

Italy:

Invisible children - The human rights of migrant and asylum-seeking minors detained upon arrival at the maritime border in Italy

Introduction

Minors are often forgotten in discussions on global migration and asylum. According to UNHCR, at any one time there may be up to 100,000 unaccompanied children in Western Europe alone. As many as 20,000 unaccompanied minors lodge asylum applications every year in Europe, North America and Oceania.¹ Children are particularly vulnerable to human rights abuses, both as minors and as migrants/asylum-seekers, and are thus subject to an intersectional vulnerability. In Italy, many migrant and asylum-seeking minors, whether accompanied by family members or alone, are put in immigration detention centres each year after arrival at the maritime border without an opportunity to challenge the lawfulness or arbitrariness of their detention. Their exact number is not available due to a lack of transparency in the Italian immigration system. Because the practice of routine, generalized detention does not comply with international human rights laws and standards, such detention is not subjected to protective assessments (such as whether it is in the child's best interests) as required by the UN Convention on the Rights of the Child (CRC).

This document is a summary of a longer report which examines the conditions faced by migrant and asylum-seeking minors held in immigration detention upon arrival at Italy's maritime borders. It begins with an outline of the relevant international and domestic legal safeguards which apply to migrant and asylum-seeking minors in immigration detention, followed by an analysis of the reality on the ground based on case studies carried out by Amnesty International. For the purposes of this summary, children or minors are considered to be below the age of 18 years.

This document builds on Amnesty International's previous reports on the situation faced by migrants and asylum-seekers in Italy. In June 2005, the organization published a report entitled *Temporary stay - Permanent rights: The treatment of foreign nationals detained in 'temporary stay and assistance centres' (CPTAs)* (AI Index: EUR 30/004/2005) which provided a comprehensive overview and analysis of the treatment of migrants and asylum-seekers in immigration detention centres. In July 2005, Amnesty International issued a shorter report entitled *Lampedusa, the*

¹ See, UNHCR, *The World of Children at a Glance*, 2001.

island of Europe's forgotten promises (AI Index: EUR 30/008/2005) which highlighted the problems faced by migrants and asylum-seekers arriving on the island of Lampedusa, south of Sicily. Amnesty International has also raised its concerns directly to the Italian government on several occasions.

International law and standards

International Framework

Migrant and asylum-seeking minors in immigration detention are protected by several human rights instruments, including those relating to rights of refugees, asylum-seekers, migrants, children and persons deprived of their liberty.

All decisions to be made in a child's "best interest"

The UN Convention on the Rights of the Child (CRC)², to which Italy is a state party, establishes an obligation upon states to give "primary consideration" to the "best interests" of the child every time a decision concerning them, directly or indirectly, is taken. This basic principle applies to asylum-seeking and migrant children both when they are unaccompanied and under the responsibility of officials of the receiving country, and when they arrive together with their parents, guardians or other family members.

There are a range of articles of the CRC that specifically apply to migrant or asylum-seeking children. In particular, article 20 would apply to unaccompanied migrant and asylum-seeking minors. It establishes that "1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State; 2. States Parties shall in accordance with their national laws ensure alternative care for such a child; 3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background."

In addition, Article 22 of the CRC obliges States Parties to take "all appropriate measures to ensure that a child who is seeking refugee status...whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights" in the CRC and other international human rights treaties.

² Article 3.

No migrant or asylum-seeking child to be subjected to unlawful or arbitrary detention

The Universal Declaration of Human Rights of 1948 contains an explicit prohibition of unlawful and arbitrary detention. This principle was later reaffirmed by article 5 of International Covenant on Civil and Political Rights (ICCPR) of 1966. Article 37(b) of the CRC reiterates that children also have the right to be protected against unlawful or arbitrary deprivation of liberty. According to this provision, the arrest, detention or imprisonment of a child shall be in conformity with the law, be used only as a measure of last resort and for the shortest appropriate period of time. Not unlike the general human rights provision against arbitrary detention, article 37(d) of the CRC states that “every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”

According to the United Nations High Commissioner for Refugees (UNHCR), asylum-seeking children must not be detained. This principle is developed both in the 1994 Guidelines on Protection and Care of Refugee Children and in the 1997 Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum (the “Guidelines”). It is also reaffirmed in the 1999 Revised Guidelines on Detention of Asylum-Seekers, according to which unaccompanied children should not be detained as a general rule, and “all appropriate alternatives to detention should be considered in case of children accompanying their parents.” In particular, “children and their primary caregivers should not be detained unless this is the only means of maintaining family unity.”

Detention conditions to be humane and age appropriate

Detention conditions are regulated by, amongst other things, article 10 of the ICCPR which states that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Article 7 of the ICCPR has also been used to prohibit conditions in detention that amount to forms of ill-treatment. Detention conditions are further regulated by the UN Standard Minimum Rules for the Treatment of Prisoners³ and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment⁴. These standards apply to children as well as adults. According to these international standards, all detainees are to be treated in a humane manner and with respect for the “inherent dignity” of

³ Adopted by resolution of the Economic and Social Council of the United Nations n.663 C (XXIV) of 31 July 1957.

⁴ Adopted by Resolution of the United Nations General Assembly (U.N. Doc. A/43/49 (1988)).

the human being. Of relevance to children are also the specific standards of treatment provided for by the CRC and by the UN Rules for the Protection of Juveniles Deprived of their Liberty⁵, which state that the detention facilities for juveniles and the physical environment should have due regard “to the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical activities and leisure-time activities.”

Article 37(c) of the CRC further states that “every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances”.

The UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum also establish that “if children who are asylum-seekers are detained in airports, immigration-holding centres or prisons, they must not be held under prison-like conditions. All efforts must be made to have them released from detention and placed in other appropriate accommodation. If this proves impossible, special arrangements must be made for living quarters which are suitable for children and their families. The underlying approach to such a programme should be ‘care’ and not ‘detention’. Facilities should not be located in isolated areas where culturally appropriate community resources and legal access may be unavailable.”

Transparency of places of detention

According to international human rights law and standards, monitoring ought to be carried out by an independent national institution, created on the basis of the “Paris principles” adopted in 1993 by the United Nations⁶. The independent monitoring body's mandate should include the possibility of listening to the victims of abuse⁷. Ten years after the adoption of the “Paris Principles” by the UN General Assembly, Italy has not yet set up a body of this kind⁸.

⁵ Adopted by General Assembly resolution 45/113 of 14 December 1990.

⁶ The “Paris principles” are contained in a United Nations Declaration, adopted by resolution of the General Assembly on 20 December 1993 (GA Res. N. 48/134).

⁷ An institution of this kind, already existing in the systems of several States, has a pluralistic composition and a consultative role: it works in close cooperation with NGOs and develops regular reports relating to the situation of human rights in the country and proposals for change to be submitted to the relevant authorities. Its wide mandate includes the possibility of interviewing victims of abuses.

⁸ Details of Amnesty International recommendations on the monitoring power of national human rights institutions in detention facilities can be found in *National Human Rights*

In 1999, a declaration of the United Nations General Assembly⁹ stated the right of individuals and groups to engage in the promotion of human rights, recognizing their right to ask, obtain and keep information on how such guarantees are rendered effective within the national system¹⁰. Research activity, the ultimate aim of which is to strengthen “understanding, tolerance, peace and friendly relations”¹¹ among nations and different groups, is part of this work.

European Framework

In 2005, the Council of Europe adopted the Twenty Guidelines on Forced Return. The guidelines include protection for children in detention during all stages of the “forced return” process, and provide for specific protection of unaccompanied minors, recommending their placement in institutions with skilled personnel and appropriate facilities.

The Council of Europe, in a recommendation by the Commissioner for Human Rights issued in 2001¹², asks governments to guarantee “maximum transparency” in the management of detention centres for foreigners, including ensuring access to non-governmental organizations (NGOs). The Council of Europe also recommends, in the Guidelines on All Stages of the Forced Return process¹³, that governments guarantee contact between detainees and NGOs – a principle which is also

Institutions – Amnesty International’s recommendations for effective protection and promotion of human rights (IOR 40/007/2001). Amnesty International has often urged Italy to establish this body.

⁹ Declaration on the rights and responsibility of individuals, groups and organs of society to promote and protect universally recognised human rights and fundamental freedoms, adopted by Resolution of 8 March 1999 (A/RES/53/144).

¹⁰ Article 1 : “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels”; Article 6 (a) : “Everyone has the right, individually and in association with others: (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems.”

¹¹ Article 16.

¹² Recommendation of the Human Right Commissioner of the Council of Europe concerning the rights of aliens wishing to enter a Council of Europe member State and the enforcement of expulsion orders, of 19 September 2001 (CommDH/Rec(2001)1).

¹³ Guidelines on all stages of the ‘forced return’ process, adopted by the Committee of Ministers of the Council of Europe on 9 May 2005 (CM(2005)40).

contained in the 7th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment¹⁴.

The EU Directive on Minimum Standards of Reception of Asylum-seekers obliges Member States to inform asylum-seekers “of at least any established” reception benefits, and of organizations providing legal assistance and social help. Moreover, it provides specific guarantees for minors who are victims of torture, trafficking and other forms of violence, and for unaccompanied minors. The European Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status establishes that Member States shall not hold a person in detention for the sole reason that he/she is an asylum-seeker and that where an asylum-seeker is held in detention, Member States shall ensure that there is a possibility of speedy judicial review.

National legal framework

General legal framework relating to immigration and asylum

The first decree in the field of immigration in Italy dates back to 1986¹⁵, while the first law was issued in 1990¹⁶. A comprehensive law was adopted only in 1998¹⁷ and, after an increasingly restrictive application, it was modified in 2002 by Law 189/02 (commonly referred to as the “Bossi-Fini Law”) ¹⁸. Law 189/02 came into force on 21 April 2005.

A strategic principle inspiring the 1998 Consolidated Law and the 2002 amendments is the numerical determination of “maximum quotas” for the annual entry of migrants¹⁹. The resulting mechanism for legally entering the country is extremely complex and requires employers in Italy to make an individual request (“*richiesta nominativa*”) to employ a foreign citizen living abroad²⁰.

¹⁴ 7th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (CPT/Inf (97) 10).

¹⁵ Law No 943 of December 1986 (“on work and treatment of non-EU migrant workers and against clandestine immigration”).

¹⁶ Decree Law no. 416 of December 1989 converted into Law No 39 February 1990 (“including urgent provisions in matter of asylum, entry and residence of non-EU citizens and regularization of non-EU and stateless persons already living in the territory of the State”).

¹⁷ Law 40/98 (so-called Turco Napoletano Law), later merged into Legislative Decree No. 286 of July 1998 (Consolidated Text “concerning immigration matters and standards concerning the condition of the alien”).

¹⁸ Law 189 of July 2002 (so-called Bossi-Fini Law).

¹⁹ Article 3 section 4 of Consolidated Text 286/98 on Immigration.

²⁰ Article 4 and 22 of Consolidated Text 286/98 on Immigration.

The 1998 Consolidated Law has implied, with few exceptions²¹, detention of persons who enter or reside irregularly in Italy and are awaiting removal/deportation to their country of origin.²² It has provided for the establishment of detention centres, called centres of temporary stay and assistance (“*Centri di permanenza temporanea e assistenza*”; CPTAs] where migrants awaiting removal can be held for a maximum period of 30 days. This period of time was doubled to 60 days by the 2002 amendments. Detention in a CPTA must be confirmed by the competent civil judge (“*giudice ordinario*”), who also has competence over appeals against expulsion orders.

The 2002 Bossi-Fini Law, applicable since 21 April 2005, decentralised recognition of refugee status mainly to “border” areas of arrival of asylum-seekers²³. It allows for generalized detention during the entire asylum procedure of asylum-seekers arriving irregularly, and such persons are held within facilities called Identification Centres (“*Centri di Identificazione*”; CDIs)²⁴.

There are now seven Territorial Commissions which are responsible for the recognition of refugee status, coordinated by a National Commission. One of the complexities of the system is that CDIs are often located in the same facilities as CPTAs, thus blurring the difference between these two forms of detention centres.

Constitutional right against unlawful or arbitrary detention

According to the Italian Constitution, personal freedom is inviolable and detention and other limitations on personal freedom are only permissible by judicial order and only in respect of cases provided by the law. Criminal law permits a few exceptions to this rule, including the “police provisional arrest” aimed at the identification of people under investigation or having knowledge of facts relevant to an investigation²⁵. These measures can last a maximum of 24 hours according to recent amendments by the “counter-terrorist” provisions issued in July 2005, which also require that the public prosecutor is informed of such detention²⁶.

²¹ Among them individuals at risk of persecution and unaccompanied minors, according to article 19 of Consolidated Text 286/98 on Immigration; as far as these categories are concerned see Chapter 5.

²² Before the new provisions of the Bossi-Fini Law came into force a case by case evaluation of the opportunity of forced repatriation was provided; see *infra*.

²³ The seven Local Commissions are based in Milan, Gorizia, Rome, Foggia, Crotone, Siracusa and Trapani.

²⁴ See § 2.4.

²⁵ Article 349 of the Italian Code of Penal Procedure.

²⁶ Decree Law no. 144 of 27 July 2005.

Immigration detention

Italian immigration law provides for detention of migrants in CPTAs when “it is not possible to immediately expel or reject an individual by accompanying them to the border, because he/she needs assistance, or a supplementary verification of his identity or nationality, or travel documents are not immediately available, or because of the lack of a means of transport²⁷. Both “expulsion” and “rejection at the border” are provisions adopted through a written act and communicated to the individual together with information on the appeals procedure²⁸. The act by which detention is ordered should always be subject to confirmation by the judicial authority and may be appealed before a court²⁹.

The laws in force since 21 April 2005 allow detention of asylum-seekers during the entire procedure and without judicial review in a wide range of circumstances³⁰, within CDI identification centres. Detention of asylum-seekers may be ordered (a) in order to verify or determine the asylum-seeker’s nationality or identity, (b) if they are not carrying travel or personal identity documents, or (c) if they have presented false documents on arrival; (d) in order to check the grounds on which their asylum application is based where they are not “immediately available”; or (e) while they are awaiting the outcome of the proceedings concerning the recognition of the right to be admitted to Italy. The detention is mandatory for asylum-seekers who have presented asylum applications after evading or trying to evade border controls or who have presented applications after an expulsion or rejection order.

Detention of accompanied migrant and asylum-seeking minors

Since 21 April 2005, Italian law treats the detention of *accompanied* asylum-seeking minors in the same way as adults. The maximum period of detention provided for by law is, in most circumstances, 20 days. Circumstances justifying such detention include verifying nationality or identity, investigating cases when documents are missing or false, and verifying the “not immediately available” elements of their asylum application. Detention of *accompanied* minors is also possible in cases where the minor’s family is subject to an expulsion order, which has been communicated to the family although it is not immediately enforceable. The subsequent detention is aimed at protecting family unity³¹. For this provision to be applicable, at least one

²⁷ Article 14 of Consolidated Text 286/98 on Immigration.

²⁸ Article 13 section 7 of Consolidated Text 286/98 on Immigration and present wording of Article 10 of Decree of President of the Republic no. 394 of 31 August 1999 (the implementing legislation for the Consolidated Text)

²⁹ Article 14 of Consolidated Text 286/98 on Immigration.

³⁰ According to Article 1-bis of Law 39/90 as amended by Law 189/90.

³¹ Article 19 section 2 a) of Consolidated Text 286/98 on Immigration.

parent must have requested the family unit stay together, or the Juvenile Court (“*Tribunale per i Minorenni*”) must have advised that this should be done.

No detention for unaccompanied minors

Detention under immigration laws of *unaccompanied* migrant and asylum-seeking minors is prohibited, including in CPTAs and CDIs. In fact, immigration legislation establishes that minors cannot be expelled, “except for their right to follow their expelled parent or guardian”³². Therefore, unaccompanied minors should theoretically *never* be expelled or detained in centres such as CPTAs and CDIs.

Other protections of minors

Domestic legislation does not include provisions for protecting minors immediately after their arrival at the border or concerning their treatment in detention facilities. However, Italian law establishes that all migrant minors present on Italian territory – even if irregularly present – enjoy the same rights to education³³ and to medical care³⁴ as Italian citizens. Italian law also specifically protects all minors who are not members of a family unit, ensuring that they have legal representation³⁵ as well as adequate care within family units or private facilities³⁶.

According to the 2002 Bossi-Fini Law, upon reaching the age of 18, individuals staying in Italy on a “minor age” permit convert their document into a permit for study, work or “job search” only under certain conditions. They should be able to prove that they have resided in Italy for at least three years and have been following “a project of social and civil integration run by a public or private agency”³⁷ for more than two years. A further condition is that a decision of “assisted repatriation” has not been adopted by the Foreign Minors Committee. The only exception (i.e., permission to convert the permit in the lack of the aforementioned requirements) is provided for minors who have been formally placed under foster care.

³² Article 19 section 2 a) of Consolidated Text 286/98 on Immigration.

³³ Article 38 of Consolidated Text 286/98 on Immigration.

³⁴ Article 35 section 3 b) of Consolidated Text 286/98 on Immigration.

³⁵ Article 343 and ff. of the Civil Code provide for the setting-up of a guardianship and for the appointment of a Guardian in favour of those minors whose parents “are dead or cannot, for other reasons, exercise their parental power”: the competence on adoption of this act is vested on Guardianship Judges (Giudici Tutelari).

³⁶ Law no. 184 of 4 May 1983 (“Right of the minor to have a family”) establishes procedures on foster care of minors “temporarily deprived of an adequate family environment” and on the adoption of minors “whose state of abandonment has been ascertained”; Guardianship Judges and Juvenile Civil Tribunals (Tribunale per i minorenni) are vested with specific powers in this regard.

³⁷ Article 32 Consolidated Text 286/98 on Immigration, as amended by Law 189/02.

Children who have not been granted refugee status who arrive in Italy after their fifteenth birthday and who are not in foster care or lack certification of their “integration process” lose their residence permit on the day of their eighteenth birthday. Their stay then becomes irregular, they lack legal protection and may be subjected to detention pending removal.

Amnesty International’s concerns regarding migrant and asylum-seeking minors in immigration detention in Italy

According to official data, about 80,000 migrants and asylum-seekers reached Italy by sea between the beginning of 2001 and June 2005. As Amnesty International has previously highlighted³⁸, the risk of human rights violations, for both adults and minors, at the maritime border most often concerns:

- *refoulement*³⁹ to countries of origin or transit countries where individuals could face persecution and other serious human rights violations;
- collective expulsions;
- discriminatory access to asylum procedures;
- unfair and inadequate identification procedures including age assessments;
- procedures of adoption of expulsion orders and modalities of forcible return not in line with international human rights standards;
- detention practices that fall short of international standards; and,
- disregard of the obligations, prohibitions and standards concerning vulnerable groups.

In terms of the detention of migrant and asylum-seeking children, Amnesty International raises concerns regarding the following:

³⁸ See *Italy: Lampedusa, the island of Europe's forgotten promises* (AI Index: EUR 30/008/2005); *Italy: Further information on Forcible return/fear for safety/fear of torture* (AI Index: EUR 30/005/2005); *Italy: Temporary stay - Permanent rights: The treatment of foreign nationals detained in 'temporary stay and assistance centres' (CPTAs)* (AI Index: EUR 30/004/2005; and, *Europe and Central Asia: Summary of Amnesty International's Concerns in the Region: July - December 2004* (AI Index: EUR 01/002/2005).

³⁹ “*Refoulement*” is the expulsion of persons who have the right to be recognised as refugees to places where their lives or freedoms could be threatened. It has also been held to include rejection at the frontier by UNHCR’s Executive Committee, see EXCOM Conclusions Nos. 81(XLVIII) of 1997, 85 (XLIX) of 1998, and 99 (LV) of 2004.

- lack of transparency and lack of access to detention facilities by non-governmental organisations, including the lack of statistics available on detained children;
- the detention of accompanied minors in situations that are not age appropriate, where they are not separated from non-family adults, and where conditions of detention are unsatisfactory;
- the detention of unaccompanied minors in breach of national law and without due regard to international standards (including the determination of whether detention is in the child's best interests), the requirement to consider alternatives to detention for separated or unaccompanied children and lack of basic safeguards;
- the inhumane treatment of migrant and asylum-seeking minors during transfers;
- the generalised detention of family units and the failure to apply the principle of 'last resort' to detention of accompanied minors; and,
- risks facing children who are inaccurately assessed as being as 18 years of age or older, therefore subject to adult detention.

Lack of transparency

Despite the Italian government declaring its commitment to ensure the "greatest possible transparency" in the management of CPTAs⁴⁰ in its 2004 Report to the UN Human Rights Committee, there remains a distinct lack of transparency in Italian immigration detention centres. Official statistics do not include data on migrant and asylum-seeking minors arriving in Italy each year who are held in immigration detention centres. However, Amnesty International has received credible reports and allegations indicating the presence of minors in all the different "types" of existing centres in recent years. The fact that the authorities responsible for migrant and asylum-seeking minors in immigration detention centres are either not aware of or do not publicly declare the statistics and information concerning the numbers of migrant and asylum-seeking minors in detention and their conditions evidences a clear lack of transparency, both in the management of the centres and with regard to the protection of the children inside the centres. It also puts Italy's compliance with international standards relating to transparency of detention facilities into question.

Despite repeated requests in early 2005 to undertake research concerning the situation of minors in immigration detention, Amnesty International has continuously

⁴⁰ Human Rights Committee, Consideration of reports submitted by states parties under article 40 of the covenant, Fifth Periodic Report, Italy, 15 April 2004 (CCPR/C/ITA/2004/5).

been denied access to immigration detention facilities by the Italian government with the claim that there were no minors in detention. On 15 March 2005, Amnesty International's Secretary General Irene Khan wrote a letter to the Minister of the Interior, Giuseppe Pisanu, asking him to respect international standards regarding transparency of places of detention and to allow Amnesty International representatives access to immigration detention facilities. At the time of the writing of this report, he had not replied.

Detention of accompanied minors

Amnesty International has received consistent and well-documented allegations concerning 588 children who arrived on Italian territory within family units between January 2002 and August 2005 who were detained after arrival. In most cases, there were very young children (including infants) who arrived with asylum-seeking family members from Eritrea, Somalia, Ethiopia, and Kurds from Turkey and Iraq. Amnesty International believes that, considering the limited transparency in the management of relevant information and of the centres themselves, they represent only a small part of the children detained during that period.

The detention of family units upon arrival does not appear to have been decided on a case-by-case basis, but rather applied *routinely* and without notifying the detained persons of the reasons for their detention and the possibility to take proceedings before a court on the lawfulness of that detention. Amnesty International has received reports that such detention has involved circumstances not foreseen by the law. Allegations relate to detention of both migrant and asylum-seeking children. Detention which is not allowed under domestic law is prohibited by international human rights law.

As it is not clearly provided for by domestic law, generalized detention "upon arrival" is hard to define, therefore difficult to evaluate from the point of view of its *necessity* and *proportionality*. According to official documents and declarations made to Amnesty International by the competent authorities, detention is applied to newly-arrived irregular migrants and asylum-seekers "waiting for identification". According to reports and allegations, however, it appears that family units - including minors within those units - have remained in the centres for more than 10 days after identification and when there is no removal order.

Amnesty International is concerned that Italy is failing to fully consider appropriate alternatives to detention, as well as failing to apply detention as a 'last resort' for family unit as required by the CRC with respect to the detention of minors.

Detention of unaccompanied minors

In spite of Italian law prohibiting the detention of unaccompanied migrant or asylum-seeking children, Amnesty International has received consistent allegations regarding 28 unaccompanied minors who have been detained at some point between January 2002 and August 2005. Almost all were asylum-seekers from sub-Saharan African countries in which the human rights situation is very precarious.

Allegations made to Amnesty International by the minors themselves or professionals, such as social workers who know their situation, include:

- body searches, inspections and confiscation of belongings which are not in line with international standards on respect for the human dignity of children;
- obstacles to accessing asylum procedures, as well as cases of persons who were considered as asylum-seekers without their knowledge and received residence permits of which they did not understand the meaning;
- inadequate or insufficient legal aid and poor information on the rights of minors in Italy;
- non-appointment of a legal representative; and,
- accommodation in places where non-family member adults were also present.

Amnesty International has spoken to “John”⁴¹ who arrived in Italy as an unaccompanied minor fleeing a life as a child soldier in his native country. After arriving on Lampedusa, he was taken to a detention centre and ordered to get undressed for a body check. He told them that he was only 16 years old, yet he was detained at the Lampedusa centre for 2 days where he slept in a room with 6 adult men. He was later transferred to another centre in southern Italy where he had to share a room with 12 adults for a month. “John” eventually found accommodation in a reception centre for minors. However, 5 months after his arrival in Italy, a guardian had still not been appointed to represent him.

In addition to the cases mentioned above, Amnesty International has received consistent and (in part) well-documented information regarding the detention of at least 275 other unaccompanied young persons. Amnesty International has reasons to believe that many of these persons may in fact be minors, most of whom came from North African or Middle Eastern countries.

Treatment of migrant and asylum-seeking minors during transfers

Amnesty International has received repeated and consistent information regarding ill-treatment of migrant and asylum-seeking minors, including:

⁴¹ The names of all minors cited in this report have been changed to protect their identities.

:

- controls on arrival and confiscation of personal belongings of unaccompanied minors carried out in ways which do not appear in line with “the respect of the dignity” and the specific needs, including psychological needs, of minors;
- delays in the transfer of infants to suitable places of reception;
- long waits for children during identification operations; and,
- hospitalization not in line with standards for the reception of refugees.

For example, “Selma”⁴², of African origin was small and fragile when she arrived in Italy. She was only 20 days old and weighed 3 kilos. Upon arrival, “Selma”, her mother and two of her mother’s travelling companions were put in a small room in a nearby hospital. They were only allowed to leave the room to go to the toilet, and the mothers had to keep their children with them at all times as there were no cradles.

Many consistent allegations focus on the conditions during transfers to and from immigration detention centres carried out by different means of transport, including ferry boats, military planes and private buses under police supervision. Amnesty International has received repeated and consistent allegations concerning transfers carried out between January 2002 and August 2005 which do not appear in line with the standards of treatment provided for in the UN Convention on the Rights of the Child and standards relating to persons deprived of their liberty. These include:

- the lack of information for minors and their parents relating to the final destination of their journey;
- the inadequacy and insufficiency of food and water provided for the journey which, in many cases, lasted for more than 12 hours;
- the inadequacy of the transfers conditions of newborn babies and pregnant women;
- the difficulty of the transferred migrants in communicating the children’s essential needs to the police agents supervising these transfers; and,
- the lack of female personnel among the police agents involved in the transfers to facilitate the transfer of female migrants and asylum-seekers.

“Merilem”⁴³ was just 6 years old when she arrived in Italy. Her mother was heavily pregnant. Her mother told Amnesty International how the family was put on a bus to

⁴² See fn. 41.

⁴³ See fn. 41.

take them to a detention centre. The journey lasted several hours but they were given nothing to eat or drink. They were not told where they were going or how long the journey would take.

Detention conditions

Amnesty International has received consistent allegations that the right of detained minors to be kept separate from adults who are not members of the same family unit has in many cases not been respected. This situation results from the prevailing policy of generalized detention for arrivals by sea, as well of the use of collective detention facilities. Amnesty International considers this treatment to be in clear contrast with the right of detainees who are minors to be kept separate from adults who are not family members, and to be in accommodation which ensures their privacy and protects them from any form of abuse.

Amnesty International has received several consistent reports and allegations concerning inadequate living conditions in mobile houses used in detention centres, which in summer are subject to intense heat and in winter to cold and wet. Another cause for concern referred to Amnesty International is the lack of shade in the collective and open areas of detention centres. Many of the children who have had to face these conditions were under the age of 5, including infants born during the journey or during their mother's stay in the detention centre.

Amnesty International has been in touch with the family of a girl named "Jennifer"⁴⁴. She was born few days after her parents' arrival in Italy. "Jennifer's" mother told Amnesty International that Jennifer was born in a hospital, but that the family was soon after transferred to a mobile house in a detention centre, where they spent more than 20 days. According to Jennifer's mother, there were no trees or other forms of protection from the hot summer sun in the centre, causing her newborn infant to cry all the time from the constant exposure to the sun.

Risks relating to inaccurate age assessment

Italian law does not provide a procedure for determining the age of a migrant or asylum-seeker. Amnesty International has received consistent and credible allegations that Italian immigration authorities are currently depending almost entirely on forensic medicine methods to assess a person's age in case of uncertainty. The authorities allegedly do not take into account the margin of error implied by age assessment procedures based solely on scientific procedures. This means that some

⁴⁴ See fn. 41.

migrants and asylum-seekers who are in fact minors may be detained and expelled as they have been classified as adults.

Amnesty International has received consistent reports concerning the detention of children of an uncertain age in immigration detention centres which lodge only adult migrants awaiting expulsion. According to allegations, these detentions were authorized based on age determinations made through the use of forensic medical techniques. Amnesty International encourages the Italian government to uniformly apply policies in line with international practice giving minors of an uncertain age the "benefit of the doubt". In respect of this principle, expulsion or detention of such minors should never occur.

6. Conclusions and recommendations

The standards and principles provided for by the UN Convention on the Rights of the Child for anyone under 18 years of age have been ignored by the Italian authorities in many phases following the arrival of asylum-seeking and migrant children at the maritime border, with particular reference to conditions of transfers, and type of accommodation used for detention purposes including permanent structures, closed camps and mobile units. Persons deprived of their freedom, e.g. asylum-seekers and irregular migrants including new born babies, infants and unaccompanied minors have seen their rights ignored.

Vulnerable categories - which include children above all - are among the first victims of the failings of Italian policies on asylum and immigration, and in particular of detention applied routinely to irregular migrants and asylum-seekers. The lawfulness of these measures, the dubious arguments given for the choices which have led to their adoption and their application without falling short to human right standards, must be therefore seriously reconsidered: the most vulnerable cannot be protected without taking action on the general context of risk for human rights which at present characterises the legislation and procedures.

States have the right to control their borders: they have also the obligation to respect their voluntarily assumed international legal obligations including the human rights of all asylum-seekers and migrants in their territory or under their effective control. Amnesty International therefore recommends the following

In general

Amnesty International urges the Italian authorities to:

- ensure the full implementation of the provisions of the UN Convention on the Rights of the Child, without discrimination of any kind with regard to all minors present on Italian territory;
- ensure primary consideration of the best interests of asylum-seeking and migrant children in all actions concerning them during every phase of their presence in Italy and independently of their legal status or that of their parents or guardians;
- adopt a policy that provides for the strongest possible presumption against the detention of migrant or asylum-seeking children. In respect of primary caregivers who are accompanying children, all appropriate alternatives to detention should be considered. If no alternative to detention can be applied, children whose primary caregivers are subject to detention could be exceptionally held in detention facilities if this is the only means of maintaining family unity and it is in the best interests of the child. In such case, detention should be in accordance with the Convention on the Rights of the Child and include facilities necessary for the development of the child.
- ensure that unaccompanied minors are never held in immigration detention and that national law is respected which prohibits their detention. In addition, ensure that they have immediate access to reception facilities that provide for special protection and assistance as warranted by their situation, including foster care placements and other alternative arrangements;
- ensure that detention measures are in conformity with the UN Body of Principles for the protection of all persons subjected to any form of detention or imprisonment, to the UN Rules for the Protection of Juveniles Deprived of their Liberty and implement the Council of Europe Guidelines in twenty points on forced return
- to adopt appropriate measures, as required by art. 22 of the UN Convention on the Rights of the Child to ensure that asylum-seeking or refugee children benefit from the protection and humanitarian assistance necessary for them to avail themselves of all the rights of minors provided for by the CRC and other international human rights instruments;
- ensure that all children arriving irregularly in Italy are given the opportunity to seek and to apply for asylum and that they are provided legal representation, that the right is explained to them in a language that they understand and in an age sensitive manner;
- ensure implementation of the UNHCR Guidelines on Protection and Care of Refugee Children and of the UNHCR Guidelines Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum
- ratify the Convention for the Protection of the Rights of all Migrant Workers and Members of their Families and ensure that migrant workers and members of their families who are deprived of their liberty are treated with humanity and

with respect for the inherent dignity of the human person and for their cultural identity.

Concerning asylum seekers including minors

- adopt a specific and organic law on the right of asylum, in full conformity with the applicable international standards including the adoption of an age and gender sensitive approach in the application of applicable international standards
- adopt a presumption against detention of asylum-seekers and ensure that detention is only used in accordance with procedures established by law that are in conformity with international standards and on the basis of necessity and proportionality to the aim to be achieved; and that every possible alternative to detention is considered on a case by case basis; in the light of these principles, ensure:
 - that unaccompanied minor asylum-seekers are never detained even for brief periods and have immediate access to suitable alternative reception structures;
 - that asylum-seeking family units with minors are not detained, since this detention appears in no way proportionate to the aim, and immediately have access to alternative reception structures;
- ensure that everybody has access, without discrimination, to the asylum procedure and that the principle of *non-refoulement* to persecution, torture or other forms of ill-treatment is scrupulously observed, including in relation to non-rejection at the frontier.

Concerning the treatment of migrant and asylum-seeking minors on arrival and in the course of transferrals

- ensure that the contents and sequence of the provisions adopted on the arrival of asylum-seekers and migrants on the territory and directly or indirectly concerning asylum-seeking and refugee children are guided by consideration of the “best interests” of the child and are such as to ensure that minors they are treated with humanity and the respect due to the dignity and needs of their age;
- ensure that transfers to and from places of detention or reception of asylum-seekers and migrants including asylum-seeking and migrant children are not

unnecessary or gratuitous and are carried out in conditions that respect the human rights of those being transferred;

Concerning detention facilities for migrants and asylum-seekers

- ensure that, in the exceptional cases of immigration detention, this occurs in conditions that provide for protection against torture or ill treatment and guarantee the humane treatment of detainees with full respect for their human rights including the right to live in dignity;
- render transparent and clear the regulations concerning the setting up and operation of places of detention for asylum-seekers and migrants, avoiding their establishment on the basis of urgent and special provisions and clearly defining the legal status of existing places of detention also with reference to the safeguards for the treatment of detainees and their contact with the outside world;

Concerning the treatment of minors within detention structures

- ensure that, in exceptional cases of “immigration detention” of minors, they are separated from adults, except for the members of their own family unit, and that the facilities in which they are lodged and the spaces in which they move are therefore clearly distinct and not merely set apart from those where adults who do not belong to their family units are placed;
- ensure that detained minors enjoy their right to education in structures outside the place of detention, as provided for by international standards and by national law;
- ensure the protection of pregnancy and maternity of migrant and asylum-seeking women, and suitable medical care for new born babies and their mothers, on the basis of equal treatment with Italian citizens, as required by national law;
- ensure that detained minors and their parents or guardians have access to legal advisers with experience on the rights of minors; ensure that the “Letter of rights and duties” [*Carta dei diritti e dei doveri*] and the information brochure concerning the asylum procedure are distributed to everyone and that they are amended in order to include reference to the fundamental rights of accompanied and unaccompanied minors provided for both by international and internal law;
- ensure that detained minors have regular contact with the outside world and that their right to recreation is guaranteed;

Concerning unaccompanied minors

- ensure that asylum-seeking and migrant children who are separated from both parents, guardians and are not being cared for by an adult who by law or custom has responsibility to do so, have access to special care and protection without any discrimination and in conditions of equality with all the minors present on Italian territory, as required by international standards and domestic law;
- ensure that the benefit of the doubt is given to young people whose age is subject to assessment (such as where no documents are available). This would include taking into account not only the physical appearance of the child but also his/her psychological maturity/immaturity. Decision-makers should avoid making decisions on the detention or expulsion of young people on the basis of forensic medicine alone.
- take measures to ensure that unaccompanied minors are immediately identified as such on arrival, also regardless of their declarations, through procedures directed towards the protection of their fundamental rights and centred on correct information concerning their rights, so as to avoid their detention or expulsion or mistreatment or exploitation by other migrants/asylum-seekers;
- ensure that each child that is identified as unaccompanied has a guardian or adviser appointed for him/her that has the necessary expertise as to ensure that the best interest of the child are safeguarded and that the child's legal, social, medical and other needs are appropriately covered;
- ensure access to fair asylum procedures for children regardless of their age including access to a qualified legal representative;
- prioritise the examination of asylum applications of children ensuring that decisions are made promptly, fairly and in an age and gender sensitive manner.

Concerning the transparency of places of detention and the prevention of human rights violations

- ensure that, in conformity with international standards, an independent monitoring and inspection body which may carry out regular, unlimited and unannounced visits in every structure where irregular migrants and asylum-seekers are held is set up, and that this body has specific responsibility concerning the rights of detained minors;
- ensure that information relating to detention practices including the detention of asylum-seeking and migrant minors is made publicly available through the publication of complete and detailed data concerning:

- the admission and presence of accompanied and unaccompanied asylum-seeking and migrant children;
- the average length and places of detention of asylum-seeking and minor children;
- gender-disaggregated statistics
- ensure that the recommendations adopted by the Commissioner of Human Rights and by the Committee on prevention of torture of the Council of Europe concerning the maximum transparency of the operations carried out in all places of detention are fully implemented, in order to ensure the respect of fundamental human rights.

Appendix

The detention places – here referred to as “centres” when they are stable, for the sake of simplicity – in which the presence of one or more of the above-mentioned categories of people has been indicated, include:

Sicily

- Agrigento: “Contrada S. Benedetto” centre (closed)⁴⁵ – CPTA
- Lampedusa (Agrigento): centre close to the airport
- Licata (Agrigento): gymnasium of an abandoned school
- Porto Empedocle (Agrigento): sports centre
- Pozzallo (Ragusa): industrial hangar in the port
- Caltanissetta: “Pian del Lago Centre” – CDA and CPTA sections
- Siracusa: hostel
- Trapani: “Salinagrande” centre
- Trapani: “Serraino Vulpitta” centre [CPTA]

Calabria

- Crotone: Capo Rizzuto “Sant’Anna” centre – CDA, CI and CPTA sections

Puglia

- Bari: “Palese” centre
- Foggia: “Borgo Tressanti”-Borgo Mezz’Anone centre
- Lecce: “Lorizzonte” centre (closed)
- Lecce: S. Foca “Regina Pacis” centre

⁴⁵ The centre was closed after a visit by the Committee on Prevention of torture of the Council of Europe; according to the Minister of the Interior Pisanu this body found the centre “inadequate” (declaration made on 14 December 2004 during an audition before the Schengen Committee).