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КОНКРЕТНЫЕ ГРУППЫ И ЛИЦА: ТРУДЯЩИЕСЯ-МИГРАНТЫ

**Доклад, представленный Специальным докладчиком г-жой Габриэлой Родригес
Писарро в соответствии с резолюцией 2004/53 Комиссии по правам человека¹**

Добавление 2

ПОЕЗДКА В ИТАЛИЮ

¹ Резюме настоящего доклада по итогам поездки распространяется на всех официальных языках. Сам доклад приводится в приложении к резюме и будет распространен на языке представления, а также на французском и английском языках.

Резюме

7-18 июня 2004 года Специальный докладчик посетила Италию по приглашению итальянского правительства. В ходе этой поездки Специальный докладчик преследовала двойную цель: во-первых, собрать информацию о механизмах контроля и обеспечения безопасности на границе и системе административного задержания иммигрантов, не имеющих соответствующих документов, и, во-вторых, дать оценку воздействия недавней реформы законодательства по вопросам иммиграции на политику в области интеграции иммигрантов.

В настоящем докладе проводится анализ основных вопросов, изученных Специальным докладчиком в ходе ее поездки, как-то: условия жизни и занятости трудящихся-мигрантов, доступ к жилью, образованию и медицинскому обслуживанию и административное задержание иммигрантов, не имеющих соответствующих документов. В своем докладе Специальный докладчик уделяет особое внимание мерам, принимаемым в целях борьбы против торговли людьми, а также положению просителей убежища и несопровождаемых несовершеннолетних иностранцев.

Выводы и заключения, приводимые в настоящем докладе, основываются на информации, которая была собрана в ходе поездки, а также на соответствующих международных нормах.

Annex

**REPORT SUBMITTED BY MS. GABRIELA RODRÍGUEZ PIZARRO,
SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS,
ON HER VISIT TO ITALY FROM 7 TO 18 JUNE 2004**

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Introduction

1. The Special Rapporteur visited Italy from 7 to 18 June 2004, at the invitation of the Italian Government. She takes this opportunity to thank the Government for its valuable assistance and cooperation, which eased her task very considerably. She also thanks the Permanent Mission of Italy to the United Nations Office at Geneva for its collaboration in preparing her visit. She further expresses her thanks to the numerous representatives of civil society and private individuals she was able to interview. The programme office of the United Nations Development Programme and the Office of the International Organization for Migration (OIM) in Rome provided logistical and administrative support of an impeccable standard, without which the visit would not have been so productive.

2. In the course of the last three decades Italy has gone from being regarded as a country people emigrate from to being one of the favoured new destinations of migrants arriving in Europe. It is subject to considerable migratory pressure for many reasons, both geographical and economic. At the time of the visit, the Government estimated that immigrants in Italy numbered some 2.5 million individuals, or 4 per cent of the population. According to data from the Ministry of the Interior, there were 2,039,657 non-European Union foreign citizens living in Italy with a residence permit in 2003. Traditionally, the countries of origin of immigrants living in Italy have been Morocco (227,000 legal residents in 2003) and Albania (233,000). The highest increase in the last four years, however, has been in legal immigrants from Romania (239,000), Ukraine (112,000) and Poland (65,000). Rising numbers have also been observed with arrivals of nationals from China (100,109), the Philippines (73,847) and Senegal (47,762).

3. One of the aims of the Special Rapporteur's visit was to compile information on border controls and security and the system for the administrative detention of undocumented immigrants. She wished to assess the impact of the recent reform of immigration legislation in policies for the integration of the immigrant population living in Italy. The conclusions and observations of this report are based on the information compiled and on the relevant international standards.

I. PROGRAMME OF THE VISIT

4. From 7 to 11 June the Special Rapporteur held meetings in Rome with senior officials at the Ministries of Foreign Affairs, Labour, Justice, the Interior and Equal Opportunities, and officials in charge of departments dealing with migration. In the Ministry of Foreign Affairs, these included the Under-Secretary of State, Mr. Antonione, the Director-General and the Deputy Director of the Department for Italian Citizens Abroad and Migration Policies, the

Director-General of the Department for Multilateral Political Affairs and Human Rights and the President of the Inter-Ministerial Committee on Human Rights; in the Ministry of Labour and Social Policies: the Director-General for Immigration, the President of the Foreign Minors Committee, and the Director-General for the Supervision of Conditions of Employment; in the Ministry of the Interior: the Under-Secretary of State, Mr. D'Alí, the Head of the Department of Civil Liberties and Immigration, the Central Director for Immigration and Border Police and the President of the Commission on the Status of Refugees. She also had interviews with the Head of the Office for Prison Administration, the President of the Inter-Ministerial Commission for the implementation of article 18 of legislative decree No. 286/98 and the President of the Senate Human Rights Commission and with members of the National Economy and Labour Council (CNEL). The Special Rapporteur visited the Roma-Fiumicino Leonardo da Vinci airport and the Rebibbia Prison.

5. The Special Rapporteur held a meeting with the consular authorities of Albania, Colombia, El Salvador, Mexico, Morocco, Peru and Poland. A wide range of sectors of society with experience in migration matters were invited to take part in four thematic meetings. Among those present were representatives of human rights NGOs, immigrants' associations, churches, trade unions, politicians and lawyers.

6. The second part of the visit began in Brindisi. Here the Special Rapporteur visited the Restinco temporary stay and assistance centre (CPTA). The local authorities who received her included the Prefect (local Government representative), the President of the Provincial Government, the Special Commissioner (*Commisario straordinario*) and the Chief of Police (*Questore*). She had a meeting with the provincial commanders of the *Carabinieri* and the Finance Police (*Guardia di Finanza*), the Harbour Master and the Director of the Border Police Office. On 14 June the Special Rapporteur arrived in Trapani (Sicily) where she visited the Salinagrande identification centre¹ and met the mayor, the Prefect and the local security forces. The following day she travelled to the island of Lampedusa, 200 km south of Sicily, where she had interviews with the mayor and members of the security forces; she also visited the Lampedusa CPTA. The regions of Lombardy and Emilia Romagna, noted for their economic vitality and large immigrant populations, were also visited. On 16 June the Special Rapporteur visited the San Vittore Prison in Milan and had meetings with the authorities of the region. These meetings were attended by the Prefect and the Chief of Police of Milan. The Special Rapporteur visited two reception centres for asylum-seekers in Milan, in Via Gorlini No.1 and Via Novara No. 451. In Bologna, she had meetings with the adviser on regional reception policy and regional social services, the deputy mayor and the local authority's councillor for social services. She visited the San Francesca Cabrini reception centre for migrant workers.

7. During this period the Special Rapporteur also met representatives of civil society. In Brindisi, she spoke to a wide-ranging group of representatives of NGOs, associations and trade unions from the area. In Trapani she had the occasion to meet members of the Legal Studies on Immigration Association (ASGI), and in Bologna she had a meeting with members of Jurists for Democracy and Magistrates for Democracy.

8. Her official visit ended in Rome where she had interviews with the Minister for Italians Abroad and the President of the Human Rights Committee of the III Foreign Affairs Commission of the Chamber of Deputies. At the conclusion of the visit, the Special Rapporteur called a press conference in which she informed the media about her mandate and her activities in Italy.

9. The Special Rapporteur would like to express her sincere gratitude to all the people she interviewed for their valuable contributions. Special thanks go to ASGI, CGIL, Congregazione Missionarie Scalabriniane, the Peruvian Consulate in Rome, Jurists for Democracy, the Working Group on the CPTAs, Magistrates for Democracy, Médecins sans Frontières (MSF) and Save the Children.

II. LEGAL FRAMEWORK

10. Italy is a party to the main United Nations human rights instruments,² with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Special Rapporteur was informed that there were no plans to initiate domestic procedures to ratify the Convention.

11. Italy signed the United Nations Convention against Transnational Organized Crime, the Protocol against the Smuggling of Migrants by Land, Sea and Air, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children on 12 December 2000. The procedure for the ratification of these instruments is in its final phase and it is hoped that it can be completed in the next few months.

12. Legislation on migration, based on Act No. 40/1998 on immigration regulations and norms on the status of aliens of 6 March 1998, is incorporated along with other norms on immigration in Legislative Degree No. 286, of 25 July 1998, comprising the Consolidated Text of provisions concerning aliens, amended by Act No. 189/2002 on changes to immigration and asylum standards (known as the Bossi-Fini Act). As of 15 November 2004, the regulations to give effect to Act No. 189/2002 had still not been adopted and the legislation had been amended once again by decree-law No. 241 (Urgent provisions on immigration) of 14 September 2004, which subsequently, with changes, became Act. No. 271 of 12 November 2004.

13. Following the Special Rapporteur's visit, the Italian Constitutional Court ruled³ that articles 13 and 14 of the Immigration Act breached article 3 of the Italian Constitution which stipulates that citizens are equal before the law, and article 13 whereby the adoption by the administrative authorities of procedures affecting personal freedom is permissible only in exceptional cases or emergency. The Court ruled that an immigrant could not, under the Constitution, be expelled after appearing in court without a proper defence, i.e. without a lawyer present. It also found unconstitutional the article requiring mandatory detention of an alien in breach of an order to leave Italy within five days.
14. Italy has ratified the Convention relating to the Status of Refugees. An act on the right of asylum is being debated by the Chamber of Deputies.
15. Comments on Italian legislation on trafficking in persons can be found in chapter III, section D.2 of this report.
16. At the time of the visit a bill on religious freedom was being debated by the competent parliamentary commissions.

III. TOPICS

A. Management and control of migratory flows in Italy

Border control and combating clandestine immigration

17. The management of migration in Italy is shaped by the country's geographical situation and its membership of the European Union and the Schengen Agreement. Italy has signed agreements on migration with countries of origin and transit, which in some cases include readmission agreements to control clandestine immigration. These agreements seem to have successfully contained the migratory flows which used to arrive from Albania. The Government acknowledged the problems of controlling flows from Central Africa, the Middle East and Asia, via Libya and Tunisia. The authorities claim to have observed a growing number of illegal Latin Americans.
18. Italian law punishes persons who assist the illegal entry of an alien by up to three years' imprisonment and fines of up to €15,000 for each clandestine undocumented migrant entering the country.

19. The Special Rapporteur was given information about the Italian coastal air-sea system for the surveillance, monitoring and checking of immigration, with the participation of various State security bodies and the Armed Forces. The military arm of the Navy is responsible for surveillance on the high seas in the Western Mediterranean and on the east coast, in collaboration with the Albanian authorities. The *Guardia di Finanza* is responsible for checking clandestine immigration from the area adjoining Italy; it operates in both international and territorial waters and is empowered to make arrests and confiscate property. The Italian Police operates solely in territorial waters. Lastly, the Coast Guard may intervene in any of the above three situations, providing rescue and assistance at sea in the event of the risk of shipwreck, restricting its interventions to the 12 + 12 mile zone, but extending to up to 100 miles for humanitarian reasons. All operations are coordinated by the Prefect of the province with cooperation from the Chief of Police in technical aspects. In Brindisi, the Special Rapporteur attended a simulated interception and boarding of a vessel at sea. The members of the security forces in Lampedusa explained that they made daily flights over the sector between the island, Tunisia and Libya, as far as Malta. When a vessel was located with undocumented immigrants on board, a sea-rescue operation was organized and the immigrants were taken to the nearest port.

20. The Special Commissioner in Brindisi confirmed that, as a result of agreements with Albania, no noteworthy landings from that country had been registered on the Italian coast for two years. Currently, the majority of undocumented migrants were intercepted on board vessels or in lorries. In Brindisi, the number of interceptions had begun to fall in 2000, when 5,670 individuals were detected attempting to enter Italy clandestinely. During the first half of 2004, 257 persons were allegedly intercepted, of whom 35 were turned away at the border. The others had apparently entered through Greece, and were therefore returned to that country. The Special Commissioner considered that efforts should now be directed at preventing and containing immigration at its origin. According to the Prefect of Brindisi, after observing that the routes used in the area by organized crime for cigarette smuggling were the same as those for migrant smuggling, it was decided to take a coordinated stand against both forms of crime.

21. In the port of Lampedusa, the Special Rapporteur saw how makeshift were the craft in which a group of immigrants had arrived at the island on 2 June (163 individuals, according to the Lampedusa CPTA register). The Coast Guard explained that the immigrants were brought in boats, but that halfway through the journey they were forced to continue in small craft with the aid of nothing more than a compass and guidance from fishermen. Bad conditions at sea and the inaccuracy of their navigational aids could drag a 12-hour crossing out to up to 4 days.

The immigrants travel with very little water, crowded together and unable to move. Radar detection of craft like this depends on their shape, which means that rescue operations sometimes arrive too late.

22. The Special Rapporteur visited Roma-Fiumicino Leonardo da Vinci Airport. This airport is used by 24 million passengers a year and a third of its air traffic is outside the Schengen area. The statistics provided by the airport authority show a change in the places where clandestine immigration originates; flows from Central Africa are declining, while arrivals from Latin America and Eastern Europe, and Romania in particular, appear to have increased.

23. The Counterfeit Passports Section at the airport reported that when they detected a counterfeit travel document, the bearer was reported and expelled from the country. In such cases the consular authorities of the country of origin would not be informed. Ordinary border controls were supplemented by additional controls at the entrance to transit areas, thus reducing problems stemming from the destruction of documents and bogus transit. It was out-of-date residence permits rather than document authenticity that gave rise to most problems. In order to prevent entries of this type, border checks included screening (2,192 persons were turned away in 2003 and 854 between January and May 2004). In these cases, again, the competent consular authorities would not be informed. Some consuls, during the meeting in Rome, expressed discomfort at not being informed immediately when individuals were turned back at the border but only being notified in writing after deportation had taken place.

24. Illegal immigrants wait in the airport transit areas for expulsion orders to be carried out. It was reported that they generally had to wait 24 hours to be put on a plane, with the exception of flights to Gabon where there was a wait of several days. The Special Rapporteur, however, interviewed a 28-year-old Filipino woman who had been waiting for four days to be deported after it was discovered that she was carrying a false passport. The Special Rapporteur spoke to several people at the airport who were going to be deported (an average of 15 per day), and was surprised by the number who said that they were Palestinians expecting a transfer to another European Union member State on the basis of the system established by the Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities (Dublin Convention), of 15 June 1990 and Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the member State responsible for examining an asylum application lodged in one of the member States by a third-country national.

25. In the office of the Italian Refugee Council (CIR) in Fiumicino the Special Rapporteur was informed that the people seeking advice there could have reached Italy directly or have been transferred from another State party to the Dublin Convention. The majority of those who

arrived directly were from Iraq and Myanmar, while Somalis, Eritreans and Sudanese apparently arrived under the Dublin Convention. Between January and June 2004 the office had processed 216 people, of whom only 14 were said to have arrived directly in Italy.

B. Migrant workers

26. The Special Rapporteur was informed that the annual schedule of flows of migrant workers entering Italy was defined in a decree from the President of the Council of Ministers, which had to be approved by 30 November of each year. The decree defines maximum annual quotas for contractual and seasonal employment and self-employment for the following year, which may be amended by subsequent decrees in the course of the year. The latest annual decree had been promulgated early in 2004 and provided for 79,900 places, of which 50,000 were for temporary contractual employment.⁴ The decrees give preferential quotas to countries which collaborate with Italy in stemming illegal migrant smuggling.⁵ Before the recent extension of the European Union to the East, 20,000 workers from these countries had been authorized to enter Italy.⁶

27. Italian law stipulates that the employer must apply for authorization from the Ministry of Labour to hire a non-EU foreign worker, and must submit a proposal for a residence contract for the purpose of employment (*contratto di soggiorno per lavoro*). The employer must guarantee suitable accommodation (the residence contract is otherwise void), undertake to pay the cost of the return journey and report any modification affecting the employment contract, or be fined between €500 and €2,500. The employer may also request visas for people on the lists of foreign workers from non-EU countries with which Italy has signed bilateral agreements. Once the Provincial Employment Centres confirm that no Italian or Community workers are interested, the provincial office of the Ministry of Labour checks that the annual quota for the recruitment of foreign workers is not full and that the contract and accommodation on offer are in keeping with Italian labour legislation. Only then, and after perusal of the applicant's judicial record, can the relevant consular office give the worker the papers for issuance of an entry visa.

28. The foreign worker is required to apply to the police department of the city of destination for a residence permit (*permesso di soggiorno*), which must be processed within 20 days. The duration of these permits has apparently been reduced to coincide with that of the contract, and may not exceed nine months for one or more seasonal contracts, one year for fixed-term contractual employment or two years for indefinite contractual employment. A residence permit can be renewed, but not for a duration longer than the initial permit covered.⁷ If the worker does not apply for renewal within the specified period, the police department will issue an order (*provvedimento di rifiuto*) requesting him or her to leave the country within 15 days. Appeal may be lodged as from the date of notification of the expulsion order, which carries a 10-year ban on entry to Italy.

29. The procedure for hiring temporary workers is the same, but less time is allowed for the formalities. If, once their residence permits expire, they return to their home countries, they will be given priority in the future. When a worker can prove that he was hired for seasonal work for a minimum of two consecutive years, he may be granted a long-term permit (*permesso pluriennale*), for a period not exceeding that of the previous permit.

30. The Special Rapporteur was informed that Italian legislation ensures that foreign workers legally resident in Italy and their families receive the same treatment as Italian workers and have full equality of rights with them. In cases of residence for contractual employment, job loss does not mean that the worker's residence permit is cancelled. He can register as unemployed and will be given preference in recruitment over other non-EU workers although, according to some sources, these job centres are of questionable efficiency. The registration will be valid for the remaining duration of the residence permit, and, with the exception of seasonal work permits, may not be less than six months. Foreign workers keep their social security rights after returning to their home countries.

31. A non-EU national who wishes to become self-employed in Italy must obtain the appropriate visa, subject to entry quotas, with the exception of some categories of highly skilled workers. It is possible to convert an existing residence permit into a residence permit for self-employment.

32. The Ministry of Labour informed the Special Rapporteur that people taking its Italian language and professional training courses in host countries are given priority in the entry quotas.⁸ These priority qualifications appear to have replaced the sponsor - who could be an Italian or a legally-established foreign national or an authorized body - who guaranteed a foreign national entering Italy to seek work for a period of one year; if the foreigner did not find work he was required to leave the country. The Ministry was also working on programmes to prevent illegal emigration. Once the regulations for the implementation of the migration act were approved, information campaigns on the risks of clandestine migration would be introduced.

33. Italian law provides for sanctions against anyone who employs immigrants without a residence permit or whose permits have expired or been withdrawn or cancelled. In such cases, the employer may face a prison sentence of between three months and one year and a fine of €5,000 for each foreign worker employed. The workers are also punished, and may even be deported.

34. The latest special regularization of illegal migrant workers was completed in December 2003. According to data from the Ministry of the Interior, a total of 641,638 persons benefited from this exercise, having proved that they had been working in Italy for more than

three months. The documentation provided shows that the numbers of legal foreign residents rose from 1,363,454 in 2001 to 2,193,099 in 2003, with Romanians and Ukrainians benefiting most from the latest regularization. Representatives of trade unions, consular authorities and migrant workers considered that the regulation of the situation had depended entirely on employers' goodwill. While regularization was in process, the workers involved had to put up with a lengthy waiting period when they could not leave Italy.

35. The migrants who met the Special Rapporteur had the opportunity to describe their personal experiences and migration plans. They agreed about a series of situations affecting their status as workers, notably their concern that some nationalities faced discrimination in access to employment, delays in the issuance and renewal of their residence permits, the disappearance of the sponsor system, problems with recognition of their academic qualifications, and the high accident rate among the migrant community and how compensation and disability allowances were calculated. Some sectors of civil society considered that domestic work should be recognized as a profession. Mention was also made of the complications for migrant workers with a residence permit of trying to combine vocational training with professional activity.

36. The trade unions and NGOs considered that the recent labour reform intended to make labour contracts more flexible⁹ had made it harder for immigrants to hold down a stable job.

C. Integration policies

37. The National Council on the Economy and Employment (CNEL) considered that the reforms introduced by Act No. 189/2002 had not changed the thrust of immigration policy from the earlier act but de facto undermined integration procedures, as illustrated by the close link they established between residence permits and employment contracts.

38. The Special Rapporteur was informed that immigrants appeared to be experiencing delays of about six months on average, and sometimes more than a year, in the issuance and renewal of residence permits. This is important because it is the residence permit that entitles its holder to exercise rights and obtain access to services. Many legal immigrants found that their rights were restricted because they had only a receipt for the renewal application which was refused by many bodies as inadequate. The consular authorities mentioned the problems that this situation caused for their nationals seeking employment or needing to travel home in an emergency. They also noted problems in obtaining papers certifying the loss of residence permits.

39. A foreign worker may apply to the police to issue a residence card for an indefinite period for him- or herself, a spouse and under-age children living under the same roof. For this purpose he must prove that he has lived legally in Italy for a minimum of six years (one more than before

the reform), that he holds a residence permit on grounds permitting an unlimited number of renewals and that he has a sufficient income to support himself and his family. The holder of a residence card is entitled to live in Italy even if he loses his job for a long period of time. Application may be made for Italian citizenship following a minimum residence period of 10 years. In meetings with immigrants, the Special Rapporteur was told of the difficulties encountered by second-generation immigrants when they applied for Italian nationality. In the case of immigrant women, their low earnings would not allow them to apply.

40. The Lombardy Region gave numerous details of its regional policy, international cooperation and the network of services supplied by the Milan city authorities. The Adviser on social and immigration policy in the Emilia-Romagna Region reported that the Central Government had appealed to the Constitutional Court against a regional immigration act,¹⁰ the result of three years of consultations with various representatives of society. This provides that the Region should supervise and monitor the CPTAs and establish a regional immigrants' advisory board.

41. Resident foreigners with a legal remunerated activity as a result of self-employment or paid employment, those registered as unemployed and those who have applied for renewal of their residence permits are entitled and required to register with the National Health Service. Registration gives them and their families access to health assistance under the same conditions as Italians. Illegal aliens in Italy may apply to the local health authority, which may not pass on data to the police, for a health card. Aliens without residence permits have access to emergency services, hospital and medical care, free of charge in the event of illness or injury. CNEL considered that the most delicate health policies were those in which least progress had been made - care for women and children and policy in the event of death. The Council informed the Special Rapporteur there was a high rate of abortions among immigrant women. In her visits to administrative detention centres and prisons, the Special Rapporteur expressed an interest in the incidence of HIV/AIDS among immigrants. In Rebibbia she was informed that the incidence was lower among foreign prisoners since there were fewer drug addicts among them. In the Restinco CPTA, drug addicts were treated by specialists from Brindisi hospital and frequently presented with breathing disorders.

42. Foreign children are entitled to attend compulsory education and applications to enrol them in school can be made throughout the school year. The law details measures for the integration of foreign children and for intercultural education, notably through action by local and regional authorities. CNEL reported that school drop-out among foreign primary pupils appeared to be 25 per cent higher than among Italians, and 10 per cent higher in secondary education. The cultural mediation available in schools is, in its view, inadequate. According to the Consolidated Text, amended by Act No. 189/2002, non-resident (quota system) and resident aliens can attend

university: (a) if they hold a residence card or residence permit for contractual employment or self-employment, for family or religious reasons or political or humanitarian asylum; (b) if they have been legal residents for at least one year and hold a higher certificate obtained in Italy; (c) whether they are residents or not, if they hold a leaving certificate from an Italian school abroad or an international school in Italy. Some immigrants interviewed considered it unfair that they should be required to have had three years of secondary education in Italy to be able to attend university.

43. Resident aliens have the right of access to the public system of housing assistance under the same conditions as Italians. The Emilia-Romagna Region reported that its regional immigration act did not require immigrants to hold a two-year residence permit in order to be able to rent protected housing (a requirement introduced by Act No. 189/2002). The regional act also provided for the creation of public agencies to facilitate the renting of accommodation to immigrants, with public funds to cover the rent deposit.

44. The regions, in collaboration with the provinces, the local authorities and volunteer associations, have reception centres affording temporary housing for legal immigrants who do not have the necessary means.

45. The Special Rapporteur noted that one of the main concerns of legal immigrants to Italy was the amendment of the regulations concerning family reunification in Act No. 189/2002. Female immigrants in particular considered that the reform meant that family reunification became a right that it was impossible to achieve, since their low incomes prevented them from finding accommodation that met the conditions established in the Act.

46. All aliens holding residence cards or permits linked to employment, education, religion, political asylum or humanitarian protection and valid for one year or more may apply for family reunification. Application may concern: (a) a spouse, with the exception of separated or divorced couples; (b) children under 18; (c) children over 18 who are unable to earn their own income because of total disability; and (d) parents and grandparents when the applicant is responsible for them because there are not other children in the country of origin or because such children as there are cannot take responsibility for them on clearly-documented health grounds. The applicant must prove that his accommodation complies with the minimum required standards and that he has an income not less than the annual social subsidy¹¹ if the application is for family reunification with one person; not less than double this amount for two or three family members and triple the amount for four or more. In calculating income, account is taken of all the earnings of family members living together. The residence permit issued to the integrated family member will entitle him to work, to enrol in educational institutions, and to health assistance.

D. Immigrants in administrative detention and foreigners in prison

47. According to the legislation in force at the time of the visit, an alien could be deported by a judge¹² or, at the administrative level, by the Prefect¹³ or the Ministry of the Interior in the most serious cases of persons representing a danger to public order or State security. The procedure for executing an order of administrative removal appears to be immediate accompaniment to the border. The Chief of Police will order the immigrant held in a CPTA if deportation cannot take place immediately, and confirmation by the judge is required within 48 hours. Appeal may be lodged against the judge's decision, but the appeal does not suspend deportation.

48. Act No. 189/2002 increased the maximum period of administrative detention in CPTAs from 20 to 30 days, with a possible extension for a further 30. Following this, if the deportation order has not been executed, the Chief of Police will issue an order of mandatory removal from Italian territory within five days. In practice, this last-mentioned form of the deportation order appears to be the one most used. Beyond this deadline, the individual would have to be detained¹⁴ if found in Italy without justification, for committing a criminal offence (*reato*) punishable by a prison sentence of six months to one year and deportation.

49. Should an alien re-enter Italian territory without specific authorization from the Ministry of the Interior, after undergoing administrative removal,¹⁵ he could be punished by a prison sentence of six months to one year. If, however, deportation had been ordered by a judge, the applicable prison sentence would be one to four years.

Temporary stay and assistance centres (CPTAs)

50. Article 14 of the Consolidated Text makes provision for CPTAs. At the time of the visit there were 15 such centres, with a total capacity of 1,823 inmates. Their main objective is to identify and repatriate immigrants who have been detained for being in Italy illegally. Generally speaking, their function is to detain, although the Lampedusa and Lecce-Otranto (Puglia) centres exist to provide emergency care and deal with inmate allocation.¹⁶

51. The Special Rapporteur decided to visit centres in particular locations and with special characteristics: the Restinco CPTA, in Brindisi (Puglia), because of its proximity to Albania, and the Lampedusa CPTA, the main disembarkation point for undocumented migrants from the coast of Tunisia and Libya, sometimes in tragic circumstances.

52. On the day of the visit to the Restinco CPTA facilities there were 57 individuals there - 26 women and 31 men - who had been intercepted in various parts of Italy. The director of the centre explained that the cooperative Fiamme d'Argento had been managing the centre

since it was selected by public competition in accordance with the criteria laid down by the Administration.¹⁷ The cooperative was responsible for all of the centre's services, including health assistance, while other associations carried out projects previously agreed on with the Prefect. One out of every six people interned in the Restinco CPTA would appeal against their administrative detention orders, although this did not suspend their deportations.

53. The Special Rapporteur expressed surprise on finding that not a single immigrant was being held in the Lampedusa CPTA on the day of her visit. According to the Centre's official register, 62 people had been transferred the previous day to the Crotone S. Anna CPTA (Calabria).¹⁸ During the month, the register showed that up to 329 individuals were in the CPTA on the same day, although the Centre's maximum capacity was 190. Since 1 January 2004, 1,680 individuals had apparently passed through it: 832 had declared themselves to be Palestinians, 322 Iraqis, 112 Bangladeshis, 63 Sudanese, 59 Eritreans, 58 Moroccans, etc. In 2003, 8,796 people had been detained at the Centre.

54. The Lampedusa CPTA was built in 1998 as provisional centre and since then the facilities have remained the same, although improvements have been made, including the infirmary and a prayer space for Muslim immigrants. The immigrants continue to be housed in huts and containers. In the Special Rapporteur's opinion, the location of the Centre, adjoining the airport, gives no guarantee of security. The plan to build a new centre in the interior of the island appears to have been suspended because of protests from the population. The Ministry of the Interior reported that it was negotiating a transfer to another part of the island with the Ministry of Defence.

55. Arrivals in the Lampedusa CPTA are reported to the Ministry of the Interior, and the Department of Public Security in Rome decides where to send people depending on the nationality they declare and the number of places free in other CPTAs. In the event of mass landings, the Ministry of the Interior ensures an immediate transfer out of the Centre when its maximum capacity is exceeded.

56. The Special Rapporteur met the staff of the Centre, all of whom are members of or volunteers in the religious organization Cofradía de la Misericordia. The psychologist explained that she met the immigrants as a group with the help of an interpreter and in special cases held individual interviews. The individuals held were examined by a doctor on arrival and, if it was considered necessary, were transferred to the polyclinic. In emergencies, a helicopter took patients to Trapani hospital. The local authorities commented that there was some discontent among the local population because of the impact this had on the island's health services.

57. In September 2002, Médecins sans Frontières (MSF) Italy initiated a medical assistance programme for immigrants and asylum-seekers in the Lampedusa CPTA, where it looked after some 7,000 people per year. In April 2004, the Ministry of the Interior officially informed MSF that the agreement which until then had given the organization access to the CPTAs was not to be renewed. The Ministry's decision was taken two and a half months after the publication by MSF of its report *Rapporto sui centri di permanenza temporanea e assistenza*.¹⁹ Since then, MSF had repeatedly requested a meeting with the head of the Department of Civil Liberties and Immigration at the Ministry of the Interior, who is responsible for the coordination of the CPTAs and the identification centres. The Special Rapporteur put in a plea for MSF during her visit and a meeting between the organization and the Ministry of the Interior finally took place at the end of June. After that meeting, the Ministry of the Interior brokered the signing of a protocol between the Prefect of Agrigento, the Cofradía de la Misericordia and MSF on the coordination of medical assistance during mass landings in Lampedusa.

58. The staff of the Lampedusa CPTA reported that to date 20 applications for asylum had been submitted from the Centre in 2004. Representatives of the Office of the United Nations High Commissioner for Refugees (UNHCR) and CIR apparently visited Lampedusa in 2003.

59. In Rome, the Special Rapporteur met members of the working group on CPTAs composed of members of Parliament, senators and representatives of NGOs. The group is preparing a White Paper on alleged violations of the rights of immigrants held in these centres and considers that discussion is needed about the centres and possible alternatives. It expressed concern at the increase of the maximum period of administrative detention in the CPTAs and the presence of ex-convicts who, after serving sentence in Italian prisons, were taken to the CPTAs for subsequent deportation. The group also commented that the codes of conduct of the CPTAs were not known, and expressed reservations about the private management of the centres. It decried the restrictions on access to CPTA facilities.²⁰

Identification centers

60. According to the Ministry of the Interior, the identification centres for which article 32 of Act No. 189/2002 provides have not yet been established, since the implementing regulations have not been approved. The Special Rapporteur nevertheless visited the Salinagrande centre in Trapani, inaugurated in July 2003, which according to the official agenda was an identification centre.²¹

61. According to the Ministry of the Interior, Act No. 189/2002 provides that its regulations will establish the regime applicable to asylum-seekers, who will in the future have to wait in these identification centres for a decision on their applications. The Special Rapporteur was informed that the Salinagrande centre held persons who had applied for asylum after arriving on Lampedusa, although it also took in immigrants when the island's CPTA exceeded its maximum capacity.

Prisons

62. The Special Rapporteur visited the prisons of Rebibbia (Rome) and San Vittore (Milan). On the day of her visit to Rebibbia there were 1,630 male prisoners, 35 per cent of whom were foreigners. The official register records up to 47 different nationalities among the ordinary detainees, mostly from North Africa and Eastern Europe. In San Vittore there were 807 foreign prisoners out of a total of 1,500. In the women's section there were 62 foreigners as opposed to 68 Italians.

63. The foreign prisoners were generally serving short sentences for minor offences or for not obeying expulsion orders, although there were very few of the latter. The directors of both centres mentioned the difficulties attendant on the lack of cooperation from certain consulates. They also commented on the limited access for foreign prisoners to penalties other than deprivation of liberty.

64. During her visits to these prisons, the Special Rapporteur observed that foreign prisoners were taking part in cultural activities and vocational training workshops.

65. The Special Rapporteur was informed that 90 per cent of the foreign prisoners were in Italy illegally once they had completed their sentences. According to the legislation in force, once released these persons should be deported, but when deportation was not possible they were transferred to a CPTA.

E. Other topics of interest

Violence against immigrant women

66. Article 18 of the Consolidated Text establishes the requirements for granting special residence permits to victims of trafficking in persons, thus enabling them to participate in social assistance and rehabilitation programmes. The granting of these permits takes account of the victim's contribution to the investigation and to the identification and arrest of members of the criminal organization. An application for a permit may be made not only by the prosecutor in

cases where legal action is being taken, but also by the social services of local or other bodies responsible for social safety-net projects. During the period 2000-2003, 5,388 women took part in such projects and 2,857 had obtained a residence permit. The Ministry for Equal Opportunities had set up the inter-ministerial commission on trafficking in persons for which article 18 provides.

67. Some NGOs reported police pressure to make the victims of such trafficking cooperate with investigations. During her visit to the CPTA Restinco, on the other hand, the Special Rapporteur spoke to women held there who said that they had been victims of trafficking.

68. The Ministry for Equal Opportunities also reported on measures recently adopted under Act No. 228/2003 to combat trafficking in persons. A new definition of the offence of trafficking had been introduced by the Act, and provision made for prison sentences of between 8 and 20 years, while article 600 of the Criminal Code, concerning slavery and similar practices, had been reworked.

69. The International Organization for Migration (IOM) informed the Special Rapporteur about its work on trafficking in persons. It offered the Italian Government advisory services on assistance to the victims of such trafficking and had run projects to prevent trafficking in Italy. The organization had also been managing voluntary return programmes for Albanians since 1999.

70. A multidisciplinary inter-ministerial committee on female genital mutilation had been established to decide on appropriate responses and keep the phenomenon under close observation. The committee had drawn up national guidelines on female genital mutilation for health professionals, social workers and others. The Government had supported a bill classifying female genital mutilation as an offence and increasing prison sentences for those performing such acts on Italian citizens or Italian residents from 6 to 12 years even if the mutilation is perpetrated abroad.

Asylum-seekers

71. The residence permits granted to asylum-seekers do not allow them to work and would seem to be granted between three and five months after an application is submitted. The permit confers the right to a taxpayer number, a health card and a daily subsidy of €17.56 for 45 days which appears to be paid six months later on average. As an alternative to the subsidy, asylum-seekers may be housed in a reception centre.

72. In Milan, the Special Rapporteur visited two reception centres operated under the National Asylum Plan, one for men and the other for women and children. The managers commented that it was usual for a father to be separated from the rest of the family and frequently not to find a place in another centre. They also mentioned the difficulties such people encountered in finding accommodation when required to leave the centre after six months there, which often left the National Commission for the Right of Asylum (*Commissione nazionale per il diritto di asilo*)²² unable to locate them.

73. Generally speaking, it seems that the Commission rules on applications for asylum a year after they are submitted; according to the Ministry of the Interior, the Commission grants refugee status to not more than 6 per cent of applicants. Some NGOs expressed reservations about the interpretation services provided to asylum-seekers submitting declarations. In the event of an appeal against an adverse decision, the Commission may apparently request the competent police department, on the basis of a favourable opinion, to issue a humanitarian residence permit for one year.

74. With the help of the Scalabrinian Missionary Sisters, the Special Rapporteur was able to meet a group of immigrants and asylum-seekers. Some of them complained of the conditions in which they lived, in abandoned buildings in Rome's *Stazione Tiburtina* (popularly known as "Africa Hotel"), after their asylum applications were turned down. The buildings were said to house some 600 people from Eritrea, Nigeria, Somalia and Sudan. One young woman commented that she lived in a single overcrowded room with another 20 people. During the visit, the Special Rapporteur told the Ministry of the Interior that she was extremely concerned about these people's living conditions. She told the authorities that teenaged girls in the *Stazione Tiburtina* ran a risk of sexual abuse in such circumstances.

75. The Special Rapporteur would also like to express her concern at reports she received on the living and working conditions of some 1,400 asylum-seekers in Stornara, Borgo Mezzanone and Rignano (Foggia). It seems that these people, who are apparently doing farm work although they hold valid residence permits issued following their applications for asylum, are abused by their employers and live in settlements in totally unhygienic conditions.

Unaccompanied minors

76. Unaccompanied foreign minors are acknowledged to have all basic rights, subject to the same conditions as abandoned Italian children. They are under the protection of the Juvenile Court and are assisted by the local authorities if they cannot return home. An unaccompanied minor who goes to the authorities receives a temporary residence permit and can remain in Italy until the Foreign Minors' Committee can ensure the best possible conditions, in the child's best

interest, for his repatriation. If return is not possible, Act No. 189/2002 allows study or work permits to be issued to unaccompanied young people who attain their majority and, with the Commission's approval, have remained in Italy for three years, being part of an integration project for at least two. The provision is not often applied, since the majority of unaccompanied minors are said to be over 15 when they enter Italy. For this reason, the Lombardy Region is said to have suggested that the Central Government should include such minors in the annual quotas of non-EU foreign workers.

77. The President of the Committee reported that most such minors are Romanians, Moroccans and, to a lesser extent, Albanians. In his opinion an excellent level of collaboration with the countries of origin was required. He acknowledged that there had been difficulties in identifying 1,929 minors.

78. The Special Rapporteur observed with concern the situation of unaccompanied minors from Central Africa who had been refused asylum, as in the case of the teenaged girls in *Stazione Tiburtina*. She also received detailed reports about unaccompanied minors from Morocco, Republic of Moldova and Romania being forced by criminal organizations or private persons to beg, sell drugs or prostitute themselves. These minors had no protection, were not in school and lived in shacks or abandoned buildings in extremely unsanitary conditions.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

79. **The reform introduced by Act No. 189/2002 has made efforts to combat illegal immigration a strategic priority in migration issues, but has imposed severe restrictions on the entry of aliens and limited a series of rights for immigrants already in the country. For this reason, the Special Rapporteur welcomes judgement No. 222 of the Constitutional Court.**

80. **The Special Rapporteur considers that the availability of work in the Italian underground economy is the main cause of illegal immigration to Italy. The special regularization processes are proof that there is extensive unsatisfied demand for manpower which cannot be resolved through the individual contract system based on maximum quotas.**

81. **The Special Rapporteur noted efforts by the Italian Government to establish closer relations with countries of origin and transit. In her opinion this is the best means of monitoring flows and checking illegal immigration.**

82. The offices responsible for issuing residence permits are overwhelmed. Delays in settling applications for renewal of these permits involve constant uncertainty for migrant workers and their families. The shortening of the validity of these permits and the grace period allowed to migrant workers who lose their jobs is helping to push the migrant community gradually outside the law.

83. The Special Rapporteur observes a lack of coordination between employment policy, which is tending to cut down on indefinite contracts, and current migration policy, which requires immigrants to provide proof of employment over time. She also considers that the grace period allowed to immigrant workers who are laid off is inadequate in view of the inefficiency of the employment services at finding work for them.

84. The Special Rapporteur welcomes recent efforts to regularize the situation of illegal immigrants able to show they had been working. She nevertheless considers that the fact that only the employer can request regularization leaves illegal immigrant workers all the more vulnerable.

85. The Special Rapporteur would like to acknowledge the work of the security forces responsible for the sea rescue of clandestine immigrants and their understanding of the human face of clandestine immigration.

86. Few differences were apparent between detention in the CPTAs and in the identification centres. The Special Rapporteur would like to express her concern at the gradual transformation of local reception centres into identification centres. She would also like to express concern at the consequences of and limitations inherent in the private management of such centres. In the absence of a national human rights institution, she considers that an independent organization is needed to supervise the management of the centres, respect for the human rights of the people held there and the health, psychological and legal assistance provided. This body should also supervise access by NGOs and lawyers to the centres. The Special Rapporteur considers that building new centres is not the solution to illegal immigration.

87. The Lampedusa CPTA facilities are clearly inadequate for the frequent landings of large groups of immigrants on the island. Action in response to such landings cannot be improvised or devised under the pressure of ad hoc conditions, and the human rights obligations to which Italy is internationally committed must be met. The Special Rapporteur invites UNHCR and CIR to maintain a permanent presence in the CPTAs and identification centres in order to monitor the identification procedures used.

88. Because of the lengthy waits before asylum-seekers appear before the National Commission for the Right of Asylum, many of them drift into illegal situations.

89. The Special Rapporteur would also like to express her concern at the high percentage of foreigners in Italian prisons. She considers that the immediate deportation of prisoners after conviction means that the prison's function of rehabilitating criminals is lost.

90. The Special Rapporteur noted that the regional authorities regarded the reform of the Aliens Act as an obstacle which constantly thwarted the implementation and effectiveness of their policies and programmes for integrating the immigrant population.

91. The Special Rapporteur welcomes the important steps taken by the Ministry for Equal Opportunities to combat trafficking in persons.

B. Recommendations

92. In the light of this report, the Special Rapporteur invites the Government of Italy to consider the following recommendations.

93. It should pay the closest attention to whether the constant changes in the Aliens Act are consistent with the relevant requirements of the human rights instruments ratified by Italy.

94. Migration policy should be based on dialogue and fleshed out by contributions from all political forces and social partners. Dialogue between institutions and with civil society (immigrants' associations, NGOs, churches, etc.) should be nurtured. The Special Rapporteur requests that the recommendations on migration submitted by CNEL, many of which she has endorsed, should be taken into account.

95. Italy should consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the United Nations Convention against Transnational Organized Crime, and the Protocols supplementing it. In particular, the Special Rapporteur advises a thorough analysis of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families for a correct assessment of its provisions.

96. The system of preferential quotas could be supplemented by development cooperation programmes. Information channels to consulates should also be improved.

97. **Linking migration to employment also means bringing migration policy into line with the employment situation. The Special Rapporteur therefore proposes an annual programming of quotas to match demand on the Italian labour market, involving the regions and social forces in the reception extended to workers. Legal means of migration need to be promoted, and the provisional nature of decrees on maximum quotas and the restrictions on nationals from 8 out of the 10 new members of the European Union need to end. The requirements of the labour market should also be borne in mind in establishing the duration of residence permits.**

98. **Urgent steps should be taken to expedite the issuance and renewal of residence permits within the legal deadlines. The possibility of devolving this task upon local authorities and using information technology for accessing files should be considered.**

99. **The Special Rapporteur proposes the introduction of visas for people seeking work in sectors dominated by small companies and individual employers, such as domestic work, care of the elderly and sick, or the hotel trade.**

100. **She also proposes some flexibility in the regulation of the residence contract for employment purposes. More stable legal residence for immigrant workers would encourage them and their families to integrate.**

101. **She proposes action to rectify segmentation by country of origin in the labour market, the high incidence of work-related accidents and the lack of professional mobility among the immigrant community, and to recognize or accept the equivalence of academic qualifications.**

102. **She proposes that the gist of the Aliens Act, labour legislation and the situation on the Italian labour market should be circulated in a clear and comprehensible form among the potential immigrant and emigrant population.**

103. **The adoption of the regulations for the implementation of Act No. 189/2002 should be expedited.**

104. **Means of combating illegal migration should be reinforced, and efforts and resources increased to prosecute the hiring of illegal migrants.**

105. **Urgent steps should be taken to ensure health assistance for mass arrivals in Lampedusa. The priority of the Lampedusa CPTA should be the correct identification of everyone arriving on the island, not the immediate deportation of newly-arrived**

immigrants. The Special Rapporteur welcomes the new agreement between the Ministry of the Interior and MSF and hopes that MSF will be able to resume its activities in the CPTAs and the identification centres in the near future.

106. Alternatives to deprivation of liberty, agreements allowing sentences to be served in countries of origin and opportunities for rehabilitation by means of existing vocational training workshops should be developed for foreign prisoners. The relationship between discrimination against immigrants in access to employment and the high percentage of foreigners imprisoned for minor offences requires analysis.

107. Better coordination is required between the Ministry of the Interior and the prison authorities over the deportation of foreign prisoners. Holding ex-convicts in the CPTAs implies an unjustified extension of their sentences and creates problems of personal safety for everyone else held there, particularly women.

108. The right of asylum act should be adopted and the National Commission for the right of asylum should function more swiftly in order to prevent asylum-seekers from slipping into situations of illegality.

109. Official interpreters should be available inside prisons.

110. The Special Rapporteur observed that discrimination against migrants was not addressed directly either in political spheres or by civil society. She therefore urges the Inter-Ministerial Committee on Human Rights to supplement its work on the national action plan by implementing the Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban.

111. Action is needed in response to the demand for rented accommodation affordable by lower-income immigrants. Support for local and regional bodies' efforts to solve the accommodation problem is needed.

112. Programmes should be adopted for training Italian language teachers for the classroom. The presence of well-trained cultural mediators in schools is essential, particularly in relations between school and family.

113. The right of undocumented immigrants to health care with no kind of discretionary latitude must be effectively implemented. A trans-cultural approach that takes account of the social and cultural roots of immigrant patients seeking primary care, particularly paediatric and reproductive health services, should be introduced. Measures should be

considered for reducing abortion rates and the incidence of HIV/AIDS and other sexually transmitted diseases.

114. The possibility should be studied of extending the article 18 programmes to male and female victims of trafficking in persons who have been subjected to forced labour, slavery or similar practices, bondage or organ removal. Foreigners in prison or in CPTAs should be ensured access to these programmes.

115. Voluntary (i.e. not forcible) return programmes should be developed for immigrants.

Notes

¹ See chapter III, section D below for the terminology used.

² International Covenant on Social and Political Rights, International Covenant on Economic, Social and Cultural Rights, International Convention on the Elimination of All Forms of Racial Discrimination, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Elimination of All Forms of Discrimination against Women and Convention on the Rights of the Child.

³ See judgement No. 222 of 8-15 July 2004.

⁴ See *Gazzetta Ufficiale* No. 18 of 23 January 2004.

⁵ The latest decree established special quotas for Albania, Morocco, Tunisia, Egypt, Nigeria, Moldova, Sri Lanka, Bangladesh and Pakistan.

⁶ Nationals of Malta and Cyprus are excluded, since the free circulation of workers is fully valid for these countries as from their accession.

⁷ Within 90 days of expiry if the worker has an indefinite employment contract, 60 days in the case of a fixed-term contract and 30 days in the case of seasonal employment.

⁸ The regulations must set out the arrangements for drawing up the preferential lists for this category of workers.

⁹ See *Legge Biagi* No. 30, of 14 February 2003.

¹⁰ *Norme per l'integrazione sociale dei cittadini stranieri immigranti*, of 24 March 2004, No. 5.

¹¹ In 2004, €4,783.61.

¹² In the cases considered in the Criminal Code or in the Consolidated Text, arts. 13, 13 bis, 14, 15 and 16.

¹³ If the alien is in an irregular administrative situation because he entered the country clandestinely or failed to apply for the renewal of his permit in the terms established by the law.

¹⁴ See para. 13 above.

¹⁵ Ordered by the Prefect or by the Ministry of the Interior, before the established deadline (normally 10 years, with a minimum of 5).

¹⁶ See Presidential Decree D.P.R. 394/1994, art. 23.

¹⁷ See, *Linea Guida & Convenzioni Tipo per la Gestione di centri di permanenza temporanea e di centri di identificazione (già d'accoglienza)*.

¹⁸ Sixty declared themselves to be Palestinians and two, Iraqis.

¹⁹ The text of the report may be consulted at:
http://www.msf.it/msfinforma/dossier/missione_italia/CPT_FINALE.pdf.

²⁰ Article 21.7 of Directive P.R. No. 394/99 establishes who has access to the CPTAs. In the case of associations permission is required from the Prefect.

²¹ Following the visit, the Italian Government informed the Special Rapporteur that the Salinagrande centre was a "help and assistance" centre established under Act No. 563/1995.

²² Act No. 189/2002 provides for the establishment of territorial commissions to replace the National Commission once the regulations for the implementation of the Act have been approved.
