

The Challenge of the Nigerian Migration's Trends for Sexual Exploitation Purposes to the Italian Legal Framework on Migration Policies

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Abstract

Since the establishment of the international legal definitions of the phenomena Trafficking of Human Beings and Migrants Smuggling on the year 2000, by the UN(1) that the migration arriving throughout the Mediterranean has passed through several changes. **The adaptation of the organized criminal networks operating on the Mediterranean routes, to the national and transnational policies regarding to migration, as well as their coercion tendencies have put into challenge the limitation of the international legal framework regarding to both phenomena.** Furthermore, the migration flows have witnessed that smugglers and traffickers have been using the same routes, putting a mix of different categories of vulnerable individuals, such as asylum seekers, non-accompanied minors and victims of human trafficking victims together. In the last three years, Italy has witnessed an increase of Nigerian women arriving through the Mediterranean route, which were destined to the sexual exploitation. Therefore, with the recent entering mechanisms developed by these criminal groups, the present article will analyse: 1) the transfer tendencies of the Nigerian criminal networks to displace the victims; 2) The use of immigration policies in order to avoid deportation; 3) The response of the Italian Government regarding to the human trafficking victims that are within the asylum-seeking system.

Introduction

The first Nigerian women, mainly coming from Edo have established themselves in Italy by the end of the 80s, due to the contacts they had with the male staff working in the periphery of Benin City and Lagos for the AGIP of Italian Petrol industries [1]. Since many of these relationships have ended in deception, some of the women have mainly started in the seasonal harvesting of tomato.

However, due to the lack of harvesting during the winter, some these women that have decided to establish in Italy have started to be engaged in the sex industry [2]. In 1989, in the main Italian cities there was about 6.000 Nigerian women whose permit has been granted by the Italian Embassy in Lagos, while in the middle of the 90s the number has increased up to 15.000 Nigerian women [3].

The women would come directly by plane from Nigeria to Rome or Milan due to the granting of the high number of visas. Nevertheless, the continuous granting of visas has induced the *Procura*(2) of Torino to investigate the situation which has ended with the final judgment in 28th June 1999 with the prosecution of four members of the Italian Embassy in Lagos.

Consequently, with the enhance of the International Legal Framework on Human Trafficking on the beginning of the first millennium, the traffickers have started to diverse the routes from Nigerian to Europe, betting on the arrival of several girls through Spain, not only by plane, but mainly through the route of Morocco, England, which is mainly connected to the Nigerian community in the country as well as Netherlands. However, despite the focusing on the arrival on these countries, the traffickers have mainly played with a high mobility of the women through all Europe, making the girls arrive to Italy mainly by land.

After the beginning of the Arab Spring in 2011, the traffickers have started to profit from this route, obviously less expensive than by flight as well as less risky due to the lack of control by the authorities, in order to introduce the Nigerian women in the European territory. Despite that at the beginning the numbers were reduced, in 2013 IOM has registered an immediate increase of 434 women that in 2015 has increased to 5.500 and found its peak in 2016 with the exponential number of 11.406 Nigerian women. In this case, not only the number of Nigerian women has increased, but also traffickers have started to use new strategies in order to avoid the deportation of the women, by profiting from the migration policies.

The use of vulnerable categories to avoid deportation

While present at the harbor of Sicily is not difficult to understand the intersectionality of different vulnerable categories such as non-accompanied minors, human trafficking victims, mothers, asylum seekers within the same person. In fact, it is not difficult that when the traffickers have started to use the Mediterranean route in order to introduce the women in the European territory, they have also started to profit from these vulnerable categories to avoid the deportation.

One of the main categories that the traffickers have been using especially until 2014 is the category of the mothers or pregnant women. In fact, despite the assumption on the Italian Trafficking report by IOM [4] that there was the possibility of using this strategy in Italy, in my research this strategy was only used until 2015 in Italy, since that at the moment the women are mainly introduced as asylum seekers. Furthermore, the women nowadays have a quicker travel through the desert that does not allow the time to make them pregnant with the purpose of avoiding the deportation. However, the use of pregnant women as well as women with children has been mainly used in the route Morocco and Spain. In fact, in 2013 the Spanish Police has investigated a Nigerian criminal network that would purposely rape the women in Morocco, in order to make them enter the Spanish territory already pregnant or with children. This strategy was not only made through the rape of women, while they would wait for their entering in Europe in

Oujda, but also through the use of fake husbands that were Nigerians who tried to migrate to Europe, but have decided to become the trolleys of the Nigerian Criminal networks [5].

Another case in 2013 was the case of a Nigerian woman who has arrived in Spain with a twin child of another Nigerian woman that the trafficker has given to her before disembarking. However, despite the goal of the network was to avoid of deportation for motherhood, the other mother has given the alarm after realizing the missing of the other child, which has led to the arrest of 9 months of the other woman who was accused of kidnaping the child of the mother of the child. In fact, the problem is that the Spanish authorities have not recognized the woman as a potential human trafficking victim, which would have granted her the freedom on the commitment of a crime under a situation of human trafficking [6]. These situations have raised the suspicion of the authorities, which have started to investigate the phenomenon of *niños-ancla*, by concluding that in 2013 from 100 Nigerian mothers that have arrived in Spain with children, 25 of them were not related to the child [7]. With this strategy, the networks not only profit from the art 57, line 6 of the Organic law of 4/2000 of 11th January that forbidden the deportation of pregnant women, but it also allows that the women who arrive with children are directed to the Red Cross Centres or social assistance networks, where they have more mobility, rather that the centres for illegal migrants (Centro de Internamiento de Extranjeros).

Another used vulnerable category by the criminal networks is the non-accompanied minors, in fact during the last year we have observed a decrease of the average age of the recruited women, being many of them non-accompanied minors. In the past the Nigerian criminal networks have started to use this category in order to avoid deportation, even if the minors were put in a more restrictive and protective centre. However, the girls tend to memorize their exploiters' cell phone numbers and try to contact them once they have an opportunity to go out of the centre or when they have access to a cell phone. In fact, minors that have been flagged as potential human trafficking victims have disappeared after being in the reception centre for non-accompanied minors. For example, there was a case of three minors that were put in a situation of restrictive mobility in a centre for female non- accompanied minors in Sicily, yet after a while they have started to have Italian classes outside the structure. This mobility has led that these girls that were in a city with a high presence of the Nigerian community have disappeared some days after they have started to be allowed in having Italian lessons outside the centre.

Despite that declaring being a non-accompanied minor has been a strategy used in the last years by the Nigerian criminal networks to introduce Nigerian women in the European territory; it is also known that in the last year the Nigerian Criminal networks try to reverse this tendency. In fact, at the moment, due to the enhance of protection for non-accompanied minors, by putting them in particular reception centres, which restrict their contact and mobility, the criminal networks at the moment try to declare the majority of the victims. The avoidance of this category as well as we have observed with the mothers is due to the major possibility that has been used by the criminal networks in the last years in using the category of asylum seekers.

In fact, the third mentioned category are the so-called asylum seekers that have mainly increased with the enhancing of the operation Mare Nostrum that has started after the sink of the ship with 366 dead people on the 3rd October 2013. The operation of Mare Nostrum would be based on the rescue of migrants directly in the Mediterranean with rescue ships from governmental ships and after also non-governmental ships. After the rescue, the ships would disembark in the several ports of Sicily, where all the migrants would be identified and taken to the reception centres in order to proceed with an asylum request. This possibility of presenting the asylum request has led that many Nigerian women would have entered in Italy as an asylum

seeker, asking for a permit for International Protection. Furthermore, due to the of the Law Decree 142/2015(3) the asylum seekers cannot be expelled until the final exit, which until the implementation of the Law Decree Minitti-Orlando(5), could last until two or three years, since the exit from the Territorial Commission to the appeal to the Regional Court.

This situation has permitted that the Nigerian criminal networks have started to profit from the long duration period of attendance and started to exploit the women while accommodated within the reception centres for migrants. Furthermore, if in the past the criminal networks profit to raise the debt by adding the amount regarding to the accommodation and food, currently by being in the reception centres the criminal networks profit from what is called “the sponsoring of the State”, which decreases the amount of the debt. In fact, the debt that has been implemented in the past from 40.000 to 60.000 euros has decreased to a sum of 15.000 to 30.000 euros, not only by the lack of payment of certain factors such as accommodation and plane tickets which are more expensive, but also because this is the exact amount that it can be paid during the duration of the asylum request, which as previously mentioned can go from two until three years. Furthermore, it has been observed that with the large number of Nigerian women that has arrived in Italy in the past years the criminal networks tend to not bet that much on the quality of the “merchandise”, but on the quantity having more girls that pay less, rather than less girls that pay more.

It is exactly on this situation that the reception centres for migrants, especially the CAS and the CARA(6) that are less prepared than the staff from the SPRAR have started to notice that these women were in risk of being trafficked or already in a situation of trafficking. Therefore, for the women that have done a request for International Protection, the Territorial Commission has started to try to identify the potential human trafficking victims, normally focused on Nigerian women by passing to the anti-trafficking regional referents from the Art. 18(7) system or to the IOM team. These women normally started to interrupt their asylum seekers process in order to start a judicial or social path with the Art. 18, which grants the permit only for six months being renewable for one year.

Furthermore, the Art. 18 provides to the victim the possibility of having access to a full protection package that not only includes accommodation, but also psychological and legal counselling as well as job training so the woman can achieve her full autonomy by not pressing charges with the social path or by being engaged as a witness in the investigation through the judicial path. However, how it has been observed by several Institutions [8]; [9], the *Questure*(8) tend to only grant the Art.18 permit in case of that the victim press charges against the traffickers.

Therefore, once that the Territorial Commission has started to interrupt the asylum request of the potential human trafficking victim and pass them to the system of Art.18 it has been verified that they would not only have access to a permit that has a shorter duration than the granted actual International Protection, but also the women will normally have obliged to press charges against their traffickers.

Furthermore, the protection of Art. 18 when it was designed was mainly for women that have already been sexually exploited and were in a situation of danger in the destination country(9).

However, many of the women who have been identified as human trafficking victims or potential human trafficking victims arrive in Italy without being actually exploited, but with the obvious purpose of being exploited and with no apparent danger in the destination country. Therefore, the Territorial Commissions has started to attribute the International Protection through the application of the guidelines of UNHCR [10] that provides the International Protection mainly based on the exposure to danger, persecution and marginalization in the origin country of the victims.

The women that are granted the International Protection should also have access to special reception

centres previewed by the Art. 17 of the law decree 142/2015 that foresees the introduction of vulnerable categories in reception centres with a particular assistance and integration program.

However, the granting of the International Protection, on the contrary of the *ex-Art. 18* is totally independent from the obligation of the completion of the protection path as it was previously foreseen by the Art.18. Hence, the women in order to have access to the permit are not obliged anymore to fulfil the requirements that were previously requested by the Art. 18, such as the completion of the protection path or exiting from the sex industry, even if it is done totally disconnected from any kind of exploitation. In fact, it has been observed that these measures have been insufficient since that even if the women were identified as potential human trafficking victims and have been inserted in a protection path they could still be attached with their exploiters.

Best Practices on combating human trafficking

As it has been demonstrated through the article, the protection system for human trafficking victims has been demonstrating in the last decade symptoms of schizophrenia, yet it has also been observed in the territory the advance of certain anti-trafficking networks that try to combat criminal networks. For instance, the Territorial Commission of Torino along with the anti-trafficking regional network in 2014 have started to implement a multidisciplinary group able to tackle these new trends in human trafficking. Therefore, both institutions have signed a collaboration Protocol [11], in which the anti-trafficking network is called in case there is the identification of a potential human trafficking victims during the interview with the Territorial Commission. Moreover, in order to proceed on a real evaluation of the situation the anti-trafficking network introduces the figure of a cultural mediator, who has experience on the issue of human trafficking, as well as two educators also experts on the issue [12]. With this measure, there is the anticipation of the Territorial Commission and the anti- trafficking network in proceeding with a particular protection path that regards the same measures previewed on Art.18, even if the victim intends to continue with the procedures of the asylum request.

Another successful project is the one from Emilia Romagna, the project “Oltre La Strada” that has an anti-trafficking network that operates at a regional level, along with the two Territorial Commissions. As previously observed in the protocol of Torino, the Territorial Commissions also tend to call the experts of the anti-trafficking networks in order to recognise potential human trafficking victims. Moreover, due to the large experience on the migration field, the Territorial Commissions, as well as the anti-trafficking networks are able to identify re-used stories of the asylum seekers that are normally provided by the traffickers to the women. In fact, as previously mentioned, the importance to the traffickers is not about the final exit of the asylum request, but the duration that the woman is able to remain in the Italian territory while being exploited. However, normally when the women have a negative exit of the asylum request is the moment that often they decide to abandon their exploiters and start to tell their true story, since that even if the anti-trafficking networks are able to identify the victims, it is not a synonym that the victims declare or are even aware about their state of submission.

Another best practice regarding to the identification and protection of potential human trafficking victims during the auditions of the asylum request is the Protocol between the *Prefettura* of Parma and third sector stakeholders [13]. In the model of Parma asylum seekers are firstly interviewed by a cultural mediator and an expert on the subject of human trafficking in order to identify potential indicators. Once the potential victim is identified they are immediately inserted in a protection center, a CAS with prepared and experienced staff on the subject of human trafficking. Here, the important is the presence of the cultural mediator who tries to activate a trust bond with the women, in order to create a stable

relationship of trust where the women can tell their true story. Moreover, the Protocol previews a derogation of the time conceded by the Law Decree 142/2015 in order that the staff has the opportunity to establish a trust bond with the women inside the CAS.

In the aim of safety as for the staff as for the women inside the CAS, the model applies some rules of Art. 18 that are agreed with the women such as: the delivery of the potential's victim cell phone; the possibility of exiting from the structure only when accompanied by a person of the staff or by volunteers; the collaboration of the real story for the interview with the Territorial Commission and finally the availability of the potential victim to undergo a sanitary assistance and probably psychological counselling. Once the first level of hosting is concluded, the women are redirected to secondary structures within the network, in which is provided a social-educative accompaniment, an information path on the rights and duties of the asylum seeker; an Italian language course as well as training courses and the implementation of an active research of work with the collaboration of other entities inside the network. Furthermore, the secondary level centres have volunteers in daily and night shifts and also continue with the sanitary assistance path, including psychological counselling as well as a social integration path of the potential victim. The protection path has a duration of 12 months that is the time foreseen to provide the victim the necessary instruments to achieve independency and sufficient autonomy.

Aside from the protection path the Protocol is continuously in contact with the *Prefettura* of Parma and *Questura*, as regarding the matters of Art. 18 in order that the victim can be granted the Art.18 permit through the social path, rather than the judicial path, as in case of any sign of exploitation or other type of offence. This procedure permits that once the woman arrives in the Commission they can present already a report from the anti-trafficking network that declares that the woman is already within a Protection Path. However, this initiative has started in June 2016, which means that many of these women still have not have had the exit of the Territorial Commission. **On the other side, many of the women that are accompanied by the Municipality of Parma have had already access to the Subsidiary or Humanitarian Protection permit.**

This system does not only have been successful by the application of preventive measures, mainly engaging women that have been exploited in Libya and avoiding their exploitation in Italy, but also in matter of financial resources, since their protection path is used under the funding for CAS and not under the funding of the Art. 18 system. However, despite the success of putting the women in CAS, the project has already presented a gap, since that in case that the woman goes to the Territorial Commission and has a positive result after, the woman is obliged to leave the CAS. This can be a problem in the future since the project of Art.18 has demonstrated to be overloaded, not only by the women who are arriving from Libya, but also by the women arriving from other countries.

The last best practice regarding to the issue of the overlap between human trafficking victims and asylum seekers is the guidelines designed by UNHCR and the Ministry of Internal Affairs “The identification of human trafficking victims between asylum seekers for International Protection and the referral procedures” that has come out in December. The guidelines are a result of the best practices models that have been previously presented in the article and intend to help the Territorial Commission on the identification of potential human trafficking victims during the asylum request.

The identification is normally supported with the collaboration of the anti-trafficking networks on the local or IOM team for human trafficking victims. Furthermore, the Guidelines also provide the potential indicators of the human trafficking victims as well as the procedures that should be taken in case of identification. Therefore, the provided guidelines mainly serve as manual not only to identify potential

human trafficking victims, but also in how to proceed during and after the identification by applying the UNHCR Guidelines (UNHCR, L'identificazione delle vittime di tratta tra richiedenti e protezione internazionale e procedure di Referral, 2016)(10). For instance, the follow up of the interview it is also important through the mediation of an anti-trafficking organization that can confirm or not the potential situation of exploitation. Moreover, in the guidelines it is previewed the application of the Art. 17, clause 2 of the Law Decree 142/2015 in which in case an individual is identified as a human trafficking victim during the asylum request procedures, there is the possibility to introduce the victim on a protection path of Art. 18 without renouncing to the asylum request.

However, not always the individual is still connected to the criminal network, in fact according to the Guidelines [14] the victim can declare three possibilities: of being currently connected to the criminal network; of being exploited during the travelling, but not in contact anymore with the criminal network; or the individual declares of having lived a situation of exploitation in Italy, being followed by a protection path Art. 18.

In the first situation the anti-trafficking network is contacted in order to direct the victim to a protection structure within the Art.18. In these cases, it can be conceived to the potential victim the

period of three months in order to provide the victim time to reestablish herself and return to the Territorial Commission with a clear story. On the second case, the victim is invited to do an interview with a referent of the anti-trafficking network, which should provide a report on the following 15/30 days. In case the victim refuses to meet the anti-trafficking network, the procedures are suspended for one month. While, in case there is continuous interviews with the anti-trafficking referent, then the procedures are suspended for four months with the aim to allow the potential victim to return to the Territorial Commission with clear facts. On the last-mentioned case, the Territorial Commission should be provided with a report of the anti-trafficking entity that has accompanied the asylum seeker through the protection path. Furthermore, the Territorial Commission can ask for a priority exam of the request as previewed by the Art. 28 of the Decree Law 25/08. In case that the asylum seeker has started already the path for a protection program, it can be suspended for three months, urging the anti-trafficking entity to update the Territorial Commission by the end of the three months period in order to decide the exit of the asylum request. However, in case the asylum seeker is not aware of being or the risk of being a human trafficking victim the Territorial Commission undergoes with the interview with particular attention of vulnerable categories. In this case if the suspicions are confirmed, then the victim undergoes with the interview with the anti-trafficking referent that should send a report declaring the risk of trafficking and the asylum procedures should be suspended for four months, in order to provide to the victim, the opportunity of a clear statement to the Commission.

Conclusion

The particular attention of European migration policies regarding to the so-called vulnerable categories, such non-accompanied minors, mothers or asylum seekers has led that the Nigerian human trafficking networks started to profit from these policies with the aim to avoid the deportation of their victims. However, as it has been observed the use of these policies can also be influenced or adapted by other factors such as the enhancing of protection of these categories. In fact, criminal networks tend to normally use the migration policies long before that the governmental institutions realise about the implemented strategies. Therefore, the use of these strategies normally lasts for a long period and only when the governments become aware about the strategies and change the Legal framework is when the criminal networks normally also change their smuggling and trafficking methods.

In fact, different Police operations have indicated that Nigerian criminal networks working on human trafficking for sexual exploitation use of the vulnerable categories within a certain period according to the implementation of the migration policies. For instance, in Italy the use of non-accompanied minors and mothers has been mainly been replaced by the category of asylum seekers, that after the implementation of the European Directives 2013/33/UE and 2013/32/UE on the Law Decree 142/2015 that forbidden the expulsion of the asylum seekers during the asylum request.

Furthermore, due to the amount of asylum request received by Italy on the last years, mainly due to the Dublin Protocol III(11), since the asylum seekers are obliged to do the request on the first European country of entrance.

Therefore, in a transit a final destination country as Italy that has received on the last year around 11.400 Nigerian women, which the majority has presented an asylum request and 80% are destined to sexual exploitation, the protection measures delimited to human trafficking victims have demonstrated until recently to be insufficient. Moreover, even if finally, the governmental and the private anti-trafficking system are finally being able to give an adequate response to this new trend, the funding system provided to Art 18 foresees a maximum of funding for 3000 victims a year, which is far from the actual number of Nigerian human trafficking victims estimated by IOM (8.000).

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(1) [United Nations Convention on Transnational Organized Crime and its protocols on trafficking in persons and migrant smuggling](#).

(2) Public Prosecutor’s Office.

(3) Decree Law, 18 August 2015, n. 142, implementation of the Directive 2013/33/UE, laying down standards for the reception of applicants for international protection and implementation of the Directive 2013/32/UE, on common procedures for granting and withdrawing international protection, (OJ n.214, 15/9/2015). The Law Decree previews the grant of a permit for six months, being renewable until the final judicial exit. During the stay on the national territory, the asylum seeker has the access to sanitary assistance through the Art. 21.

(4) On the 12th April 2017 the Italian government has approved the Law Decree 13/2017 (Minniti-Orlando Decree) that has taken the level of the appeal during the asylum request, being based mainly on the jurisdiction of the Territorial Commission and after on an audit.

(5) Collective centers: This includes the existing governmental centers for accommodation of asylum seekers (CARA) and accommodation centers (CDA) Article 9 LD 142/2015; Temporary Reception Centers (CAS), implemented by Prefectures in case of unavailability of places in the first or second accommodation centers, legal basis is now provided in Article 11 LD 142/2015; The SPRAR, established in 2002 by L 189/2002, is a publicly funded network of local authorities and NGOs which accommodates asylum seekers and beneficiaries of international protection with the an integration program, especially regarding to people with particular vulnerabilities (victims of torture or violence; people with disability or particular diseases; pregnant women; non-accompanied minors). Then, the Decree-Law 193/2016 (converted into L 225/2016) provided financial incentives for municipalities involved in the reception system, allocating €500 to each municipality for each asylum seeker hosted in its territory, not distinguishing between accommodation in SPRAR and CAS or governmental centers.

(6) Legislative Decree 6/98.

(7) Central Police Station uncharged in granting the resident permits to migrants.

(8) Article 18, paragraph 1, of the Consolidated Immigration Act reads: “Whenever police operations, investigations or court proceedings involving any of the offences set out in Articles [inter alia, 600 and 601 CC], or whenever the social services of a local administration, in the performance of their social assistance work, identify situations of abuse or severe exploitation of a foreign citizen, and whenever the safety of the foreign citizen is seen to be endangered as a consequence of attempts to escape from a criminal organization which engages in one of the afore-cited offences, or as a consequence of statements made during preliminary investigations or in the course of court proceedings, the chief of police, acting on the proposal of the Public Prosecutor, or with the favorable opinion of the same Public Prosecutor, may grant a special residence permit enabling the foreign citizen to escape from the situation of abuse perpetrated by the criminal organization and to participate in a social assistance and integration program.”

(9) Providing a cultural mediator from the same sex; guarantee a protection environment during the interview; be aware of eventual threats towards the victim or the family in the origin country; to be particular attentive to the minors and finally inform the victim about the difference of presenting the asylum request and witness against the traffickers.

(10) REGULATION (EU) No 604/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

TAG: *caporalato, Human trafficking, Immigrazione, maltrattamenti, traffico di esseri umani, tratta di schiavi, tutela dei minori, tutela delle libertà e dei diritti individuali, Diritti della persona, Diritto dell’immigrazione, Diritto internazionale, penale, Diritto penale internazionale*

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