

AMNESTY INTERNATIONAL PUBLIC STATEMENT

Date 4 July 2024 index number EUR 30/8244/2024

LIBERTY AND DIGNITY: AMNESTY INTERNATIONAL'S OBSERVATIONS ON THE ADMINISTRATIVE DETENTION OF MIGRANT AND ASYLUM-SEEKING PEOPLE IN ITALY

People, regardless of how they arrive to a country, have the right to liberty under international law. While migration-related detention is allowed by international law, detention solely for migration-related purposes is only permitted in the most exceptional of circumstances and there is a presumption against such detention. In Italy, thousands of mainly racialised people from countries in the Global South are held in migration-related detention every year.¹ In April 2024, Amnesty International visited two 'holding centres for repatriation' run by Italian authorities and documented how some asylum seekers and migrants were subjected to administrative detention without the detention being legitimate, necessary or proportional, in conditions that failed to meet international law and standards. Concerns also arose in relation to the respect of other rights, including the rights to asylum and access to justice, in particular for people who originate from countries that the Italian government has declared 'safe'. In this context, the imminent implementation of the Italy-Albania agreement is all the more liable to violate international human rights law and standards and further push mainly racialised people into arbitrary detention, without sufficient consideration of their individual cases.

BACKGROUND

The right to liberty and the related prohibition of arbitrary detention are enshrined in numerous international and regional human rights treaties ratified by Italy, as well as in customary international law.² Under international law, "freedom must be the default position and detention the exception."³ On this basis, the Commissioner for Human Rights of the Council of Europe has called upon Member States to invest in alternative measures to effectively manage migration, which are not as intrusive and harmful as detention, and to work towards the progressive abolition of detention aimed at immigration control.⁴

Detention centres for people with irregular migration status were introduced in Italy in 1998.⁵ Over the years, Over the years, lawyers, NGOs and national and international human rights mechanisms have expressed concern about the detention system's lack of compliance with international law and standards, including as to the proportionality of detention and the need to ensure dignified conditions.⁶ Despite this the system of migration-related administrative detention has not been reformed with a view to increasing the protection of human rights. Instead, from 2023 the Italian government has expanded the detention of asylum seekers and migrants, including through planning the construction of new holding

¹ A total of 37 thousand people were placed in CPRs in the period 2014-21. In 2022, 6,383 people were placed in CPRs. Data from ActionAid/University of Bari, *Trattenuti: Una radiografia del sistema detentivo per stranieri*, 2023; and National Guarantor for the rights of persons deprived of personal liberty, *Report to Parliament 2023*.

² International Covenant on Civil and Political Rights, Article 9(1); European Convention on Human Rights, Article 5(1); United Nations Convention Relating to the Status of Refugees (1951), Article 31. See also: United Nations Human Rights Committee, General Comment 35 on Article 9: Freedom and Security of the Person, CCPR/C/GC/35, 31 October 2014; United Nations General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Resolution 43/173, 9 December 1988, Principle 2; and Declaration on the Human Rights of Individuals who are Not Nationals of the Country in Which They Live, Resolution 40/144, 13 December 1985, Article 5(1)(a).

³ United Nations Human Rights Council, Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda to facilitate human mobility, A/HRC/35/25, 28 April 2017, paragraphs 58 and 62.

⁴ Council of Europe Commissioner for Human Rights, *High time for states to invest in alternatives to migrant detention*, 31 January 2017.

⁵ Law 6 March 1998, No. 40, Article 12.

⁶ See, among others, UN Committee Against Torture, *Concluding observations on Italy*, CAT/C/ITA/CO/5-6, 18 December 2017, paragraphs 28 and 29; CoE Committee for the Prevention of Torture, *Report to the Italian Government on the visit to Italy*, CPT/Inf (2018) 13, 10 April 2018; National Guarantor for the rights of persons deprived of personal liberty, *Rapporto sulle visite effettuate nei centri di permanenza per i rimpatri (cpr) (2019-2020)*; and all the reports of the *LasciateCIEntrare* campaign: <https://www.lasciatecientrare.it/category/report/>

centres for repatriation (Centri di Permanenza per il Rimpatrio, CPR), lengthening maximum detention times, and introducing measures aimed at applying 'border procedures' to asylum seekers coming from 'safe countries'.⁷

Concerned by these developments and by persistent reports of sub-standard conditions of detention and treatment in CPRs, a delegation of Amnesty International visited Italy from 8 to 13 April 2024 to gather information on the respect and protection of human rights in detention centres. Delegates visited the CPRs of Ponte Galeria (Rome) and Pian del Lago (Caltanissetta), where they were able to speak with public security officials and operators employed at the facilities, and to carry out private in-depth interviews or shorter conversations with a total of 24 people (22 men and 2 women) subject to detention, from a variety of countries including Tunisia, Iran, Georgia, Morocco, Peru, Egypt, Gambia and China. The delegation had access also to the Pozzallo 'hotspot' centre and its extension in Modica, which are first reception facilities where authorities provide initial reception and engage in identification, registration and fingerprinting of newly arrived asylum-seekers and migrants. There, delegates spoke with operators and police officials, but were unable to carry out interviews with migrants and asylum seekers as the facilities were empty given the recent transfer of people to other facilities. Amnesty International also met senior officials from the Ministry of Interior, and received information from lawyers, academics and representatives of civil society organisations with direct experience of the situation in detention centres. Amnesty International's delegates met the former National Guarantor for the rights of persons deprived of personal liberty, Mauro Palma, as well as the Guarantors for Rome, Valentina Calderone, and the Sicily Region, Santi Consolo; however, they could not be received by the current National Guarantor, in place since early 2024, from whose office no response was received. On 11 June 2024, Amnesty International sent a letter to the Italian Ministers of Interior, Justice and Health, detailing the findings of its research and offering an opportunity to reply. On 24 June 2024, the Department for Civil Liberties and Immigration and the Department for Public Security of the Ministry of Interior provided separate replies, whose most relevant content is reflected in this document. No response was received from the Ministries of Justice and Health. Amnesty International is grateful for the availability and collaboration shown by the Ministry of Interior in supporting the visit and providing information both through a meeting and in writing. It is also deeply grateful for the willingness of people in detention to share their testimonies.⁸

Critical observations about the legal regime and conditions of detention in Italy have been the subject of a number of court rulings,⁹ reports of the National Guarantor for the rights of persons deprived of personal liberty,¹⁰ and reports by NGOs and investigative journalists.¹¹ This document builds on that body of information, by detailing key findings and concerns emerging from Amnesty International's research.

Information collected by the organization indicates that, in some cases, asylum seekers and migrants are subjected to administrative detention without a legal basis, or without the detention being necessary or proportional, and therefore in violation of their right to liberty. Amnesty International also found that asylum seekers and migrants were detained in conditions not in line with applicable international law and standards. This document illustrates how national laws and practices that are not compatible with Italy's obligations under international laws and standards result in violations not only of the right to liberty, but also of the rights to asylum, to effective recourse and to legal assistance. Italy's decision to build detention centres on Albanian territory, to hold people rescued or intercepted at sea by Italian ships, will exacerbate the risk of human rights violations. Finally, Amnesty International provides a number of recommendations to Italian authorities to address these findings.

RIGHT TO LIBERTY

During the visits carried out in April 2024, Amnesty International found that some of the people placed in detention within CPRs should never have been placed there in the first place under international law and standards. Among them, there were people seeking asylum, people who should not have been issued expulsion orders in view of their personal status, and people for whom the detention appeared unnecessary or disproportionate.

⁷ Reference is made in particular, among other measures, to those introduced by Decree-Law No. 124 of 19 September 2023 and by the Interministerial Decree of the Minister of the Interior, the Minister of Justice and the Minister of Economy and Finance of 14 September 2023. The list of 'safe countries' was updated by the Ministry of Foreign Affairs and International Cooperation with Decree 7 May 2024.

⁸ Their identities and details that could make interviewees identifiable are withheld, for security reasons.

⁹ Among others: European Court of Human Rights, *J.A. and others v. Italy*, 21329/18, Judgment, 30 March 2023, and *A.T. and others v. Italy*, 47287/17, Judgment, 23 November 2023; Lombardy Regional Administrative Court, Judgment No. 1 of 2 January 2023 and Judgment No. 2322 of 24 October 2022. See also: ASGI, *Tra le macerie del CPR di Milo: voci da un'indegna reclusione. La CEDU condanna l'Italia*, 7 Febbraio 2024.

¹⁰ National Guarantor for the rights of persons deprived of personal liberty, Report to Parliament 2023.

¹¹ CILD, *Buchi neri. La detenzione senza reato nei CPR*, October 2021; ActionAid/University of Bari, *Trattenuti: Una radiografia del sistema detentivo per stranieri*, October 2023; *Altraeconomia, Rinchiusi e sedati: l'abuso quotidiano di psicofarmaci nei Cpr italiani*, April 2023.

ARBITRARY DETENTION OF ASYLUM SEEKERS

The right to liberty of people who enter Italian territory to request international protection requires that detention be considered as an extreme and *ultima ratio* measure, to be applied only in exceptional cases and on the basis of an adequate assessment of personal circumstances.¹² International law prohibits states from detaining asylum seekers for the purpose of their removal, until a final decision has been made on their request for international protection.¹³ Furthermore, international and European law require that anyone arriving on Italian territory, including through autonomous disembarkation or rescue operations at sea, have immediate access to adequate legal information and other forms of assistance that allow those who seek to do so to apply for asylum,¹⁴ before adopting any expulsion and detention measures. The intention to seek protection must be immediately recorded and followed by an adequate procedure for assessing any protection needs, which must normally take place while the person is at liberty, without discrimination on the basis of nationality.

Notwithstanding these international obligations, in 2023 Italy introduced procedures for the automatic detention of asylum seekers who originate from countries that the Italian government considers 'safe'.¹⁵ Legislative measures introduced in 2023, in particular with law no. 50/2023 (converting decree-law 20/2023),¹⁶ have resulted in the automatic detention of people on the basis of their nationality, in contrast with international law,¹⁷ which establishes the obligation for states to conduct individualized assessments of each migrant or asylum seeker, taking into account different personal circumstances.¹⁸

The application of these provisions was suspended soon after their adoption, following court orders that found them to be in contrast with domestic and EU legislation.¹⁹ In particular, the rulings criticized a bail mechanism introduced by the government in September 2023 as sole potential alternative to detention for asylum seekers facing a 'border procedure', in circumstances that would be virtually impossible for asylum seekers to access. Amnesty International observes with concern the government's attempts to restore these measures. These include appealing against the court orders,²⁰ and the recent adoption of legislation re-introducing a bail mechanism which, albeit slightly more flexible, still makes liberty

¹² UN Human Rights Committee, Concluding observations on the sixth periodic report of Canada, 13 August 2015, (CCPR/C/C/CAN/CO/6), paragraph 12; Concluding observations on the fourth periodic report of Cyprus, 30 April 2015, (CCPR/C/C/CYP/CO/4), paragraphs 14-15; Concluding observations on the third periodic report of the Czech Republic, 22 August 2013, (CCPR/C/CZE/CO/3), paragraph 17; Concluding observations on the sixth periodic report of Denmark, 15 August 2016, (CCPR/C/DNK/CO/6), paragraph 32; Concluding observations on the sixth periodic report of Finland, 22 August 2013, (CCPR/C/FIN/CO/6), paragraph 10; Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia, 17 August 2015, (CCPR/C/MKD/CO/3), paragraph 17; Concluding observations on the second periodic report of Greece, 3 December 2015, (CCPR/C/GRC/CO/2), paragraph 28; Concluding observations on the sixth periodic report of Japan, 20 August 2014, (CCPR/C/JPN/CO/6), paragraph 19; Concluding observations on the sixth periodic report of Spain, 14 August 2015, (CCPR/C/ESO/CO/6), paragraph 15; Concluding observations on the seventh periodic report of Ukraine, 22 August 2013, (CCPR/C/UKR/CO/7), paragraphs 16 and 18. See also, in EU legislation, Article 15(1) of the Return Directive (2008/115/EC), Article 8(2) of the Reception Directive (2013/33/EU), and Article 18(2) of the Dublin Regulation (604/2013).

¹³ See United Nations Convention Relating to the Status of Refugees (1951), Articles 31-33; European Court of Human Rights, *R.U. v. Greece*, (No. 2237/08), Decision, 7 June 2011, paragraph 94, and *S.D. v. Greece*, (No. 53541/07), 11 June 2009, paragraph 62.

¹⁴ Article 6(2) of the Asylum Procedures Directive (2013/32/EU) obliges states to ensure that any person who has made an application for international protection has an effective opportunity to lodge it as soon as possible. Article 8 then reads: "Where there are indications that third-country nationals or stateless persons held in detention facilities or present at border crossing points, including external border transit zones, wish to lodge an application for international protection, Member States shall provide them with information on the possibility of doing so." See also European Court of Human Rights, *M.S.S. v. Belgium and Greece* [GC], (30696/09), paragraph 304.

¹⁵ The reference is to the list of 'Safe Countries of Origin for Applicants for International Protection', introduced by Legislative Decree no. 25 of 28 January 2008, last updated by the Decree of the Ministry of Foreign Affairs and International Cooperation of 7 May 2024.

¹⁶ Reference is made to Article 7-bis, paragraph 1, which introduces a new hypothesis of an accelerated procedure for examining applications for international protection submitted at the border or in transit zones by an asylum seeker from a country of origin considered to be safe, and paragraph 2, which provides for a new hypothesis of detention directly linked to the conduct of the aforementioned procedure.

¹⁷ Article 3 of the United Nations Convention Relating to the Status of Refugees (1951) enshrines the principle of non-discrimination, requiring contracting states to apply the provisions of the Convention without distinction as to race, religion or country of origin. More generally, see: United Nations High Commissioner for Refugees, Background Note on the Safe Country Concept and Refugee Status, EC/SCP/68, Sub-Committee on International Protection, 26 July 1991.

¹⁸ UN Human Rights Committee, *F.K.A.G v. Australia*, (2013) Communication No. 2094/2011, paragraph 9.3; Council of Europe, Committee of Ministers, Twenty Guidelines on Forced Return (2005), CM(2005)40 final, 9 May 2005, Guideline 6.1. More generally, see: Universal Declaration of Human Rights, Articles 9 and 14; UN Convention Relating to the Status of Refugees (1951), Article 31; International Covenant on Civil and Political Rights, Articles 2 and 9(1); UN Human Rights Committee, General Comment 35 on Article 9: Freedom and Security of the Person, CCPR/C/GC/35, 31 October 2014; UN Committee on the Elimination of Racial Discrimination, General Recommendation 30 on Discrimination against Non-Citizens; European Convention on Human Rights, Article 5(1); United Nations High Commissioner for Refugees, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012), Guidelines 1, 2 and 3. In EU law, see in particular: Charter of Fundamental Rights, Article 47; Reception Conditions Directive, Article 9, Procedures Directive, Article 26.

¹⁹ Among others, Court of Catania, 29 September 2023, RG. 10459/2023, 10460/2023 and 10461/2023, and Court of Florence, Sec. Immigration, Decree of 20 September 2023.

²⁰ Presidency of the Council of Ministers, *Migranti, ricorsi contro gli atti del Tribunale di Catania: la nota di Palazzo Chigi*, 23 October 2023.

dependant on financial means rather than the default condition, and is therefore not in line with international law, as well as outlining possible discrimination on the basis of the financial means of individuals..²¹

Regardless of the non-application of the legislation in question during the first half of 2024, and assurances given by representatives of the Ministry of Interior that asylum seekers were not subjected to administrative detention, Amnesty International's research indicates that citizens of countries that the government considers 'safe' continued to be detained, despite being asylum seekers. In fact, a significant proportion of the detainees met by Amnesty International, in particular Tunisian nationals, had been transferred to CPRs immediately after disembarking in Italy, after rapidly passing through hotspots or other facilities for pre-identification and photo-identification procedures that resulted in their not being considered as asylum seekers, even if in fact they intended to seek protection. Among the Tunisian citizens that Amnesty International met, some had applied for international protection, after being transferred to the CPR, claiming to be at risk of persecution in Tunisia based on their sexual orientation or political opinions, and had nevertheless not been transferred to open reception centres to wait for the end of their asylum procedure. "I was told that I can apply for asylum, but that as a Tunisian I will still be deported", said a 30-year-old man.

Based on the testimonies collected, Amnesty International believes that the detention of these people was unlawful, and that this violation of their right to personal liberty was the result of three critical issues: (a) the adoption of expulsion orders and detention measures based on a 'pre-identification' procedure carried out in ways that hindered the possibility of requesting asylum *before* entering a CPR; (b) the differential and penalizing treatment, in the asylum procedure, of citizens of countries that the Italian government considers 'safe'; and (c) the application of Article 6.3 of Legislative Decree 142/2015, which provides for the possibility for the authorities to continue to detain people who submit an asylum application following transfer to a CPR, where they believe that the application was submitted to delay or prevent expulsion.

Regarding the first point, in the past Amnesty International had already underlined the negative impacts of the pre-identification activities introduced with the so-called 'hotspot approach'. The pre-identification procedure involves a very rapid screening aimed at summarily distinguishing people seeking asylum from others who would not require protection. Amnesty International underlined in the past the need "to ensure that exhausted, traumatized, poorly advised or ill-informed individuals are not penalized for failing to request asylum immediately upon arrival."²² The pre-identification procedure, which is based on questions that can mislead people and is usually carried out very quickly upon disembarkation in Italy, can have negative and long-lasting consequences for the individual concerned: failure to be identified as an asylum seeker can result in the immediate adoption of a removal order, which could then lead to detention. To ensure that the procedure does not result in asylum seekers being channeled towards expulsion, it is paramount that people are provided with timely, adequate legal information before the procedure itself. Indeed, Italy has an obligation to provide adequate information to anyone who may wish to seek asylum, and the Court of Cassation has ruled that removal "is illegitimate when it has been ordered without respecting the prior duty to 'information'".²³

The Department of Public Security of the Ministry of Interior has highlighted that it routinely sends clear instructions to police officials, emphasising the need to carry out a careful assessment of each individual situation and to provide opportunities to raise any condition of vulnerability or protection need. It also emphasised that newly arrived people receive information on the possibility to seek protection at different stages, including at disembarkation from personnel of international organizations, and during the pre-identification procedure from the relevant police officer, assisted by a cultural mediator.²⁴ Yet, Italian authorities do not appear to have substantially revised the pre-identification procedures, nor to have ensured that all people receive adequate legal information enabling anyone wishing to seek protection to do so, before issuing a removal order against them.²⁵ Instead, people interviewed by Amnesty International recounted how they did not receive legal information from authorities and were presented with documents for signature in an intentionally hasty manner. Several detainees, in particular Tunisian citizens, said that they had signed sheets of paper, at the request of police officers, without having had the opportunity to read their contents – as the police officers would have simply raised a corner of each sheet, in the part to be signed, without giving people the opportunity to read its text. Some people reported that they had been filmed by the police during this signing procedure, but that only once they had the time to

²¹ Decree 10 May 2024, Indicazione dell'importo e delle modalità di prestazione della garanzia finanziaria a carico dello straniero durante lo svolgimento della procedura per l'accertamento del diritto di accedere al territorio dello Stato e contestuale abrogazione del decreto 14 settembre 2023, Gazzetta Ufficiale, 19 June 2024.

²² Amnesty International, Hotspot Italy: how EU policies lead to violations of the rights of refugees and migrants, Index Number: EUR 30/5004/2016, 3 November 2016, p.33.

²³ Court of Cassation, Section VI, Order No. 5926, 25 March 2015, paragraph 3.2.

²⁴ Ministry of Interior, Department for Public Security, Written communication to Amnesty International, 24 June 2024, pp. 4-5, on file.

²⁵ On the inadequacy of the pre-identification procedure, see most recently: Commissioner for Human Rights of the Council of Europe Dunja Mijatović, Report following her visit to Italy from 19 to 23 June 2023, 14 December 2023, paragraph 79.

read the document given to them – on the bus that would take them to a CPR – did they understand that it was an expulsion order, on the basis of which their detention was ordered.

This information leads Amnesty International to consider that the procedures for provision of legal information, pre-identification and adoption of removal and detention measures are carried out in a superficial manner. This means that, in some cases, even people who wish to seek international protection are issued expulsion orders and then quickly transferred to CPRs.

This happens, in particular, when the relevant procedures concern citizens of countries that Italy considers 'safe', and therefore subjected to accelerated asylum procedures if they seek protection. Many Tunisian men even said that they had in fact indicated their intention to request protection at the time of pre-identification, but nonetheless were issued removal orders and transferred to detention.

International law prohibits any form of discrimination based, inter alia, on the country of origin, including in matters of asylum.²⁶ This principle precludes the legitimacy of distinctions based on the concept of 'safe country of origin', which is not compatible with the right to an individualised, fair and efficient asylum procedure. The application of this concept leads to discrimination against asylum seekers on the basis of their nationality and often results in an excessive burden of proof imposed on the applicant to overcome an unreasonable presumption against the merits of their claim.²⁷ Since citizens of countries regarded as 'safe' are prioritized for detention in CPRs, Amnesty International considers that, in Italy, the application of the concept of 'safe country of origin' can lead to discrimination in the enjoyment not only of the right to asylum, but also of liberty.

In this sense, the government's recent decision to expand the number of countries considered 'safe', and therefore of people potentially subject to accelerated procedure and detention, is a reason for concern.²⁸ All the more so, considering the inclusion or maintenance in the list of countries such as Egypt, Tunisia and Nigeria, despite the serious and systematic violations of human rights recorded in these countries.²⁹

Finally, Amnesty International notes that under international laws and standards the detention of asylum seekers must be considered as an extreme measure, to be applied only in exceptional cases and on the basis of an adequate assessment of personal circumstances, regardless of the moment when people express an intention to seek asylum. Article 6.3 of Legislative Decree 142/2015 contrasts with this principle, effectively erasing guarantees for people who present an asylum application after transfer to a CPR, and offering police a significant margin of discretion in the application of the provision. Based on this, when people transferred to a CPR seek asylum, often the response of the authorities – as confirmed by police officials interviewed – is not to release them, but only to write a new detention order, based on a different legal ground.

Amnesty International expresses concern that people, in particular Tunisian nationals, are transferred to CPRs immediately after their arrival in Italy, and that their effective exercise of the right to asylum and to remain at liberty pending the determination of their status is hindered by ineffective legal information and pre-identification procedures and by reduced guarantees for people seeking asylum after their transfer to CPRs. This means that asylum seekers arriving in Italy and quickly taken to CPRs can actually be detained there, for a period of up to 12 months, even in cases where this is not necessary and legitimate, in violation of international law.

ARBITRARY DETENTION OF OTHER NON-REMOVABLE PERSONS

According to international and European law, any restriction of personal liberty can only be lawful where it is necessary and proportionate to achieve a legitimate aim.³⁰ One of the purposes recognized as legitimate is to prevent the

²⁶ See e.g. UN Convention Relating to the Status of Refugees (1951), Article 3.

²⁷ Amnesty International, Response to the Green Paper of the European Commission on the future Common European Asylum System - COM (2007) 301, September 2007, pages 14-15. Amnesty International, The proposed Dublin reform, 25 November 2016; Amnesty International, The proposed asylum procedures regulation, 31 March 2017.

²⁸ Ministry of Foreign Affairs and International Cooperation, Decree 7 May 2024, Aggiornamento della lista dei Paesi di origine sicuri prevista dall'articolo 2-bis del decreto legislativo 28 gennaio 2008, No. 25. For an analysis and relevant documents, see: ASGI, *Accesso civico ASGI: le schede dei Paesi di origine "sicuri"*, 19 June 2024.

²⁹ See corresponding entries in Amnesty International, Report 2023-24 on the situation of human rights in the world.

³⁰ Syracuse Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, I(A)(10); United Nations Convention Relating to the Status of Refugees (1951), Article 31(2); United Nations Human Rights Council, Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda to facilitate human mobility, A/HRC/35/25, 28 April 2017, paragraph 58.

absconding of a person whose removal the authorities are pursuing, when there are reasonable prospects that the expulsion can be carried out within a reasonable time.³¹

On this basis, the authorities can legitimately order administrative detention – where there is a demonstrated risk of absconding and such restriction of liberty is necessary and proportionate – only towards persons against whom a removal order has been legitimately issued and when there are realistic prospects of removal.³²

Nonetheless, during its visits, Amnesty International found the presence in CPRs of people who, according to the organisation, should not have been the recipients of removal orders, and therefore detention measures, due to their personal conditions. Among them, Amnesty International met an older man who claimed to be stateless, born and raised in Palermo, who went to a police office to report a theft only to receive an expulsion and end up in detention. This shows, inter alia, a lack of firewalls to protect undocumented individuals, which impacts on their right to access to justice and other rights. Amnesty International also met a Tunisian citizen who fell into irregularity after staying regularly in Italy for over 10 years, and was issued an expulsion order despite being the father of two Italian children residing in Italy. International law forbids the removal of stateless people,³³ and protects the right of each child not to be separated from their parents.³⁴

Amnesty International also met in CPRs citizens of countries with which Italy does not have readmission agreements, which are often necessary for the implementation of forced returns. More generally, the fact that only about half of the people detained in CPRs are actually removed from Italy appears to confirm that the authorities also impose detention on people for whom there is no realistic prospect of removal within a reasonable time.³⁵

This underscores the inadequacy of the assessment of personal conditions carried out by the authorities who arrange removal and detention, as well as by the judicial authorities validating the detention. Despite the Ministry of Interior arguing that detention is the most effective way to ensure expulsion orders are carried out – indicating that alternative measures have a more limited effectiveness – the Ministry of Interior itself also reported that in 2024 (as of 19 June) only 51% of the 2,383 people returned had been previously detained in CPRs.³⁶ In any case, regardless of the presumed effectiveness of different measures, arbitrary detention represents a violation of international law, and the presumed effectiveness of a measure cannot justify the imposition of measures that are not legitimate, necessary and proportionate. Any measure of migration control, including forced returns, can only take place within the limits imposed by the respect and protection of human rights.

UNNECESSARY OR DISPROPORTIONATE DETENTION

If and when the requirements for removal are met, the authorities can legitimately order detention only when this is necessary and proportionate, i.e. only when it is absolutely indispensable for the achievement of its purpose and no other less restrictive measure is applicable in the circumstances of the specific case. The necessity and proportionality of detention must be assessed based on the risk of absconding in the specific case,³⁷ and the personal conditions – including in relation to the physical and mental health – of the person receiving the removal order. Amnesty International's visit to the CPRs of Ponte Galeria and Pian del Lago gave reasons for concern regarding compliance with this principle. Many people held there had been residing in Italy for a long time, and were part of local communities, in situations that suggest the viability of less intrusive forms of limitation of personal liberty. In other cases, detention in CPRs appeared to be a continuation of periods of imprisonment, during which the necessary procedures to prepare a return could have taken place, rather than imposing a further and unnecessary period of detention.

Reasons for concern also emerged due to the presence in the CPRs of people who, according to the organization, should not have been subjected to detention in view of their physical or mental health conditions. In Caltanissetta-Pian del Lago,

³¹ See Article 15 of the Return Directive.

³² Court of Justice of the EU, Kadzoev (Huchbarov), Judgment 30 November 2009, C-357/09, paragraphs 65 and 66; Court of Justice of the EU, Bashir Mohamed Ali Mahdi, Judgment 5 June 2014, C-146/14 PPU, paragraphs 59-60; European Court of Human Rights, Mikolenko v. Estonia (No. 10664/05), Judgment 8 October 2009, paragraph 67.

³³ Convention relating to the Status of Stateless Persons, Article 31.

³⁴ Convention on the Rights of the Child, Article 9.

³⁵ National Guarantor for the rights of persons deprived of personal liberty, Report to Parliament 2023, page 46.

³⁶ In the same period of 2023, it was 68% of the 2,045 returned people. Data from Ministry of Interior, Department for Public Security, Written communication to Amnesty International, 24 June 2024, page 3, on file.

³⁷ UN Working Group on Arbitrary Detention, Revised Deliberation No. 5 on deprivation of liberty of migrants, 7 February 2018. See also: Return Directive (2008/115/EC), Articles 15 and 3.7, Reception Conditions Directive (2013/33/EU), Article 8.2.

authorities were detaining an Iranian citizen, who had fled Iranian Kurdistan as a child with a humanitarian visa, suffering from a psychiatric disorder, who was nonetheless deemed suitable for detention by the competent health authority, despite strong concerns repeatedly reported also by health professionals working in the CPR. Similar concerns emerged regarding the situation of a Turkish person, held in Ponte Galeria for almost 6 months at the time of the visit, suffering from serious mental health issues, confirmed by the management of the centre. In this case too, the detention had been authorized based on a certification by the competent health authority that the person was suitable for detention. In the same CPR, another Turkish citizen was being held despite presenting evident physical health problems that, as witnessed by Amnesty International, prevented him from moving. He had been considered suitable for detention nevertheless, by local health authorities, and transferred from the CPR in Macomer (Sardinia) to Ponte Galeria, although his medical records had not been transmitted on time to the health professionals of the CPR of destination. The lack of early identification and release of individuals suffering from serious health issues can have dramatic consequences, as displayed by the case of Ousmane Sylla, a 22-year-old Guinean who took his life in the same centre of Ponte Galeria on 4 February 2024. Sylla had been detained for four months in the CPRs of Trapani-Milo and Ponte Galeria, despite suffering from mental health issues as reported to the Police Headquarters by the lawyer who was assisting him, evidenced by a a psychological report .³⁸

Various international bodies and courts have emphasised that detention can have disproportionate effects on people with physical or mental health conditions, resulting in the arbitrariness of detention.³⁹ The UN Committee on the Rights of Persons with Disabilities has stated that the detention of persons with disabilities, in the context of migration and asylum seeking, is not in line with the Convention on the Rights of Persons with Disabilities.⁴⁰ While acknowledging an increase in resources for the provision of psychological and social support in CPRs, approved by the Minister of Interior in March 2024,⁴¹ Amnesty International underlines that this in no way excuses the continuing detention of people who, because of their individual circumstances, are not suitable to detention.

Amnesty International has also met people in detention centres who should be precluded from detention given they had been subject to exploitation and abuse. Under domestic law, for those subject to previous conditions of exploitation and abuse, their right to access criminal justice as victims of crime should prevail over the purposes of removal, and therefore preclude detention, through the use of protection tools already existing in applicable legislation.⁴² In particular, Amnesty International found in CPRs an Asian woman subjected to labour exploitation in Tuscany by individuals who had seized her identity document; an African man who had been stopped by the police in Puglia while cycling to carry out under-paid irregular work in the fields, and told the police that he was employed without a contract; and a South American woman⁴³ victim of domestic violence from her boyfriend. Victims of crime, including trafficking, exploitation and domestic violence, and people at risk, should have access to the protection of their rights.⁴⁴

Amnesty International believes that these cases highlight some systemic issues, starting from the insufficient use of alternative measures to detention for people receiving removal orders. One of the Public Security officials interviewed indicated that, when a police operator tracks down a person without documents on national territory, by law they must necessarily pursue the detention of the person for repatriation purposes. While the actual detention then depends on the availability of places in detention centres, and priority is given to people who are believed to present risks for public safety or to have committed crimes or citizens of countries with which Italy has return agreements,⁴⁵ detention is imposed routinely also in other cases.

As pointed out by the Department of Public Security of the Ministry of Interior, the police can – and often does – resort to a less restrictive measure, issuing an order to autonomously leave the country within seven days.⁴⁶ However, under the current legislation, this only happens when it is not possible to detain the person in a CPR – usually, for lack of available

³⁸ Annalisa Camilli, *Una morte annunciata nel centro di detenzione di Ponte Galeria*, Internazionale, 6 February 2024.

³⁹ United Nations Human Rights Committee, *C. v. Australia*, Communication No. 900/1999, 13 November 2002; European Court of Human Rights, *Farbthuis v. Latvia*, 4672/02, Judgment, 2 December 2004; United Nations High Commissioner for Refugees, Guidelines on Detention, 2012, Guideline 9; Working Group on Arbitrary Detention, Revised Deliberation No. 5 on deprivation of liberty, paragraph 41.

⁴⁰ United Nations Committee on the Rights of Persons with Disabilities, Concluding Observations on the Initial Report of the European Union, 2 October 2015, (CRPD/C/EU/CO/1), paragraph 35.

⁴¹ Ministry of Interior, Department for Civil Liberties and Immigration, Written communication to Amnesty International, 24 June 2024, p. 2, on file.

⁴² Articles 18, 18-bis and 22, paragraphs 12 quater and quinquies, Legislative Decree No. 286 of 25 July 1998. See also Consiglio di Stato, 10 October 2006, no. 6023.

⁴³ The nationality of individuals is withheld in order to protect them from identification.

⁴⁴ European Court of Human Rights, *Chowdury and Others v. Greece* (no. 21884/15), 30 March 2017, paragraph 110 et seq. See also: Council of Europe, Group of Experts on Trafficking in Human Beings, Guidance Note on the Right of Victims of Trafficking, and Persons at Risk of Being Trafficked, to International Protection, GRETA(2020)062.

⁴⁵ Legislative Decree No. 286 of 25 July 1998, Article 14.1.1

⁴⁶ Ministry of Interior, Department for Public Security, Written communication to Amnesty International, 24 June 2024, page 6, on file.

places – or when the person has already been detained in a CPR but the expulsion could not be carried out, or when there is no reasonable prospect to carry out a return.⁴⁷

Alternatives to detention exist, as the law provides in particular for the obligation to surrender a passport or identity document, to reside at a designated location, or to regularly report to a police station.⁴⁸ However, the application of non-custodial measures is precluded by law in relation to people who are not in possession of a valid passport or other equivalent document,⁴⁹ which is common among people arriving in Italy by sea. According to official data, police imposed a total of 1,373 alternative measures in 2023 and 803 in 2024 (as of 19 June), which led to the return of 294 and 189 people respectively.⁵⁰

Amnesty International notes that various United Nations bodies and committees have repeatedly recommended that States consider alternative measures to detention before resorting to such an intrusive form of restriction of personal liberty.⁵¹ Indeed, to demonstrate that detention is necessary and proportionate, the authorities should first evaluate whether less restrictive measures can be effectively applied in the specific case.⁵²

Furthermore, Amnesty International is concerned that the competent health authorities do not always carry out an adequate assessment of the conditions of the person whose removal is being sought. This results in individuals being considered fit for detention even in the presence of serious health conditions.⁵³

CPRs in some cases appear to perform a function of containment of vulnerable people who would be in need of very different forms of assistance. This includes access to open treatment centres for people with mental health issues or drug dependence, which are not available for people who, not having a residence permit, are excluded from access to social services, as confirmed by professionals working in one of the CPRs.

Amnesty International highlights the obligation to ensure rigorous adherence to the principles of necessity and proportionality in the adoption of measures restricting personal liberty, in order to avoid further cases of arbitrary detention. Even where a removal order may be legitimate, transfer to a CPR should not be the default response and in any case should not be ordered where less restrictive measures may be effective in the specific case, or when relevant people are unsuitable for such an intrusive limitation of liberty in view of their personal circumstances.

ISSUES AFFECTING ACCESS TO JUSTICE

Under international law, States have a duty to protect people at all stages of the migration process and to provide them with access to justice to obtain redress for any discriminatory treatment or human rights violations they may have suffered. Effective access to judicial protection includes, among other things, guarantees of a fair trial, access to effective remedies, the right to legal assistance, and the right to information and an interpreter.⁵⁴

Judicial oversight of detention is essential to ensure its lawfulness, necessity and proportionality.⁵⁵ Asylum seekers and migrants subjected to detention therefore have a right to appeal against it before a judge, who can evaluate the lawfulness, necessity and proportionality of the measures adopted and order, where appropriate, the release of the person or the provision of less restrictive measures. This assessment must take adequate consideration of the individual circumstances of the person in question and start from the assumption that the burden of proof, in relation to the lawfulness, necessity and proportionality of the detention, falls on the authorities ordering it. The relevant person must be promptly informed of the reasons for detention⁵⁶ and of their rights,⁵⁷ and must have access to legal assistance – even

⁴⁷ Legislative Decree No. 286 of 25 July 1998, Article 14.5bis.

⁴⁸ Legislative Decree No. 286 of 25 July 1998, Article 14.1-bis.

⁴⁹ Legislative Decree No. 286 of 25 July 1998, Article 14.1-bis.

⁵⁰ Ministry of Interior, Department for Public Security, Written communication to Amnesty International, 24 June 2024, page 3, on file.

⁵¹ See footnote 12.

⁵² United Nations High Commissioner for Refugees, Guidelines on Detention, 2012, Guideline 4.2, para. 34. See also Syracuse Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, I(A)(11).

⁵³ For an initiative launched by health practitioners in this regard, see: <https://www.simmmweb.it/2-simm/1188-appello-per-una-campagna-di-presenza-di-coscienza-dei-medici-sulla-certificazione-di-idoneita-C3%A0-delle-persone-migranti-alla-vita-nei-cpr>

⁵⁴ United Nations General Assembly, Report of the Special Rapporteur on the human rights of migrants, 25 September 2018, A/73/178/Rev.1, paragraphs 7 and 71.

⁵⁵ United Nations General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Resolution 43/173, 9 December 1988.

⁵⁶ International Covenant on Civil and Political Rights, Article 9(2).

⁵⁷ United Nations Committee on the Elimination of Racial Discrimination, Concluding Observations: Malta, 14 September 2011, (CERD/C/MLT/CO/15-20), paragraph 13.

free of charge, where necessary –⁵⁸ also for the purpose of opposing detention,⁵⁹ in a language that they can understand.⁶⁰

Amnesty International believes that situations of arbitrary detention such as those described above are made possible by deficiencies in judicial protection.

Firstly, there is an inadequate assessment of personal situations, and of the effective presence of relevant requirements, when judicial authorities validate detention orders. In this sense, there is a fundamental problem in entrusting justices of the peace – i.e. honorary and non-professional magistrates, operating on a temporary basis and with competence for minor matters only – with the delicate responsibility of validating detention orders and their extension.⁶¹ While decisions of the justices of the peace can be appealed before the Court of Cassation, such appeal does not have a suspensive effect on the application of the detention order.⁶² Justices of the peace are not entrusted with similarly intrusive powers with regard to Italian citizens, which raises profiles of potential discrimination.

Furthermore, the times and methods of the hearings before the justice of the peace do not seem adequate for the purpose. Detention validations now take place remotely and in short sessions, which can jeopardize the adequate analysis of the concrete case. Some testimonies also highlighted the absence, at times, of the figure of a mediator or interpreter.

Lastly, there are critical issues regarding the right to legal assistance. On the one hand, people facing detention are not always guaranteed access to trusted lawyers, given the frequent impossibility to use personal phones, or to access lawyers with adequate expertise in the delicate matter of immigration law, except in cases where lists of available specialists are provided to people subject to detention. On the other hand, the frequent impossibility for the detained person to meet their lawyer before the validation hearing can jeopardize adequate preparation for it. The absence of interpreters made available by the institutions also sometimes represents an obstacle to the protection of the right to legal assistance.

In relation to the right to asylum, it is underlined that the rapid times imposed on people subjected to accelerated procedure because they come from countries considered 'safe' – with documents transmitted to the Territorial Commissions, the bodies competent to examine asylum claims, and decisions of the latter within a few days, and repatriation carried out without necessarily waiting for the deadlines for filing an appeal where the application is deemed inadmissible or manifestly unfounded – significantly increase the risk of refoulement of people in need of international protection. At the same time, several sources have indicated a general difficulty for authorities to respect the deadlines established by law, which can in some cases lead to further violations against people in detention.

Based on its own findings, and on issues reported to Amnesty International by lawyers and associations assisting people in detention, the organisation considers that cases of arbitrary detention mentioned above are not mere exceptions, but the result of procedures not adequately calibrated to protect individuals and ensure they have an effective recourse to justice at all times.

DETENTION OF PEOPLE IN PLACES OTHER THAN CPR

In Italian legislation, immigration detention is regulated primarily by Article 14 of Legislative Decree 286/98, which specifically provides for the cases and methods of detention in the CPRs. However, in addition, there are other places used for the detention of migrants and asylum seekers irregularly present on Italian territory. In fact, forms of restriction of liberty that can be equated to detention are enforced in a plurality of places, in particular in 'hotspots', in facilities dedicated to the detention of people subjected to border procedures, and in other 'suitable premises' for detention, generally in border posts and/or police offices.

In the 'hotspots', people who have just arrived on Italian territory – generally following autonomous disembarkation or rescue at sea – are routinely held for a few hours or a few days, while police officials carry out pre-identification and photo-identification procedures. Although the government consistently maintains that hotspots do not constitute places of

⁵⁸ See, among others: United Nations General Assembly, Body of principles for the protection of all persons under any form of detention or imprisonment, Principle 17(2); United Nations Committee against Torture, Concluding Observations: Liechtenstein, 25 May 2010, (CAT/C/LIE/CO/3), paragraph 16.

⁵⁹ See, among others: International Covenant on Civil and Political Rights, Articles 2(3) and 9(4); United Nations Human Rights Committee, A. v. Australia, (No. 560/1993), 3 April 1997, paragraph 9(5).

⁶⁰ United Nations General Assembly, Principles for the Protection of All Persons Subjected to Any Form of Detention or Imprisonment, Principle 14; United Nations Working Group on Arbitrary Detention, Legal Opinion on the Situation of Immigrants and Asylum Seekers, E/CN.4/1999/63, paragraph 69.

⁶¹ International Commission of Jurists, 'Precarious' Justice for Immigrants in Italy, 2014.

⁶² Legislative Decree No. 286 of 25 July 1998, Article 14.6.

detention,⁶³ Amnesty International notes that case-law, including from the European Court of Human Rights, has established the opposite.⁶⁴ The government acknowledges that people are not allowed to leave the facilities for the time necessary to carry out identification procedures, however it emphasises that these are completed rapidly and, once they are concluded, people continue to be hosted in hotspots for short periods only and without any limitation to their personal liberty, before being transferred to other structures.⁶⁵ Amnesty International recognizes that the aim of identifying people who have just arrived in the territory can legitimize detention for a short period, but notes the need for clear legal grounds to regulate such forms of detention, also to avoid any form of arbitrariness and to impose strict time limits. In fact, Amnesty International notes that detention in hotspots continued in many cases for several days, and in some cases for weeks.

In this sense, the de facto detention of unaccompanied minors is of particular concern. A person working in the Pozzallo hotspot has confirmed that in 2023 unaccompanied minors were held for up to a month in the centre, and even longer in its detachment specifically intended for minors, in Contrada Cifali. Italian NGOs reported concerning information about the prolonged detention of children in this latter facility, and presented a legal challenge before the Court of Catania.⁶⁶ While the court declared the matter closed, since the Ministry of Interior had transferred the minors to another structure while the case was pending, it ruled that the ministry had acted unlawfully, in breach of the minors' right to liberty.⁶⁷ Despite this, the Ministry of Interior continues to consider that the limitation of liberty imposed on minors does not qualify as detention, and to justify its prolonged duration in certain periods of 2023 by referring to the high number of arrivals.⁶⁸ While acknowledging that the permanence of minors in hotspots is linked to the difficulty of finding places in reception centres for minors, or individuals capable of assuming guardianship, Amnesty International emphasizes that this circumstance does not legitimize or justify in any way the detention of minors. Moreover, the two centres visited by the delegation do not guarantee a real separation between minors and adults.

Amnesty International also notes that, starting from 2018, the possibility has been introduced in certain cases, subject to authorization from the Justice of the Peace, to detain a person receiving a removal order in 'suitable premises'.⁶⁹ Multiple rooms of this type were subsequently equipped and used, in particular in police offices and border posts.⁷⁰ In this regard, Amnesty International expresses concern about the fragmentation of places of detention and the lack of accessible and updated maps of detention places, which make it difficult to implement any form of control by independent bodies and the judiciary itself.

Furthermore, Amnesty International observes with concern that Italian legislation continues to provide for the crime of irregular immigration, which can lead to the incarceration of people found to be undocumented on the territory and who have not followed up on a removal order, perhaps issued at the same time as a refusal of asylum, as required by recent legislation.⁷¹ In this sense, Amnesty International renews its appeal to Italy to proceed with the cancellation of the crime of irregular immigration from the legal system.

Amnesty International is worried by documented cases of arbitrary detention, including of children, and by an increasing fragmentation of places of detention, which may lead to reduced transparency and accountability for instances of arbitrary detention. The organisation is also concerned by legislation making irregular migration a criminal offence.

RIGHT TO DIGNITY

In exceptional cases in which the detention of asylum seekers or migrants is permitted by international law, the restriction of personal liberty must take place in appropriate, healthy and non-punitive facilities.⁷² Article 3 of the ECHR obliges

⁶³ Ministry of Interior, Department for Civil Liberties and Immigration, Written communication to Amnesty International, 24 June 2024, page 1, on file.

⁶⁴ European Court of Human Rights, J.A. and others v. Italy, 21329/18, Judgment, 30 March 2023, and A.T. and others v. Italy, 47287/17, Judgment, 23 November 2023.

⁶⁵ Ministry of Interior, Department for Civil Liberties and Immigration, Written communication to Amnesty International, 24 June 2024, page 1, on file.

⁶⁶ ASGI, *At 12 in the hotspot 'dedicated' to minors: Report from Pozzallo and Cifali*, 12 October 2023, and *Unaccompanied Foreign Minors: after ECHR condemnation, violations persist*, 28 November 2023; MEDU, *Until when? The long wait for minors in southern Italian hotspots*, 27 December 2023.

⁶⁷ Court of Catania, First Civil Section, Order, 12915/2023 R.G., 5 February 2024.

⁶⁸ Ministry of Interior, Department for Civil Liberties and Immigration, Written communication to Amnesty International, 24 June 2024, pages 1-2, on file.

⁶⁹ Decree-Law No. 113 of 4 October 2018, converted with amendments by Law No. 132 of 1 December 2018, Article 4.1

⁷⁰ National Guarantor for the rights of persons deprived of personal liberty, Report to Parliament 2023, pages 72-73.

⁷¹ Law No. 50 of 5 May 2023, Article 7-ter.

⁷² UN Human Rights Committee, General Comment 35 on Article 9: Freedom and Security of the Person, CCPR/C/GC/35, 31 October 2014, paragraph 18.

States Parties to ensure that conditions of detention respect human dignity, that the methods of detention do not cause suffering to persons that exceed the unavoidable levels of suffering inherent in detention, and that the health and well-being of detained persons are ensured.⁷³ The Council of Europe's Twenty Guidelines on Forced Returns establish that persons subjected to detention must have access to facilities and a regime appropriate to their status, in adequately furnished, clean and well-maintained accommodation, designed to avoid any impression of prison environment. Organized activities should include outdoor exercise, access to a community room and to radio, television, newspapers and magazines, and other appropriate means of entertainment.⁷⁴

During visits to CPRs, Amnesty International found several reasons for concern regarding detention conditions within the centres. Although the CPRs should not fulfil a punitive function, but only the retention of people subject to expulsion orders, the visited structures appeared extremely restrictive, bare and lacking from a hygienic-sanitary point of view. People could not move freely even within the structures, without authorization and accompaniment from police operators. In fact, people were held in confined spaces, forced to spend all of their time in fenced cages – with sleeping areas made of concrete facing small courtyards surrounded by high metal bars. The structures visited were extremely basic, with foam mattresses placed on concrete beds. Even the rest of the furniture – bedside tables and shelves, where present – was extremely sparse and made of concrete.

The autonomy of the detained people was restricted to a minimum, to the point that even the lights inside the rooms/cells were turned on and off from the outside, with switches not accessible by detained people. In closed environments, natural air circulation was not guaranteed since windows were hermetically closed. The bathrooms were generally in conditions ranging from poor to dilapidated, they were sometimes without doors – thus violating privacy – and cleanliness was lacking. Similar conditions were also found in the Pozzallo hotspot, although the temporary absence of people in the centre would facilitate maintenance and cleaning activities within the site.⁷⁵

Inside the visited CPRs, Amnesty International noted an almost total absence of activities – and spaces for activities – of an educational, physical or recreational nature. In both CPRs there was a lack of sports fields accessible to detained people. In Pian del Lago the only television present was not working. The only small library present (in the Ponte Galeria CPR) had never been used by the people interviewed by Amnesty International, and was precarious, with damaged furniture. Although (non-smart) phones and prepaid cards were provided, the prohibition on using personal smartphones severely limited the ability of detained people to communicate with the outside world. Even the Modica detachment of the Pozzallo Hotspot, built in 2023 and dedicated to asylum seekers facing border procedures, was not equipped with an area for sports activities, nor a prayer room, nor a library.

Amnesty International believes that such restrictive measures are not compatible with international standards, as they do not respect the dignity of the persons detained and are also not necessary or proportionate to the purposes of a CPR. As suggested by the former National Guarantor for the rights of persons deprived of personal liberty, as well as by the territorial Guarantors interviewed, people subjected to detention must be able to use their time in a way that is meaningful to them.⁷⁶ If authorities often suggest that facilities are bare because detained people sometimes damage them during protests, it must be underlined – as a detained person did – that detained people are not at fault for any damage caused by others who preceded them. Furthermore, also considering the lengthening of the maximum detention times based on recent legislation,⁷⁷ the absence of activities, combined with the uncertainty about one's future and the fact that many people are transferred from one CPR to another during the period of detention, endangers the mental health of detained people and can contribute to tense relations with authorities. The sense of isolation is also greater for people who belong to linguistic communities that are poorly represented in the CPRs and are not covered by interpreters working in the centres. For example, at the time of Amnesty International's visit to Ponte Galeria, the only Chinese woman remaining in the centre had lost – with the repatriation of another Chinese woman that same morning – the only possibility of interaction she had. Although Amnesty International was unable to interview this person, the operators present confirmed

⁷³ European Court of Human Rights, *M.S.S. v. Belgium and Greece*, 30696/09, Judgment [GC], 21 January 2011, para. 221. See also International Covenant on Civil and Political Rights, Article 10(1), and UN Human Rights Committee, General comment No. 21: Article 10 (Humane treatment of persons deprived of their liberty), 1992.

⁷⁴ Council of Europe, *Twenty guidelines on forced returns*, September 2005, Guideline 10 - Detention conditions pending return.

⁷⁵ On the structural limitations of CPRs and inadequate conditions within them, see also: National Guarantor for the rights of persons deprived of personal liberty, *Position paper on CPRs*, page 6.

⁷⁶ National Guarantor for the rights of persons deprived of personal liberty, *Position paper on CPRs*, page 4.

⁷⁷ Decree-Law No 124 of 19 September 2023, Article 20.

the impossibility of communicating with the woman, due to the lack of interpreters: an element which, it is highlighted, can jeopardize the possibility of accessing other rights.

Furthermore, Amnesty International notes that, although the National Guarantor and the regional and local guarantors for the rights of persons deprived of personal liberty can visit detention centres and receive complaints from detainees,⁷⁸ the law does not provide for the attribution to any judicial body of the responsibility to supervise detention in the CPRs – unlike in prisons, where an ad hoc magistrate exercises an important function in protecting the rights of prisoners.

Amnesty International expresses concern about the conditions of detention in the CPRs, which in some ways – as underlined by several detained people – takes place in conditions even worse than those seen in prisons. Amnesty International considers these conditions to be overall not in line with international law and standards protecting the dignity of people in detention and prohibiting cruel, inhuman and degrading treatment or punishment. Of particular concern are the structural limitations of the facilities, and the impact that the absence of educational, recreational or physical activities inevitably has on the health and well-being of people detained for periods of up to 18 months.

MIGRATION-RELATED ADMINISTRATIVE DETENTION AT BORDERS AND BEYOND

Developments recorded in 2023 and early 2024 indicate that the critical issues illustrated in this document, if not urgently addressed by Italian authorities, are bound to affect an increasing number of people in the future. This is not only because of plans to build new CPRs in Italy, but also due to the introduction of mandatory border procedures under EU legislation adopted in May 2024, and the upcoming implementation of the Italy-Albania agreement of 6 November 2023, aiming at the construction of two detention centres on Albanian territory.

The various legislative instruments comprising the Pact on Migration and Asylum, a package of reforms to EU migration and asylum systems that was approved in May 2024 and will enter into implementation by June 2026, carry important implications for detention across EU member states. In particular, the Screening Regulation,⁷⁹ Asylum Procedures Regulation⁸⁰ and Return Border Procedure Regulation⁸¹ establish a new ‘pre-entry’ procedure for people arriving at EU’s external borders. Asylum seekers reaching the EU will be subjected to a mandatory screening procedure lasting up to 7 days, after which certain groups of asylum applicants will be channelled through a mandatory border asylum procedure, lasting up to 12 weeks. If their claim is rejected, they may then undergo return border procedures lasting up to an additional 12 weeks. In this time, individuals would be under a ‘legal fiction of non-entry’, deemed not to be inside EU territory. While detention should not be a default measure, people will be required to remain available to authorities, usually near the border, and member states may choose to detain people if deemed necessary to prevent absconding. Amnesty International and other organisations have previously warned that these provisions risk resulting in a significantly increased use of detention and other restrictions of liberty at EU borders.⁸²

Amnesty International also observes with concern the potential negative consequences of the implementation of the Italy-Albania Protocol and the ongoing construction of detention centres in Albania, already described in a document published in January 2024.⁸³ Among them, of particular relevance is the concern that people transferred to Albania may be subjected to automatic detention. In this sense, in reiterating the principles of international law referred to above regarding arbitrary detention, Amnesty International observes that the right to liberty must be recognized to every person and that a screening aimed at excluding from detention people who have particular vulnerabilities is not sufficient to guarantee the legitimacy of the detention of other persons, since administrative detention for repatriation purposes must always be considered as an exceptional circumstance, subject to individual assessments on a case-by-case basis.

Amnesty International notes the real risk that human rights violations described in this document could also be reproduced in detention centres being built in Albania, where the Italian government plans to hold people rescued or

⁷⁸ Legislative Decree No. 286 of 25 July 1998, Article 14.2-bis, as modified by decree-law No. 130 of 21 October 2020, converted into Law No. 173 of 18 December 2020.

⁷⁹ Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817.

⁸⁰ Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU

⁸¹ Regulation (EU) 2024/1349 of the European Parliament and of the Council of 14 May 2024 establishing a return border procedure, and amending Regulation (EU) 2021/1148

⁸² See, inter alia, The Pact on Migration and Asylum: to provide a fresh start and avoid past mistakes, risky elements need to be addressed and positive aspects need to be expanded, Joint Statement, 6 October 2020; and Amnesty International, EU: Migration and Asylum Pact reforms will put people at heightened risk of human rights violations, 4 April 2024.

⁸³ Amnesty International, Italy-Albania Protocol: Crossing borders, threatening rights, 19 January 2024.

intercepted at sea by Italian authorities and subject to either ‘border procedures’ or return procedures.⁸⁴ The organisation is concerned that such violations could be compounded by the geographical location of the centres – outside Italian territory and therefore potentially outside the scope of action of existing procedural guarantees. In practice, the right to seek asylum, including access to fair and effective asylum procedures, risks being curtailed due to the physical distance between asylum seekers and the authorities and other actors who play a key role in decisions that concern them, such as asylum commissions, judges, and lawyers. There are critical issues, for example, in relation to the possibility of receiving adequate legal assistance from a person of one's choice and of effectively participating in the relevant proceedings, considering the expected use of remote legal assistance and remote interviews,⁸⁵ which increases the risk of misunderstandings and poor interpretation or legal assistance, and limits people's ability to fully describe their situation. This aggravates the already restrictive conditions imposed using accelerated procedures. Questions also arise on the actual possibility for the competent authorities, such as Members of Parliament and the National Guarantor for the rights of persons deprived of personal liberty, to fully exercise their prerogatives in defence of the rights of detainees, including that of carrying out surprise visits to the facilities.

RECOMMENDATIONS

Like anyone else, people arriving in Italy to seek asylum or better opportunities for themselves and their families must benefit from a legal presumption of liberty, meaning that the enjoyment of personal liberty must remain their default condition. Even when people arrive irregularly or lack the migration status to stay in the country, they should never be treated as criminals or as public security threats.⁸⁶ Their right to liberty can only be restricted in specific and the most exceptional of circumstances, to be clearly prescribed by law, strictly justified by a legitimate purpose, and through measures that are provably necessary, proportionate and non-discriminatory. When persons are deprived of their liberty, they must be treated with humanity and with respect for their dignity.⁸⁷

In light of the absolute prohibition against both arbitrary detention and cruel, inhuman, or degrading conditions of detention, and emphasising that such prohibitions apply regardless of people's migration status, Amnesty International offers the following recommendations for Italian authorities.

For the Ministry of Interior:

- Ensure the right of personal liberty of asylum-seekers and migrants and limit the adoption of detention measures to the most exceptional of circumstances: detention can only be imposed on individuals who have received a legitimate expulsion order, where there is a realistic prospect of removal within a reasonable time, and it is demonstrated that in the specific case such restriction is necessary and proportionate.
- Provide timely, understandable legal information to ensure that all individuals arriving on Italian territory or under Italian jurisdiction are adequately informed of their right to request international protection.
- Review pre-identification procedures and their implementation, to ensure that they do not result in the expulsion and arbitrary detention of asylum seekers or other people in violation of their rights not to be arbitrarily detained and removed.
- Guarantee a rigorous assessment of personal conditions, to ensure that removal orders are not issued against individuals for whom conditions exist that prevent expulsion.
- Stop applying different procedures based on the concept of ‘safe country of origin’ and eliminate any form of discrimination resulting in differential and punitive treatment, in the asylum procedure and in identification of individuals for whom detention is sought, of citizens of countries deemed ‘safe’ by the Italian government.
- Adhere strictly to the principles of necessity and proportionality in the adoption of measures restricting the rights of people facing removal, particularly by adopting the least restrictive measures and avoiding limitations on personal liberty where alternative, non-custodial measures would be effective.
- For individuals serving a criminal sentence who meet the requirements for removal, conduct the necessary repatriation procedures during their criminal detention rather than imposing additional detention for repatriation after their criminal sentence has ended.

⁸⁴ Ministry of Interior, Department for Public Security, Written communication to Amnesty International, 24 June 2024, page 7, on file.

⁸⁵ Law No. 14 of 21 February 2024, Article 4.3-5.

⁸⁶ UNGA, Report of the Working Group on Arbitrary Detention, A/HRC/10/21 16 February 2009, Paragraphs 65-68.

⁸⁷ International Covenant on Civil and Political Rights, Article 10(1).

- Transfer people from one CPR to another only when strictly necessary to better safeguard the rights of detained individuals, ensuring that all relevant documentation, including medical records, is immediately transferred to the destination facility.
- Ensure that asylum applications, including those from citizens of countries deemed 'safe' by the Italian government, are assessed adequately and individually, to prevent removal measures that violate the principle of non-refoulement.
- Ensure that any deprivation of liberty, including in hotspots and other places of detention, is carried out in line with international law and standards and for the shortest possible time.
- Refrain from imposing any form of migration-related detention on children.
- Create an adequate number of places in open reception centres for children, to ensure that any newly arrived children can be promptly offered adequate assistance in a suitable environment.
- Ensure that conditions in CPRs and other detention facilities respect human dignity, providing appropriate, healthy accommodations and common areas, adequately furnished and designed to avoid any impression of a prison environment and to guarantee the right to privacy.
- Ensure that detained individuals have the opportunity to engage in educational, sporting or recreational activities, by providing adequate spaces and access to television, newspapers, books and the internet, including through personal smartphones, to facilitate communication with the outside world.
- Reverse the fragmentation of places of detention, ensuring that migration-related detention is conducted exclusively in specific, named and identifiable, adequate structures subject to adequate oversight.
- Stop the implementation of the Italy-Albania agreement.
- Guarantee that competent oversight authorities can fully exercise their prerogatives in defending the rights of detained persons, including by conducting surprise visits to facilities, regardless of their location.
- Ensure unrestricted access to detention centres for representatives of civil society and the media.

For the Ministry of Health:

- Conduct timely, rigorous and regular assessments of individuals' suitability for detention, including by health authorities, to avoid detaining people with physical or mental disabilities or those whose right to access justice as victims of crimes should preclude expulsion and therefore detention.
- Ensure that health and social services provide adequate support to individuals with mental health disabilities and drug dependence, irrespective of their migration status, and never subject them to detention.

For the Ministry of Justice:

- Facilitate access to justice and safe reporting by any person claiming to be a victim of crime, without fear of detention, deportation or penalty, irrespective of their migration status.
- Guarantee effective judicial protection against discriminatory treatment or other rights violations, including the rights to a fair trial before an impartial and independent tribunal, timely access to lawyers of choice or, for those unable to pay, to free legal assistance from lawyers competent in the specific matter, and the right to information and a qualified interpreter.

For the Parliament:

- Ensure, including by amending Article 6.3 of Legislative Decree 142/2015, that individuals who apply for international protection after being transferred to a CPR retain their right to personal liberty pending the determination of their status.
- Amend legislation to shorten the maximum duration of administrative detention for people in irregular migration status facing removal.
- Amend legislation to ensure the legitimacy and length of detention are thoroughly evaluated by a judicial body composed of professional judges rather than honorary judges.
- Ensure that detention for identification purposes of newly arrived undocumented individuals is adequately regulated by law, including by amending Article 6.3bis of Legislative Decree 142/2015, and that it is concluded in the shortest possible period.
- Abolish the crime of irregular immigration, referred to in Article 10-bis of Legislative Decree No 286 of 25 July 1998

- Enhance the protection of the rights of detained individuals, for example by amending legislation to assign supervisory functions over detention conditions to a judicial body, to which detained persons can lodge complaints for the protection of their rights.

/END