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Mr Pietro GRASSO

President of the Senate of Italy

Ms Laura BOLDRINI

President of the Chamber of Deputies of Italy

Mr Nico D'ASCOLA

President of Justice Committee of the Senate of Italy

Ms Donatella FERRANTI

President of the Justice Committee of the Chamber of Deputies of Italy

Mr Luigi MANCONI

President of the Extraordinary Commission for the Protection and Promotion of Human Rights of the Senate of Italy,

Strasbourg, 16 June 2017

Dear Presidents,

I welcome the efforts that are being made in the Italian Parliament to incorporate the crime of torture into the Criminal Code through Bill No. 2168-B, which I understand is currently pending for examination at the Chamber of Deputies.

The adoption of legal provisions against torture that are fully compliant with international human rights standards would fill an important gap in the Italian human rights protection system and address the shortcomings highlighted by the European Court of Human Rights (ECtHR) in its 2015 judgment in the case of *Cestaro v. Italy*, which Italy has an obligation to fully and effectively execute. As you are aware, in this judgment, the ECtHR found that the Italian criminal legislation had proved inadequate in two respects: first, as regards the requirement to punish acts of torture and other types of ill-treatment contrary to Article 3 of the European Convention on Human Rights (which prohibits torture or inhuman or degrading treatment or punishment); and secondly, as regards the necessary deterrent effect to prevent other similar violations of Article 3 in the future.

Having had an opportunity to examine the provisions of the Bill, I would like to share with you some concerns regarding certain aspects of it, which appear to be at variance with the case-law of the ECtHR, the recommendations of the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and with the UN Convention on Torture (UNCAT).

I note in particular that in the current draft, for torture to occur, multiple acts (*più condotte*) of serious violence or threats or cruelty may be required; torture might also be found when the behaviour in question amounts to inhuman *and* (emphasis added) degrading treatment. Furthermore, psychological torture is restricted to cases where psychological trauma is verifiable. Noting that the current draft appears to diverge from the definition of torture contained in Article 1 of UNCAT in other respects, too, I would like to convey to you my concern that serious discrepancies with that definition in domestic legislation might result in certain cases of torture or inhumane or degrading treatment or punishment remaining unaddressed and, therefore, create potential loopholes for impunity.

Finally, since the Bill adopts a broad notion of torture, which encompasses conduct committed by private persons, I would like to stress the importance of ensuring that this does not result in a

weakening of the protection afforded against torture committed by persons exercising the authority of the state, considering the particularly serious nature of this human rights violation.

As mentioned, the new provisions should also be capable of imposing appropriate penalties on those responsible for acts of torture or inhuman or degrading treatment or punishment and have the necessary deterrent effect to prevent violations of Article 3 of the European Convention on Human Rights. In this respect, I wish to recall that the case-law of the ECtHR and the recommendations of the CPT and the UN Committee against Torture indicate that states must ensure that the ability to hold those who commit these acts to account and the possibility for victims to obtain redress are not hindered by a statute of limitations, or any other measures of clemency, amnesty, pardon or suspended sentences.

I am aware of the difficulties that this draft legislation has encountered at various stages of its passage through Parliament. In this respect, I would like to stress that adequate legal provisions in this field would not only allow for a particularly serious category of human rights violations to be addressed, but would also protect the reputation of the overwhelming majority of members of law enforcement and other state organs who do not commit such acts by ensuring that those responsible for these violations are brought to justice.

For these reasons, I strongly encourage the Italian Parliament to adopt a law prohibiting torture or other inhuman or degrading treatment or punishment, which is fully compliant with international human rights standards.

I would be grateful if you could ensure that all members of the Parliament receive a copy of this letter.

Yours sincerely,

A handwritten signature in blue ink that reads "Nils Muižnieks". The signature is written in a cursive style and is followed by a horizontal line extending to the right.

Nils Muižnieks