ITALY

Follow-u: State Reporting
i) Action by Treaty Bodies

CAT/C/SR.240 (1995)

COMMITTEE AGAINST TORTURE
Fifteenth session
SUMMARY RECORD OF THE 240th MEETING
Wednesday, 22 November 1995, at 10 a.m.

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SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of Italy (continued) (CAT/C/25/Add.4)

58. Mr. BRUNI (Secretary of the Committee) noted that Committee members had just received copies of a letter from Ambassador Giuseppe Baldocci, the Permanent Representative of Italy, addressed to the Chairman. To situate the letter in context he (Mr. Bruni) informed members of the overall situation. In formal terms the letter fitted into the framework of agenda item 3 (Submission of reports by States parties under article 19 of the Convention). At its previous session, on 27 April 1995, the Committee had considered the second periodic report submitted by the Italian Government. It had then drafted conclusions relating to the report and requested additional information. The letter under consideration was accompanied by a voluminous report and several annexes. It included the information Committee members had requested, as well as observations on its conclusions.

59. Mr. EL IBRASHI said that the letter was very important and should be carefully considered. The Committee's conclusions should be examined in the light of the letter in question. Before acting, it was essential to know which supplementary information and documentation the letter referred to.

A briefing on the content could perhaps be given by the secretariat.

60. Mr. YAKOVLEV said that the letter raised a very delicate problem in that it contained additional material received after the Committee had discussed the formal report submitted by the Italian Government. It was necessary to decide whether to reopen the consideration

procedure on the basis of the new material. Under normal circumstances the procedure should not be reopened if a second set of material was received. The new material must not be ignored but the substance of the letter could not be considered before resolving the problem of whether to reopen the procedure.

61. Mr. SORENSEN observed that at the first meeting of the Committee's current session it had been decided to send any additional material immediately to the Country Rapporteurs so that they were aware of its contents. The debate should certainly not be reopened. Periodic debates took place for the discussion of new material. Furthermore, in its letter Italy had not requested that the procedure should be reopened. That fact was clearly demonstrated in the fifth paragraph of the letter. If the procedure was reopened no definitive conclusion would be reached. The letter should, of course, be officially published. As to the necessary procedure, further advice should be sought from Mrs. Iliopoulos-Strangas, one of the Country Rapporteurs. It would then be possible to send a reply to Italy saying that the supplementary information it had supplied had been published. In the previous discussion on the Committee's recommendations, it had been suggested that the term "racial" should not be used; otherwise serious problems, such as those in evidence in the letter, would arise.

62. Mrs. ILIOPOULOS-STRANGAS observed that she had been the Alternate Country Rapporteur and Mr. Gil Lavedra the Country Rapporteur. The letter under consideration posed a series of questions. Firstly, the Committee had been reproached for having included in its conclusions facts completely unrelated to torture. In fact, all the Committee's decisions dealt with different topics, not because it wished to interfere or exceed its terms of reference, but simply in order to try to explain the reasons for torture or because it was necessary to spell out which groups were most often affected by torture. The risk of criticism by States parties should certainly not be taken.

63. Given that the Convention did not provide for such action, it was unclear whether the possibility existed for States parties submitting reports to take a stance on the conclusions before submitting further reports four years later. Was that the first occasion on which a State party had expressed dissatisfaction with the Committee's conclusions? All Committee members were aware that, in doing their duty as independent experts, they were taking great risks. Was it the customary practice for States parties to provide additional information? Rather than stating that the Committee had simply been misinformed, the letter appeared to say that it was interfering in matters unrelated to torture.

64. From a legal stand point, it was doubtful whether the Committee was bound by the resolutions and decisions of other bodies. Previously, racial issues had been discussed only in relation to the subject of torture; the remit of the Committee was not to consider racial issues

relating to discrimination in public office. During discussion of the Italian report, the country's representatives had not questioned the fact that the majority of people tortured belonged to particular categories i.e. gypsies and foreigners. The State party appeared to be saying that the Committee had exceeded its mandate and had acted in an undiplomatic manner. It further considered that the Committee's judgement ran counter to the decision of another body set up under another Convention.

65. Mr. EL IBRASHI said that the Committee could not simply respond to the letter from the Italian Government by saying that it had considered the country's report and that the matter was now closed. That was so because the credibility and work of the Committee were at stake. It was necessary to know how to respond appropriately and also to face up to realities. Previously, the Committee had operated in accordance with the principle that once a decision had been taken not to allow any State to reopen discussions on conclusions adopted, the matter was closed. Otherwise any State would have the right to submit its views after receiving the Committee's conclusions and
recommendations. If discussions were reopened, endless proceedings would result. All States should be treated in the same manner.

66. The three main points of the letter under consideration were the following. First, it was claimed, in relation to the Committee's terms of reference, that it had included in its conclusions subjects going beyond its sphere of competence. Such an accusation was a very serious one in that it questioned the Committee's credibility. Secondly, the issue of racial discrimination had given rise to much discussion at the previous session. Some members had felt that reference to that issue should not be made owing to its possible repercussions; such matters should be dealt with only by the Committee responsible for them. The Committee against Torture was not bound by the decisions of other bodies; but it was necessary to respond appropriately to the accusation that the Committee's view that certain racially discriminatory practices existed in Italy was at variance with the view of the Committee on the Elimination of Racial Discrimination (CERD). Thirdly, Italy maintained that the Committee's conclusion that torture existed directly contradicted remarks made by an NGO on the same subject. It was necessary to respond in an affirmative manner.

67. It was also essential to know what was in the new documentation . Was it merely information or was it a response to some of the problems raised in the Committee's conclusions? It needed to know in order to decide whether to publish the supplementary material provided. It must take due account of the wording of its recommendations and concerns before deciding whether to publish. A reasoned decision could then be taken.

68. Mr. SLIM said that his reaction to the content of the letter was mixed. On the one hand, he experienced the quite natural desire not to reopen the discussion on a report,

submitted by a State party. On the other hand, he was surprised at certain statements in the letter, i.e. the apparent accusation that the Committee had raised issues that had nothing to do with the Convention. Furthermore, the letter appeared to state that the Committee had confused the Convention against Torture with the International Convention on the Elimination of All Forms of Racial Discrimination. In the Committee's discussion of that issue following submission of the Italian report, great concern had been expressed at the ill-treatment of certain foreigners as a result of racist reactions. That was confirmed in the Committee's annual report, paragraph 154 of which read:

> "The Committee notes with concern the persistence of cases of ill-treatment in prisons by police officers. It even notes a dangerous trend towards some racism, since the victims are either from foreign countries or belong to minorities."

The second sentence appeared to have been taken out of context, thereby enabling Italy to tax the Committee with concerning itself with racist reactions. However, the main issue of concern to the Committee was that of ill-treatment. It was impossible to remain silent in the face of such a distortion of what was clearly written. The content of the supplementary information accompanying the letter was as yet unknown. Knowledge of its salient features was necessary so as to be able to discuss them appropriately.

69. Mr. BURNS said that the Committee should not be overly concerned with the content of the letter under consideration. The three complaints made by Italy could have been anticipated, given its situation and its hopes about what the Committee would say. He agreed with the procedure outlined by other Committee members. The Country Rapporteur should study the new material to see whether there was any reason for the Committee to change its position.

70. Further dialogue was only possible on the basis of the periodic reports. If it could be demonstrated that the Committee had misunderstood the facts, then that should be clearly stated: an indefensible position could not be maintained. However, that did not appear to be the case in the light of the report and the Committee's discussion on it. The definition of torture within the Convention was based on discrimination and therefore provided the Committee with the necessary jurisdiction. Furthermore, the discussion had concentrated on behaviour in prisons for which article 16 of the Convention provided the appropriate jurisdiction when cruel and inhuman punishment existed and was directed at a particular group. As long as the facts existed, the Committee's position was completely defensible.

71. It was unclear what Italy meant in referring to the fact that an NGO had denied the existence of cases of torture . The Country Rapporteur should seek clarification on that subject. The Committee should probably respond with a letter to Italy acknowledging its concerns and

stating that the Committee felt its original position was justified, if that was indeed the conclusion drawn. In that case the additional material sent would be placed in the Committee's files.

72. Mr. YAKOVLEV said that it was necessary to ascertain the views expressed in the additional material so as to produce a thoughtful and reasoned reply. The Italian letter did not disprove the facts alleged in relation to paragraph 154 of the annual report; the challenge issued was purely formal. The CERD had not confirmed the existence of racism, but the Committee, on the basis of its findings that the victims were from foreign countries or from minorities, had stated that some racism existed. Contrary to what was said in the fifth paragraph of the letter, the committee could request the State party to respond. The point raised by Italy was invalid since a request for a reply
was entirely within the Committee's remit. In addition, it was for the Committee to decide whether the facts under consideration were relevant to the Convention or not. The Committee's findings in relation to racial discrimination as set out in paragraph 154 of the annual report, should be maintained, irrespective of the findings of another Committee. All in all, a thoughtful and well-reasoned letter of reply was necessary.

73. The CHAIRMAN said that the letter from the representative of Italy would be given to the Country Rapporteur, who would outline its salient features at a forthcoming meeting.

The meeting rose at 1.05 p.m.

CAT, A/62/44 (2007)

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IV. FOLLOW UP ON CONCLUSIONS AND RECOMMENDATIONS ON STATES PARTIES REPORTS

46. In Chapter IV of its annual report for 2005 2006 (A/61/44), the Committee described the framework that it had developed to provide for follow up subsequent to the adoption of the conclusions and recommendations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2006. This chapter updates the Committee's experience to 18 May 2007, the end of its thirty eighth session.

47. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow up to conclusions and recommendations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2007 on the results of the procedure.

48. The Rapporteur has emphasized that the follow up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment", as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and cruel treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

49. Since its thirtieth session in May 2003, the Committee began the practice of identifying a limited number of these recommendations that warrant a request for additional information following the review and discussion with the State party concerning its periodic report. Such "follow up" recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide within one year information on the measures taken to give effect to its "follow up recommendations" which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' reports under article 19.

50. Since the procedure was established at the thirtieth session in May 2003, through the

end of the thirty eighth session in May 2007 the Committee has reviewed 53 States for which it has identified follow up recommendations. Of the 39 States parties that were due to have submitted their follow up reports to the Committee by 18 May 2007, 25 had completed this requirement (Albania, Argentina, Austria, Azerbaijan, Bahrain, Canada, Chile, Czech Republic, Colombia, Croatia, Ecuador, Finland, France, Germany, Greece, Latvia, Lithuania, Monaco, Morocco, New Zealand, Qatar, Sri Lanka, Switzerland, United Kingdom and Yemen). As of 18 May, 14 States had not yet supplied follow up information that had fallen due (Bulgaria, Bosnia and Herzegovina, Cambodia, Cameroon, Democratic Republic of the Congo, Georgia, Guatemala, Republic of Korea, Moldova, Nepal, Peru, Togo, Uganda and United States of America). In March 2007, the Rapporteur sent a reminder requesting the outstanding information to each of the States whose follow up information was due in November 2006, but had not yet been submitted, and who had not previously been sent a reminder.

51. The Rapporteur noted that 14 follow up reports had fallen due since the previous annual report (A/61/44). However, only 4 (Austria, Ecuador, Qatar and Sri Lanka) of these 14 States had submitted the follow up information in a timely manner. Despite this, she expressed the view that the follow up procedure had been remarkably successful in eliciting valuable additional information from States on protective measures taken during the immediate follow up to the review of the periodic reports. While comparatively few States had replied precisely on time, 19 of the 25 respondents had submitted the information on time or within a matter of one to four months following the due date. Reminders seemed to help elicit many of these responses. The Rapporteur also expressed appreciation to non governmental organizations, many of whom had also encouraged States parties to submit follow up information in a timely way.

52. Through this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture ..." (art. 2, para. 1) and the undertaking "to prevent ... other acts of cruel, inhuman and degrading treatment or punishment ..." (art. 16).

53. The Rapporteur has expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information is needed, she writes to the State party concerned with specific requests for further clarification. With regard to States that have not supplied the follow up information at all, she writes to solicit the outstanding information.

54. At its thirty eighth session in May, the Committee decided to make public the Rapporteur's letters to the States parties. These would be assigned a United Nations document symbol number and placed on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies (these symbol numbers are under consideration) to the follow up and also place them on its website.

55. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill treatment.

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57. The chart below details, as of 18 May 2007, the end of the Committee's thirty eighth session, the state of the replies with respect to follow up.

Follow up procedure to conclusions and recommendations from May 2003 to May 2007

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Thirty eighth session (May 2007)

State party	Information due in	Information received	Action taken
...			
Italy	May 2008	-	
...			

CAT, A/63/44 (2008)

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CHAPTER IV. FOLLOW-UP ON CONCLUSIONS AND RECOMMENDATIONS ON STATES PARTIES REPORTS

46. In this chapter, the Committee updates its findings and activities that follow-up on the conclusions and recommendations adopted under article 19 of the Convention, in accordance with the recommendations of its Rapporteur on Follow-Up to Country conclusions. The Rapporteur's activities, responses by States parties, and the Rapporteur's views on recurring concerns encountered through this procedure are presented below, and updated to through May 2008, following the Committee's fortieth session.

47. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the conclusions and recommendations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2008.

48. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow-up to conclusions and recommendations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2008 on the results of the procedure.

49. The Rapporteur has emphasized that the follow-up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment", as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and cruel treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

50. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information specifically for this procedure. Such follow-up recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide

within one year information on the measures taken to give effect to its follow-up recommendations which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' reports under article 19.

51. Since the procedure was established at the thirtieth session in May 2003, through the end of the fortieth session in May 2008, the Committee has reviewed 67 States for which it has identified follow-up recommendations. Of the 53 States parties that were due to have submitted their follow-up reports to the Committee by 16 May 2008, 33 had completed this requirement (Albania, Argentina, Austria, Azerbaijan, Bahrain, Bosnia and Herzegovina, Canada, Chile, Czech Republic, Colombia, Croatia, Ecuador, Finland, France, Georgia, Germany, Greece, Guatemala, Hungary, Republic of Korea, Latvia, Lithuania, Monaco, Morocco, Nepal, New Zealand, Qatar, Russian Federation, Sri Lanka, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America and Yemen). As of 16 May, 20 States had not yet supplied follow-up information that had fallen due (Bulgaria, Burundi, Cambodia, Cameroon, Democratic Republic of the Congo, Denmark, Guyana, Italy, Japan, Luxembourg, Mexico, Moldova, the Netherlands, Peru, Poland, South Africa, Tajikistan, Togo, Uganda and Ukraine). In March 2008, the Rapporteur sent a reminder requesting the outstanding information to each of the States whose follow-up information was due in November 2007, but had not yet been submitted, and who had not previously been sent a reminder.

52. The Rapporteur noted that 14 follow-up reports had fallen due since the previous annual report.[3] However, only 2 (Hungary and the Russian Federation) of these 14 States had submitted the follow-up information in a timely manner. Despite this, she expressed the view that the follow-up procedure had been remarkably successful in eliciting valuable additional information from States on protective measures taken during the immediate follow-up to the review of the periodic reports. While comparatively few States had replied precisely on time, 25 of the 33 respondents had submitted the information on time or within a matter of one to four months following the due date. Reminders seemed to help elicit many of these responses. The Rapporteur also expressed appreciation to non-governmental organizations, many of whom had also encouraged States parties to submit follow-up information in a timely way.

53. Through this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture …" (art. 2, para. 1) and the undertaking "to prevent … other acts of cruel, inhuman and degrading treatment or punishment …" (art. 16).

54. The Rapporteur expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow-up (normally between three and six recommendations) have been

addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she requests the outstanding information.

55. At its thirty-eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties. These would be placed on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow-up and also place them on its website (http://www2.ohchr.org/english/bodies/cat/sessions.htm).

56. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

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58. The chart below details, as of 16 May 2008, the end of the Committee's fortieth session, the state of the replies with respect to follow-up.

3/ *Official Records of the General Assembly, Sixty-second Session, Supplement No. 44* (A/62/44).

Follow-up procedure to conclusions and recommendations from May 2003 to May 2008

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Thirty-eighth session (May 2007)

	Information		

State party	due in	Information received	Action taken
...			
Italy	May 2008	9 May 2008 CAT/C/ITA/CO/4/Add.1	Response under review
...			

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CAT, A/64/44 (2009)

IV. FOLLOW UP ON CONCLUDING OBSERVATIONS ON STATES PARTIES REPORTS

53. In this chapter, the Committee updates its findings and activities that follow-up to concluding observations adopted under article 19 of the Convention, in accordance with the recommendations of its Rapporteur on follow-up to concluding observations. The Rapporteur's activities, responses by States parties, and the Rapporteur's views on recurring concerns encountered through this procedure are presented below, and updated through 15 May 2009, following the Committee's forty-second session.

54. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2009.

55. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2009 on the results of the procedure.

56. The Rapporteur has emphasized that the follow up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment", as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and ill-treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

57. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information specifically for this procedure. Such follow-up recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide within one year information on the measures taken to give effect to its follow-up recommendations which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' reports under article 19.

58. Since the procedure was established at the thirtieth session in May 2003, through the end of the forty-second session in May 2009, the Committee has reviewed 81 States for which it has identified follow up recommendations. Of the 67 States parties that were due to have submitted their follow up reports to the Committee by 15 May 2009, 44 had completed this requirement. As of 15 May 2009, 23 States had not yet supplied follow up information that had fallen due. The Rapporteur sends reminders requesting the outstanding information to each of the States whose follow up information was due, but had not yet been submitted, and who had not previously been sent a reminder. The status of the follow-up to concluding observations may be found in the web pages of the Committee (http://www2.ohchr.org/english/bodies/cat/ sessions.htm).

59. The Rapporteur noted that 14 follow up reports had fallen due since the previous annual report. However, only 4 (Algeria, Estonia, Portugal and Uzbekistan) of these 14 States had submitted the follow up information in a timely manner. Despite this, she expressed the view that the follow up procedure had been remarkably successful in eliciting valuable additional information from States on protective measures taken during the immediate follow up to the review of the periodic reports. One State party (Montenegro) had already submitted information which was due only in November 2009. While comparatively few States had replied precisely on time, 34 of the 44 respondents had submitted the information on time or within a matter of one to four months following the due date. Reminders seemed to help elicit many of these responses. The Rapporteur also expressed appreciation to non governmental organizations, many of whom had also encouraged States parties to submit follow up information in a timely way.

60. Through this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture …" (art. 2, para. 1) and the undertaking "to prevent … other acts of cruel, inhuman and degrading treatment or punishment …" (art. 16).

61. The Rapporteur expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow up information at all, she requests the outstanding information.

62. At its thirty eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties. These would be placed on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow up and also place them on its website (http://www2.ohchr.org/english/bodies/cat/sessions.htm).

63. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill treatment.

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65. The chart below details, as of 15 May 2009, the end of the Committee's forty-second session, the state of the replies with respect to follow up.

Follow-up procedure to conclusions and recommendations from May 2003 to May 2009

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Thirty-eighth session (May 2007)

State party	Information due in	Information received	Action taken
...			
Italy	May 2008	9 May 2008 CAT/C/ITA/CO/4/Add.1	Response under review
...			

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CAT, A/65/44 (2010)

Chapter IV. Follow-up to concluding observations on States parties' reports

65. In this chapter, the Committee updates its findings and activities that constitute follow-up to concluding observations adopted under article 19 of the Convention, in accordance with the procedure established on follow-up to concluding observations. The follow-up responses by States parties, and the activities of the Rapporteur for follow-up to concluding observations under article 19 of the Convention, including the Rapporteur's views on the results of this procedure, are presented below. This information is updated through 14 May 2010, the end of the Committee's forty-fourth session.

66. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties reports submitted under article 19 of the Convention. In that report and each year thereafter, the Committee has presented information on its experience in receiving information on follow-up measures taken by States parties since the initiation of the procedure in May 2003.

67. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow-up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. In November 2009 and May 2010, the Rapporteur presented a progress report to the Committee on the results of the procedure.

68. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific measures to prevent acts of torture and ill-treatment. Thereby, the Committee assists States parties in identifying effective legislative, judicial, administrative and other measures to bring their laws and practice into full compliance with the obligations set forth in the Convention.

69. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information within one year. Such follow-up recommendations are identified because they are serious, protective and are considered able to be accomplished within one year. The States parties are asked to provide information within one year on the measures taken to give effect to the follow-up recommendations. In the concluding observations on each State party report, the recommendations requiring follow-up within one year are specifically identified in a paragraph at the end of the concluding observations.

70. Since the procedure was established at the thirtieth session in May 2003, through the end of the forty-fourth session in May 2010, the Committee has reviewed 95 reports from States parties for which it has identified follow-up recommendations. It must be noted that periodic reports of Chile, Latvia, Lithuania and New Zealand have been examined twice by the Committee since the establishment of the follow-up procedure. Of the 81 States parties that were due to have submitted their follow-up reports to the Committee by 14 May 2010, 57 had completed this requirement. As of 14 May 2010, 24 States had not yet supplied follow-up information that had fallen due: Republic of Moldova, Cambodia, Cameroon, Bulgaria, Uganda, Democratic Republic of the Congo, Peru, Togo, Burundi, South Africa, Tajikistan, Luxembourg, Benin, Costa Rica, Indonesia, Zambia, Lithuania (to the 2009 concluding observations), Chad, Chile, Honduras, Israel, New Zealand, Nicaragua and the Philippines.

71. The Rapporteur sends reminders requesting the outstanding information to each of the States for which follow-up information is due, but not yet submitted. The status of the follow-up to concluding observations may be found in the web pages of the Committee at each of the respective sessions. As of 2010, the Committee has established a separate web page for follow-up (http://www2.ohchr.org/english/bodies/cat/follow-procedure.htm).

72. Of the 24 States parties that did not submit any information under the follow-up procedure as of 14 May 2010, non-respondents came from all world regions. While about one-third had reported for the first time, two-thirds were reporting for a second, third or even fourth time.

73. The Rapporteur expresses appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow-up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she requests the outstanding information.

74. At its thirty-eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties which are posted on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow-up and also place them on its website.

75. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

76. Among the Rapporteur's activities in the past year, have been the following: attending the inter-committee meetings in Geneva where follow-up procedures were discussed with members from other treaty bodies, and it was decided to establish a working group on follow-up; addressing the Committee on the Elimination of Discrimination against Women at its August 2009 meeting in New York concerning aspects of the follow-up procedure; assessing responses from States parties and preparing follow-up letters to countries as warranted and updating the information collected from the follow-up procedure.

77. Additionally, the Rapporteur initiated a study of the Committee's follow-up procedure, beginning with an examination of the number and nature of topics identified by the Committee in its requests to States parties for follow-up information. She reported to the Committee on some preliminary findings, in November 2009 and later in May 2010, and specifically presented charts showing that the number of topics designated for follow-up has substantially increased since the thirty-fifth session. Of the 87 countries examined as of the forty-third session (November 2009), one to three paragraphs were designated for follow-up for 14 States parties, four or five such topics were designated for 38 States parties, and six or more paragraphs were designated for 35 States parties. The Rapporteur drew this trend to the attention of the members of the Committee and it was agreed in May 2010 that, whenever possible, efforts would henceforth be made to limit the number of follow-up items to a maximum of five paragraphs.

78. The Rapporteur also found that certain topics were more commonly raised as a part of the follow up procedure than others. Specifically, for all State parties reviewed since the follow-up procedure began, the following topics were most frequently designated:

Ensure prompt, impartial and effective investigation(s)	76 per cent
Prosecute and sanction persons responsible for abuses	61 per cent
Guarantee legal safeguards	57 per cent
Enable right to complain and have cases examined	43 per cent
Conduct training, awareness-raising	43 per cent
Ensure interrogation techniques in line with the Convention	39 per cent

Provide redress and rehabilitation	38 per cent
End gender-based violence, ensure protection of women	34 per cent
Ensure monitoring of detention facilities/visit by independent body	32 per cent
Carry out data collection on torture and ill-treatment	30 per cent
Improve condition of detention, including overcrowding	28 per cent

79. In the correspondence with States parties, the Rapporteur has noted recurring concerns which are not fully addressed in the follow-up replies and her concerns (illustrative, not comprehensive) have been included in prior annual reports. To summarize them, she finds there is considerable value in having more precise information being provided, e.g. lists of prisoners, details on deaths in detention and forensic investigations.

80. As a result of numerous exchanges with States parties, the Rapporteur has observed that there is need for more vigorous fact-finding and monitoring in many States parties. In addition, there is often inadequate gathering and analysing of police and criminal justice statistics. When the Committee requests such information, States parties frequently do not provide it. The Rapporteur further considers that conducting prompt, thorough and impartial investigations into allegations of abuse is of great protective value. This is often best undertaken through unannounced inspections by independent bodies. The Committee has received documents, information and complaints about the absence of such monitoring bodies, the failure of such bodies to exercise independence in carrying out their work or to implement recommendations for improvement.

81. The Rapporteur has also pointed to the importance of States parties providing clear-cut instructions on the absolute prohibition of torture as part of the training of law-enforcement and other relevant personnel. States parties need to provide information on the results of medical examinations and autopsies, and to document signs of torture, especially including sexual violence. States parties also need to instruct personnel on the need to secure and preserve evidence. The Rapporteur has found many lacunae in national statistics, including on penal and disciplinary action against law-enforcement personnel. Accurate record keeping, covering the registration of all procedural steps of detained persons, is essential and requires greater attention. All such measures contribute to safeguard the individual against torture or other forms of ill-treatment, as set forth in the Convention.

82. The chart below details, as of 14 May 2010, the end of the Committee’s forty-fourth session, the replies with respect to follow-up. This chart also includes States parties’ comments to concluding observations, if any.

Follow-up procedure to concluding observations from May 2003 to May 2010

…

Thirty-eighth session (May 2007)

State party	Information due in	Information received	Action taken
…			
Italy	May 2008	9 May 2008 CAT/C/ITA/CO/4/Add.1	Request for further clarification
…			

…

Follow-up - State Reporting
(ii) Action by State Party

CAT, CAT/C/ITA/CO/4/Add.1 (2008) (advance unedited)

CONCLUDING OBSERVATIONS (CAT/C/ITA/CO/4) OF THE UNITED NATIONS COMMITTEE AGAINST TORTURE: ITALY'S FOLLOW-UP

[May 2008]

INTRODUCTION

General framework

Under the reporting exercise to international organisations, Italy deems that it is always necessary to recall its domestic constitutional framework:

The Italian Constitution of 1948 envisages **the protection of all rights and fundamental freedoms** as included in the relevant international standards, such as the European Convention on Human Rights and Fundamental Freedoms, the Universal Declaration of Human Rights or the International Covenant on Civil and Political Rights.

The **Basic Law** determines the political framework for action and the organization of the State. The structural principles of the constitutional system governing the organization of the State are as follows: democracy (as laid down in Article 1); the so-called *personalistic* principle (as laid down in Article 2), which guarantees the full and effective respect for human rights; the pluralistic principle, within the framework of the value of democracy (Arts. 2 and 5); the importance of labour, as a central value of the Italian community (Arts. 1 and 4); the principle of solidarity (Article 2); the principle of equality and non discrimination (as laid down in Article 3). The latter is also the basic criterion applied in the judiciary system when bringing in a verdict; the principles of unity and territorial integrity (Article 5); and above all the principles of the welfare state and of the state based on the rule of law.

Italy recognizes and guarantees the inviolability of human rights - be it individual or referred to social groups expressing their personality - by ensuring the performance of the unalterable duty to political, economic, and social solidarity (Art.2 of the Italian Constitution). The protection and promotion of rights - be it civil and political, economic, social and cultural, be it referred to freedom of expression or to the fight against racism or to the human rights of the child and of women - is one of the fundamental pillars of both domestic and foreign Italian policies.

In our view, the basic rule, if any, which should guide modern democracies in the protection of rights is the effective implementation of **the principle of non-discrimination**. The latter is indeed one of the main pillars of our constitutional code, upon which the domestic legislative system is based when referring to different categories of people, such as women, minorities and other vulnerable groups: "All citizens have equal social status and are equal before the law,

regardless of sex, race, language, religion, political opinions, and personal or social conditions. It is the duty of the Republic to remove all economic and social obstacles that, by limiting the freedom and equality of citizens, prevent full individual development and the participation of all workers in the political, economic, and social organization of the country (Art.3 of the Italian Constitution)".

Within the constitutional framework, **the Constitutional Court** exercises its duty as one of the highest guardian of the Constitution in various ways. The constitutional jurisdiction is exercised by the Italian Constitutional Court, which plays a vital role throughout the life of our State. The Constitutional Court is outside the instances of the specialist courts and deals only with infringements of specific constitutional law (from Art.134 through Art.137-Art.127 of the Italian Constitution).

Within this framework, it is worth recalling the constitutional reform concerning **the principle of "due process of law".** This has been implemented, at the constitutional level, by Act No. 2/1999 which entered into force on 7 January, 2000, integrating Art.111 of the Constitution with five new sections. Such amendments, inspired by the principle of "the due process of law", stem from the common law system and aim at enhancing the **accusatory model** within our legislative system, including by strengthening the specific provisions on interpretation, cultural mediation and legal aid
To date, the observations of international organizations and mechanisms, including the UN Committee Against Torture, on the measures to be adopted, at the domestic level, have been subject to an in-depth examination by the Italian Government.

Along these lines, we take this opportunity to reiterate that, indeed, **access to information** is one of the basic components of international obligations. Thus we emphasize that the Italian Government is used to keep NGOs, the Parliament, the relevant Authorities, and the public opinion at large informed about the state of implementation of human rights standards.

Within this framework, it is worth recalling that over the last years, relevant steps have been taken and a wide range of measures have been adopted, from the introduction of the crime of torture in the Military Penal Code of War to **the signature of the Optional Protocol to International Convention Against Torture**.

Moreover, it is also worth recalling that the work carried out, to date, by **the Inter-ministerial Committee on Human Rights (CIDU)**. Established on 15 February 1978, within the Ministry of the Foreign Affairs (MFA), by Ministerial Decree, CIDU is composed of representatives from the main Italian Ministries, responsible in human rights field.

CIDU monitors the compliance of international standards nation-wide and is also tasked with the drafting of Italy's reports relating to international human rights standards adopted under the umbrella of the United Nations and the Council of Europe's.

Lastly, we would like to reiterate that **the protection of human rights is the guiding criterion for both the European Union and our internal policy**. Accordingly, the basic vision of Italy as member of the European Union in a changing world is focussed on European fundamental values

and principles, namely freedom, rule of law, democracy, common welfare, human rights.
Current political situation

In order to provide a clear picture of the political and institutional situation, it seems necessary to recall that **last January 2008 (on January 25, 2008), the Government led by Mr. Romano Prodi lost the support of the Parliament, under Art. 94 of the Italian Constitution. Thus Pres. Prodi** resigned.

The President of the Republic therefore started consultations to find a possible consensus to form a new Government. Since the consensus was not reached, the Head of State declared the early dissolution of the Parliament. Accordingly the XV Legislature was concluded.

On April 13-14, 2008, the coalition led by Mr. Silvio Berlusconi won the Parliamentary elections[i].

While the new Council of Ministers is expected to start its term of office from the second week of May onwards[ii], the Prodi-led Government remains in charge for the ordinary activities. In the meantime the new Legislature, the Sixteenth, has been initiated on April 29, 2008.

Within this transitional framework, the current Government is just concluding its activities and the new one will be, very soon, in charge with its own political strategies and programmes of action, being referred to Acts, Bills, or draft legislation, including the draft measures which were under examination before the previous Parliament.

The current political situation does not change or vary the commitments and pledges of the Italian Authorities within the EU, the Council of Europe and, more specifically, within the UN.

Given this recent development in the political framework, it is worth considering that new guidelines and strategies will be soon developed and legislative and administrative initiatives from the past Legislature will be resumed, as well. It is then necessary to consider that while in the long term the overall effects will be visible, on the other hand, in the shorter one, we are now in a position to provide - further to and with specific regard to para.29 of the last relevant UN CAT Concluding Observations (CAT/C/ITA/CO/4) -, the following remarks:

A. Fundamental safeguards

1. It should be underlined the whole content of the provision introduced by the *Pisanu* Decree, in order to clarify it. By the so-called Pisanu Decree, the maximum period during which a person may be held in police custody has been extended from 12 to 24 hours for the identification of suspects who refuse to be identified or provide allegedly false personal data or identity documents.

The provision envisages that the suspect can be detained for the time strictly necessary for identification, and in any case, not exceeding 12 hours or, <u>after having informed, also orally, the Public Prosecutor</u>, not exceeding 24 hours, where the identification is particularly complex, or the assistance of the consular authority or of an interpreter is necessary, and <u>in</u>

<u>this case the suspect may ask to inform a member of his family or a live-in person</u> (Article 349, paragraph 4, of the Code of Criminal Procedure).

Detention exceeding 12 hours and not exceeding 24 hours is therefore exceptional and subject to a strict control of the judicial authorities (the Public Prosecutor[iii]), who must be immediately informed of the arrest and the time at which it has taken place.

The judicial authority can order the release of the person held in custody, where it holds that the requirements to detain him/her are not met (Article 349, paragraph 5, of the Code of Criminal Procedure).

Moreover, according to the case-law of the Court of Cassation (*Corte di Cassazione*), Article 349 of the Code of Criminal Procedure does not envisage that arrest is mandatory, as it should be carried out only where there are elements to hold that the personal data provided are false (judgment No. 8105 of 26/4/2000, 2nd Criminal Division, and judgment No. 37103 of 13/6/2003, 2nd Criminal Division).

2. Under Article 104 of the Code of Criminal Procedure, the person who has been arrested while in the act of committing an offence or subject to provisional arrest (according to Article 384 of the Code of Criminal Procedure) and the accused under precautionary custody, have the right to talk to the defence counsel respectively **<u>immediately after their arrest, or provisional arrest or starting of the precautionary custody in prison.</u>**

Article **104, paragraph 3,** of the Code of Criminal Procedure provides for **an exception** to said general rule: **the possibility that the judicial authorities, by means of a motivated decree, defer the exercise to confer with the defence counsel for a period of time not exceeding five days. Said postponement** is allowed, as specified under the same article, only **in the presence of precise assumptions on which the measure is grounded** and namely "**<u>the existence of specific and exceptional reasons for precaution</u>**".

In case of arrest or provisional arrest, the same power is exercised by the Public Prosecutor until the arrested person or the person subject to provisional arrest is put at the disposal of the judge for the validation hearing (Article 104, paragraph 4).

The Court of Cassation has constantly given **a very strict interpretation of this provision, defining the power of delaying the talk with the defence counsel an exceptional and a temporary power, on which ground it has considered it exempt from remarks of constitutionality and compatible with the principles governing the fair trial, because of the purpose of protecting evidence in the best interest of justice that the power of delaying aims at safeguarding (compare judgment No.15113/2006, 4th Division, No. 4479/1994, 1st Division, No. 3651/1995, 6th Division)**.

The order of the judicial authorities must contain the specific and exceptional reasons for precaution that justify it, lacking which the postponement is invalid and gives rise also to the nullity of the further questioning of the person under precautionary custody, before the Judge, according to Article 294 of the Code of Criminal Procedure, in case the arrested person was not

in the position to talk to his/her defence counsel before said questioning (judgment No.1806/1992, 1st Division; No. 1809/1992, 1st Division; judgment No.3025/1992, 6th Division; No. 29564/2003, 6th Division).

According to the Supreme Court "**the illegitimate postponement** of the talk with the defence counsel and hence the infringement of the right provided for under Article 104, paragraphs 1 and 2, of the Code of Criminal Code, entails the infringement of the right to defence, to be considered within the framework of general nullity provided for under Article 178, subparagraph c, of the Code of Criminal Procedure (judgment No. 16815/2004 1st Division; judgment No. 23681/2004, 1st Division; No 39827/2007 4th Division); nullity which, according to Article 185, paragraph 1, of the Code of Criminal Procedure, **makes invalid the questioning** rendered by the arrested person, who has been illegally denied the right to talk with his/her defence counsel, **with the consequences provided for by Article 302 of the Code of Criminal Procedure, and namely the loss of effectiveness of precautionary custody** (judgment No. 3025/1992, 6th Division; judgment No. 1758/1995, 6th Division; affirmed by the judgment of the 6th Division of 20.4.2000, MEMUSHI REFAT).

There is no doubt that the exceptional provision contained in Article 104, paragraphs 3 and 4, does not affect the right of the arrested person to be questioned in the presence of his/her defence counsel: it should be stressed that the above-mentioned Articles 391 and 294 of the Code of Criminal Procedure expressly provide for the obligatory participation of the defence counsel in the validation hearing and the questioning before the judge.

3. As already highlighted in the reply to the List of Issues, the maximum period during which a person may be held in custody without being conducted before a judicial authority is 96 hours (namely four days).

Actually, within 48 hours from the arrest or the police custody, the Public Prosecutor requests the validation to the competent Judge for Preliminary Investigations, who fixes the validation hearing as soon as possible and in any case within 48 hours, informing, without delay, the Public Prosecutor and the defence counsel (Article 390, paragraphs 1 and 2, of the Code of Criminal Procedure).

B. Non-refoulement

1. As to Law Decree No. 144/2005, entitled "Urgent Measures to Contrast International Terrorism", as converted into Law, by Act No. 155/2005, its Art.3 has integrated the legal framework of the expulsions-related issue, by including a specific circumstance under which to apply the so-called administrative expulsions measure. This case has been grounded on the need of preventing domestic and international terrorism, along the lines of the Minister of Interior's action under Art.13, para. 1, of the Unified Text on Immigration (namely Legislative Decree No.286/98).

Specifically, the expulsion measure is issued only when the individual concerned has not been restricted and brought to jail due to verdict or as a result of a pre-trial detention measure. The expulsion measure enters into force, without any delay, also in the event that relevant

information has not yet been provided. In the latter case, this procedure envisages and allows a suspension measure, upon request by the individual concerned. The suspension has been included along the lines of the suspension to be adopted in the event of the judicial expulsion (under Criminal Proceeding Code).

On this issue, there have been various interventions by the Constitutional Court, to emphasize primarily that **the Italian legal system aims at ensuring an effective framework of guarantees, so as to fully and extensively protect the fundamental rights of the individual** (When an Italian legal provision apparently seems to affect the basic individual needs expectations, in reality we are facing a "*modus operandi*", aimed at protecting fundamental rights, such as the right to life, safety, personal freedom and security, as well as national security and public order. This is somehow a method of "damage containing": by which a higher requirement is protected while other legitimate requirements of the individual may be temporarily compressed).

More importantly, as to the constitutionality of the above measures, the Constitutional Court has emphasized, with regard to the terrorism threat, as follows: 1. the admissibility of provisions with a broad content vis-?-vis cases conducive to offences of terrorism and subversion ; 2. the superiority "of the careful and indefectible duty" of the legal system vis-?-vis the democratic order and the public security against terrorism and subversion (also vis-?-vis other constitutional principles; 3. the admissibility of "peculiar measures", though with specific deadlines.

2. As to the concerns by the Committee about the procedure of expulsion and the possible lack of effective protection vis-?-vis the *refoulement,* the Ministry of Interior recalls that in conformity with the conclusions of the European Council in Tampere (dated October 1999), the European Union has introduced *ad hoc* EU measures.

More specifically, by recalling Article 32, para 1, and Article 33, para.1, of the relevant Geneva Convention, as ratified by Italy, by Act No. 722/54, the above EU measures aim both at guaranteeing common criteria and minimum standards of protection at the EU level, and at providing a common position on the *non refoulement* principle - which is already binding for the EU States on the basis of international agreements.

At the domestic level, said principle has been translated by Article 19, para. 1, of the Unified Text on Immigration: therefore, no individual may be expelled, despite the lack of requirements for the recognition of the status of refugee, if facing the effective risk of being subject to serious damage, once back to his/her country of origin.

In doing so, new subsidiary protection measures have been envisaged. By Legislative Decree No.251, dated November 19, 2007, it was translated into the Italian legislative system, EU Directive 2004/83/CE (the so-called "Qualifications Directive on international protection measures"), concerning "Minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted". This Decree was issued on the Italian Official Bulletin, on January 4, 2008, and entered into force on January 19, 2008. In addition, Legislative Decree No.25 was adopted on January 28, 2008, and issued on February 16, 2008

(Italian Official Bulletin No. 40). This translated into the Italian system EU Directive 2005/85/CE, on “Minimum standards concerning procedures in Member States for granting and withdrawing **refugee status”**. Those Decrees effectively amend the previous legislation concerning the asylum-seekers and more generally the status of refugees.

It must be noted the enhancement of the guarantees for the applicants, for those who apply for asylum, as well as for those who have been granted the status of refugee.

Of this new legislation, strengthening the protection system for asylum-seekers and more generally the international protection system, it is worth mentioning all the relevant elements:

- It has been introduced a new system of international protection, the so-called "complementary protection system ”;

- Each application for the international protection will be considered on an individual basis, through an in-depth examination, and with the full participation of the applicant;

- The list of acts and grounds for the persecution or the serious damage, on which to base the release of the international protection measure, has been drawn up with clear definitions, besides being elaborated through an extensive interpretation of the relevant Geneva Convention (i.e. the inclusion of the sexual orientation among the elements has to be considered);

- As to the applicant, it has been simplified the shifting of the *onus probandi*/burden of proof;

- The application for international protection may be based on events occurred after the flee from the country of origin, too;

- The rejection of the application has to be motivated *de jure* and *de facto*, by making specific reference to the situation in the country of origin of the applicant;

- The applicant may lodge a judicial complaint against the decision of the competent Territorial Committee. Subsequently, against any relating judicial decision, there is the possibility to appeal and then to appeal to the Court of Cassation;

- The applicant may resort to legal defence in every stage of the proceeding, including the hearing with the Territorial Committee;

-Ad hoc reception Centres for asylum-seekers have been established (acronym in Italian, "CARA"), while the role of the CPTs and CPTAs is extremely reduced;

- Those who are granted international protection measures are equalized to Italian citizens in a wider range of areas, such as work and education, while being equalized to EU citizens, as to the access to the public employment.

In doing so, Italian Authorities have been committed towards further specific obligations in order to effectively promote and protect human rights.

3. Lastly, to December 31, 2007, under Act No. 155/2005 - entered into force on July 31, 2005 - there were only 39 foreigners expelled, upon proposal by the responsible offices of the Ministry of Interior.

Conditions of detention

In order to better set out the issues related to the immigration Centres management, it deems appropriate to highlight the following:

1. As regards the national budget and to the solely aim of managing the immigration Centres, Italy allocated, in the year 2007, a total amount of _. **67.528.314,97**, while, till the month of April 2008, it was foreseen to the same aim an expense of _. **47.291.519,67;**

2. Italy presently faces an **increasing number of landings** and, as a consequence, of the international protection **applications;**

3. People remain in the immigration Centres, longer than before.

1. As regards point 1., and in addition to the national budget commitments, it is worth underlining that Italy is also willing to devote a share of the funds that the European Union places through the so-called “PON - Security” (“National Operating Program” - Security), for the immigration Centres improvement policy. (PON Security - Objective 2.1 - Migration Impact Management, funded for a total amount of **_ 150.782.130,00**).

Objective 2.1 is considered to be particularly significant as for the general strategy in the field of security. It aims to keep down the consequences of migration impact and deals with this issue, by taking into account projects to create a favorable environment for carrying out welcome and integration paths.

With the aim at implementing this strategy, it is presently under negotiation with the European Union a draft “Action Plan”, whose general lines are hereinafter summarized:

Immigration Centres :Italy aims at improving the existing structures, through the development and the restoration of centres for asylum-seekers, refugees and humanitarian *prot間閲*. In this perspective, migrant facilities could also be destined to play a role as civic and professional education, first aid, cultural, social and psychological assistance centres, etc.

2. As regards points 2. and 3. the growth of the number of landings and a longer than before stay in migrant facilities are closely linked: when the number of people to be hosted and protected increases, then the bureaucratic activities to be fulfilled for hosting and protecting them equally increase.

As regards the growth of disembarkations, it has to be noted that:

- from January 1st to April 20th , 2008, around **3,450** people landed in the South of Italy,

and in particular:

- in Sicily, roughly **3,249** people in 59 landings, of which 50 landings for a total amount of **3,126 immigrants in Lampedusa Island only;**

- in Sardinia, **207** people in 19 landings.

In the same period of the year 2007, **2,038** people landed in total.

The exponential growth of the immigrants landed in the South of Italy clearly appears from the above mentioned data. Moreover, a flow of immigrants requesting international protection has been filed, most of them coming from Afghanistan and Iraq. This situation involves about one thousand people, who reached the Crotone Centre, probably arriving from various Adriatic harbours or Northern Europe.

When dealing with the issue of a longer stay of international protection seekers within the dedicated centres during the last few months, it has to be noted that this phenomenon could be referred to the entrance into force of Legislative Decree No. 25/2008, which implements the EU Directive 2005/85/CE on minimum standards on procedures to be followed by member States to recognize and revoke a refugee status.

According to Legislative Decree No. 25, the Police authorities (*Questori*) cannot refuse to accept an application for international protection, given the fact that the solely cognizant board in this matter is now the territorial committee. As a consequence, asylum-seekers who have already received a deportation measure or that have been hosted in the so called "Temporary Stay Centres" (acronym in Italian,"CPT"), from now on, have to be sent to the so called Asylum Seekers Assistance Centres (acronym in Italian, "CARA"). All the immigrants are free to exit the Centres and in fact some of them have already left.

Furthermore, the appeal against a rejection measure of the international protection application normally stays the efficacy of the contested rejection measure, so that the person concerned is entitled to remain in Italy until his/her appeal is ruled. However, this stay cannot exceed the maximum period of six months, starting from the application date. In any case, a number of people left after they received the rejection notice of their application.

These new legislative developments determined an incremental growth of both the international protection applications and of people within the migrant Centres where, against a total availability of 2,800 places, starting from March 2, 2008 (when Legislative Decree No. 25 entered into force) people increased from around 2,000 (end of February, 2008) to around 2,700 (end of April, 2008). This is why, thanks to a recent issue by the Minister of the Interior, the Bari and Siracusa Centres have been destined to host also asylum-seekers (acronym in Italian, "CARA").

- In Bari, a new facility has just entered into force, capable of 700 places. Soon, new facilities will be operational in:

BRINDISI (180 places)

CROTONE (250 places)
GORIZIA (250 places).

Furthermore, within the Asylum-Seekers and Refugees Protection System (acronym in Italian, "SPRAR"), the Ministry of the Interior is working, in tandem with the Central Service and the Italian Municipalities Association (acronym in Italian, "ANCI"), to enhance the hosting system in the Municipalities that take part to the above-mentioned programme (SPRAR). To date, roughly 700 more places have been announced, to be added to the already existing 2,500 places.
Beside the above interventions of a structural nature, there is a clear need to reduce the duration of the procedures falling within the responsibilities of both the Immigration offices at the Police stations (*Questure*), including (pictures, registration of the applications, notification of measures adopted by the Territorial Committees), and of the Territorial Committees *(Commissioni Territoriali)*.

Last but not least, we do want to emphasize, within the framework of the activities relating to CE Regulation No. 343/2003 (Dublin II) concerning the definition of the EU State being responsible for the examination of the asylum applications, some difficulties have emerged to date, either due to the rise in the number - very high - of applications from Afghan and Iraqi asylum-seekers to be sent back to Greece and the UK or due to the applications by other member States.

2.1 As for the **penitentiary structures**, please find below the tables concerning the interventions carried out since 2007 (Table A), the interventions given out by contract since 2007 (Table B), and the interventions to be given out by contract in 2008 (Table C), as well as the information concerning the building of new prisons, by the Ministry of Infrastructures, with the indication of the date of end of works, respectively:

TABLE A - INTERVENTIONS CARRIED OUT SINCE 2007

Prison	Works
BERGAMO C.C.	Renovation of the former bunker room in a detention wing (100 beds) - Works have been financed and carried out by the Ministry of Infrastructures
BRINDISI C.C.	General Renovation of the prison - 1st lot - (93 places)
CATANZARO C.C.	Renovation and functional reallocation of the premises of the Therapeutic Diagnostic Centre (67 places)
CIVITAVECCHIA C.R.	Renovation complying with the new Regulation of enforcement of the Penitentiary Act - DPR 230/2000 - of the building "Cattaneo" (48 places)
FOSSANO C.R.	General renovation of the prison (141 beds) – Works have been financed and carried out

	buy the Ministry of Infrastructures
IS ARENAS ARBUS C.R.	Renovation complying with the new Regulation of enforcement of the Penitentiary Act - DPR 230/2000 of the detention wings of the Branch “Conca d’Oro” (50 places)
ISILI C.R.	Renovation complying with the new Regulation of enforcement of the Penitentiary Act - DPR 230/2000 - of the detention wings of the Branch “Fontana” (50 places)
L’AQUILA C.C.	Compliance with current legislation and widening of the existing wing 41b (12 places)
LOCRI C.C.	General renovation of the prison complying with the new Regulation of enforcement of the Penitentiary Act - DPR 230/2000 - (102 places)
MILANO OPERA C.R.	Compliance with current legislation and transformation of the former female wing in 41b wing (92 places)
NOTO C.R.	General renovation of the prison (180 places)
ROMA REBIBBIA C.C. N.C.	Renovation complying with the new Regulation of enforcement of the Penitentiary Act - DPR 230/2000 - of the G7 block (22 places)
SPOLETO C.R.	Compliance with current legislation and transformation of the building E5 in the wing for 41b prisoners (88 places)
TEMPIO PAUSANIA C.C.	Recovery of the fitness for habitation of the prison (29 places), waiting for the building of the new prison - Works have been financed and carried out by the local Municipal Administration

TABLE B - INTERVENTIONS GIVEN OUT BY CONTRACT SINCE 2007

Prison	Works	Expected completion date
BARCELLONA O.P.G.	Renovation complying with the new Regulation of enforcement of the Penitentiary Act - DPR 230/2000 - of the former	By the end of 2008

	workshop and of the third ward (130 places)	
MASSA C.R.	Renovation complying with the new Regulation of enforcement of the Penitentiary Act - DPR 230/2000 - of the B wing (104 places) - Works have been financed and carried out by the Ministry of Infrastructures	By the end of 2008
MILANO BOLLATE C.C.	Building of two detention wings widening the prison (344 places)	By the end of 2008
MILANO OPERA C.R.	Renovation of the Therapeutic Diagnostic Centre with annexed kitchen and laundry (48 places)	By the end of 2008
NAPOLI POGGIOREALE C.C.	Renovation complying with the new Regulation of enforcement of the Penitentiary Act - DPR 230/2000 - of the building “Firenze” (221 places)	By the end of 2008
PERUGIA C.C.	Renovation of the premises for transformation in Therapeutic Diagnostic Centre (30 places)	By the end of 2008
RIMINI C.C.	Compliance with current legislation of the former barracks for agents for transformation in detention wing (22 places)	By the end of 2008
TRANI C.R.	Renovation complying with the new Regulation of enforcement of the Penitentiary Act - DPR 230/2000 of a part of the prison (75 places)	By the end of 2008
AVELLINO C.C.	Building of a new block widening the prison (150 places)	By the end of 2009
AVEZZANO C.C.	General renovation of the	By the end of 2009

	prison complying with the new Regulation of enforcement of the Penitentiary Act - DPR 230/2000 - (70 places)	
COSENZA C.C.	General renovation of the former female wing complying with the new Regulation of enforcement of the Penitentiary Act - DPR 230/2000 (20 places)	By the end of 2009
CUNEO C.C.	Building of a new block widening the prison (200 places)	By the end of 2009
ENNA C.C.	Widening of an existing block (50 places)	By the end of 2009
FAVIGNANA C.R.	General renovation of the prison complying with the new Regulation of enforcement of the Penitentiary Act - DPR 230/2000 - (120 places)	By the end of 2009
LA SPEZIA C.C.	Completion of the general renovation of the prison - Works are carried out by the Ministry of Infrastructures with financing granted by the Penitentiary Administration	By the end of 2009
LODI C.C.	Renovation and compliance with current legislation of a part of the prison (30 places)	By the end of 2009
PALERMO UCCIARDONE C.C.	Renovation complying with the new Regulation of enforcement of the Penitentiary Act - DPR 230/2000 - of VIII wing (120 places)	By the end of 2009
VELLETRI C.C.	Building of a new block widening the prison (200 places)	By the end of 2009
CATANZARO C.C.	Building of a new block widening the prison (300 places)	By the end of 2010
PALERMO PAGLIARELLI C.C.	Building of a new block widening the prison (300	By the end of 2010

	places)	
PISA C.C.	Renovation of GS1 block which is part of the Therapeutic Diagnostic Centre (21 places)	By the end of 2010
S. MARIA CAPUA VETERE C.C.	Building of a new block widening the prison (300 places)	By the end of 2010

TABLE C - INTERVENTIONS TO BE GIVEN OUT BY CONTRACT IN 2008

Prison	Works
AGRIGENTO C.C.	Building of a new block widening the prison
ARIANO IRPINO C.C.	Building of a new block widening the prison
BARI C.C.	Renovation complying with the new
CAMPOBASSO C.C.	Renovation complying with the new
CARINOLA C.C.	Building of a new block widening the prison
CREMONA C.C.	Building of a new block widening the prison
CROTONE C.C.	Renovation complying with the new
FROSINONE C.C.	Building of a new block widening the prison
GENOVA PONTEDECIMO C.C.F.	General renovation of the prison complying
LIVORNO C.C.	Building of a new block widening the prison
MILANO OPERA	Renovation complying with the new
MODENA C.C.	Building of a new block widening the prison
MODENA C.C.	Rebuilding of a health thermic and water
MONTELUPO O.P.G.	Ending of the renovation complying with the
NAPOLI O.P.G.	Renovation complying with the new
NUORO C.C.	Building of a new block widening the prison
NUORO C.C.	General renovation of the prison complying
PADOVA C.C.	Renovation complying with the new
PAOLA C.C.	Renovation complying with the new
PARMA I.P.	General renovation of the prison complying
PAVIA C.C.	Building of a new block widening the prison
PESCARA C.C.	Renovation complying with the new
ROMA REBIBBIA C.R.	Renovation complying with the new
ROMA REGINA COELI C.C.	Renovation complying with the new
ROMA REGINA COELI C.C.	Ending of the renovation of the IV wing -
SALERNO C.C.	General renovation complying with the new
SPOLETO C.R.	Renovation complying the new Regulation
TERNI C.C.	Building of a new block widening the prison
VERCELLI C.C.	Renovation complying with the new

Besides the activity carried out by the Penitentiary Administration, in order to give a more detailed framework of the programmed interventions, the situation of the building of new prisons by the Ministry of Infrastructures is as follows:

- New Remand Prison of CAGLIARI (550 beds) – currently the building of a first lot of works to be finished by the end of 2009, is ongoing;

- New Remand Prison of SASSARI (430 beds) - currently the building of a first lot of works to be finished by the first three months of 2010, is ongoing;

- New Remand Prison of TEMPIO PAUSANIA (150 beds) - currently the carrying out of a first lot of works to be finished by the end of 2009, is ongoing;

- New Remand Prison of ORISTANO (250 beds) - currently the carrying out of a first lot of works to be finished by the end of 2009, is ongoing;

- New Remand Prison of ROVIGO (200 beds) - currently the carrying out of a first lot of works to be finished by the end of 2011, is ongoing;

- New Remand Prison of FORLI (225 beds) - works have been recently awarded and have to be finished by 2012.

- New Remand Prison of MARSALA (175 beds) - the work has never started because of a controversy between the contracting administration (Ministry of Infrastructures) and the temporary association of enterprises carrying out the work;

- New Remand Prison of REGGIO CALABRIA (150 beds) - the work is currently suspended as the financing of the last lot of works has not been given as provided for by the contracting administration (Ministry of Infrastructures);

- New Remand Prison of SAVONA (265 beds) - the work has never started because of a controversy between the contracting administration (Ministry of Infrastructures) and some enterprises which have participated in the bid for tenders by stopping the award thereof.

- New Remand Prison of TRENTO (220 beds) - currently the carrying out of the work to be finished by the end of 2010 is ongoing. It has to be pointed out that works are financed and carried out by the Autonomous Province of Trento.

2.2 As for the specific recommendation of the UN Committee for the **quick recruitment of penitentiary staff**, including staff for healthcare and pedagogic areas, it must be said that, in 2007, the reduced financial resources allowed the recruitment of 5 new staff members. However, the Penitentiary Administration has carried out the whole procedure of the public competition for the recruitment of about 180 members of administrative staff and of psychologists (39 units).

As for the pedagogic staff, two public competitions for educators are currently being carried out, one for 400 units and one for 50 units. Finally, the competition for the recruitment of 90 nurses has been completed. Therefore, in the next months, the recruitment of about 100 new units of civil staff is foreseen, within the limits of the financial resources allocated to the Penitentiary

Administration Department within the Ministry of Justice.

As for the Penitentiary Police, the authorization was asked to the recruitment, for the year 2008, of 1,769 staff members. The long procedure is ending for the shifting of the **Healthcare penitentiary system** from the Department of Penitentiary Administration to the National Healthcare Service, started by Act No. 419 of 1998 and the following Legislative Decree No. 230 of 1999.

Indeed, the Financial Act of 2008 has completed the legislator's project, since it provides for the issuing of a Decree of the President of the Council of Ministers which defines the modalities and the criteria for shifting from the Ministry of Justice to the National Healthcare Service all the healthcare functions, including the employer-employee relations, the financial resources, the equipments and goods relevant to the penitentiary healthcare service.

The above-mentioned Decree was signed by the President of the Council of Ministers and by the Ministers of Justice and of Healthcare on 1st April 2008. This provides that the healthcare service is assured, in Italy, to all citizens, both free and prisoners, by the same bodies, by the same structures and by the same staff, according to the following criteria: entirety of the intervention, unity of services, integration of social and health assistance and the guarantee of therapeutic continuity.
The healthcare services will be provided by the Regions through the Local Health Agencies, which are competent for the areas where the prisons and the penitentiary services are located.

The premises of the penitentiary structures dedicated to the healthcare service will be put at the disposal of the Local Health Agencies for free, on the basis of specific agreements.

One article of the above-mentioned Decree is dedicated to the Judicial Psychiatric Hospitals: as for healthcare, their functions will be shifted to the Regions, while the equipments, furniture and instruments will be shifted to the Local Health Agencies. The Regions will have to regulate their interventions in the Judicial Psychiatric Hospitals, in accordance with the principles set forth in the specific guidelines included in the above-mentioned Decree.

Waiting for the practical enforcement of the said reform, the Penitentiary Administration keeps orienting its activity, in the healthcare field, so as to give suitable replies to the requirements of the prison population, that suffers, in a meaningful percentage, from chronic pathologies (drug-addiction, psychiatric diseases, infectious diseases), that is socially weak and that keeps changing.

In 2007, the "Document for healthcare guidelines and planning 2007" was drafted, with the purpose of reforming the previous criterion of organization of healthcare services, thus starting an integrated network of assistance, in order to provide healthcare services inspired by principles of cheapness and efficacy, also involving the Regional Health Services.

New managerial and organizational models have been identified, classifying prisons according to health levels, on the basis not only of the number of prisoners present, but also of the health needs identified and of the functions they carry out.

Moreover, the number of the wards for psychiatric observation was increased , as well as the number of wards for prisoners suffering from HIV, of wards for disabled prisoners, of detention wards based in civilian hospitals and of wards for drug-addicts.

2.3. It must also be underlined that, by a circular letter dated 6th June 2007, new **guidelines** were established for an organizational model concerning the procedures of **reception of persons entering in prison from liberty**.

As for the planning of staff training for the three-year period 2007-2009, the strategic priorities set in the relevant guidelines pursue the promotion of a "professional culture" based upon:

1. *the centrality of the human being*, with reference both to the users of the penitentiary system (in prison and in the community), as beneficiaries of the penitentiary service, and to the penitentiary workers, as indispensable human resources for the implementation of a change within those services.

2. *the strengthening of ethics in working action*

3. *the centrality of operational structures and improvement of the quality of the service provided*
4. *the links with the local community*

With reference to the CAT recommendation in order for the whole staff to receive a specific training about how to identify the marks of torture and mistreatment, the Office for Studies of the Penitentiary Administration Department translated into Italian and printed the **1999 Istanbul Protocol**, which is currently being disseminated to the Prisons and the Penitentiary Services all over the Country, as well as to all the Agencies concerned, so that it may be included in the training for the healthcare staff.

2.4. As for the enforcement of the **measures alternative to detention**, please find below the relevant Tables:

Table A : Cases followed in 2007 - Total

TYPE OF MEASURE	Nr. of cases followed
Assignment of the offender to the Probation Service	**3391**
Assignment of the offender to the Probation Service in particular cases: drug-addicts and alcohol-addicts	**1,735**
Home detention	**3,865**
Semi-liberty	**1,398**

Table B: Cases followed on 31st March 2008

TYPE OF MEASURE - TYPE OF OFFENDER	Nr. of cases followed
ASSIGNMENT OF THE OFFENDER TO THE PROBATION SERVICE Drug-addicted assigned from liberty	411
Drug-addicted assigned from detention	441
Drug-addicted assigned from home detention or house arrest	21
Offenders assigned from detention	821
Offenders assigned from liberty	1,297
Offenders assigned from home detention or house arrest	56
TOTAL	**3,047**
SEMI-LIBERTY Semi-liberty from detention	685
Semi-liberty from liberty	47
TOTAL	**732**
HOME DETENTION Home detention from prison	692
Home detention from liberty	753
Provisional home detention	180
TOTAL	**1,625**

D. Compensation and rehabilitation

Draft Law No S. 1216 was transmitted to the II Permanent Commission (Justice) of the Senate, on 19 December 2007, for its examination. At present all the draft laws under examination by the Parliament are to be considered ceased, as on 25 January 2008 the *Prodi*-led Government resigned and contextually the XV Legislature lapsed.

As already recalled in the Introduction to the present Follow up, the current Government has been authorized to perform exclusively caretaking acts and fulfilments, whereas the future Government will have to take any decision (both technical and political) regarding the acts, drafts laws and proposals discussed so far but still unaccomplished.

Within this framework, while being confident that the legislative process will be soon resumed, we would like to reiterate that the Italian Constitution protects in a rigorous and strict way the same rights guaranteed by international instruments. Within this framework, the new Legislator

will promptly follow such lines.

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[i] In April 2008, new Parliamentary elections took place under **Article 61 [Re-elections] of the Italian Constitution: "**(1) The re-election of new chambers must take place within seventy days from the dissolution of the previous ones. The first session has to be take place no later than twenty days after elections. (2) The previous chambers retain their powers until the new chambers meet".

[ii] Article 93 [Oath] of the Italian Constitution: "The prime minister and the ministers, prior to taking office, are sworn in by the Head of State".

[iii] In the Italian legal system, the **Public Prosecutor** is a member of the Judiciary. Article 107 of the Constitution envisages that judges may only be distinguished by function and that the Public Prosecutor enjoys the guarantees defined by the organizational law. The Public Prosecutor has the duty to initiate criminal proceedings. S/He performs her/his duty objectively and loyally in respect of the suspect, having also the obligation of establishing facts and circumstances that might be favourable to the person under investigation (Article 358 of the Code of Criminal Procedure).