



Analysis

Italy: Mass discrimination based on nationality and human rights violations – Nigerian refugees and trafficking victims deported from Rome

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Europe's answer to the refugee crisis has so far been to intensify existing policies and practices, conveniently overlooking their role in the genesis of the problem and in demeaning the rule of law in its member states.

On 17 September 2015, around twenty Nigerian women who had been rescued in international waters and disembarked in Lampedusa and Pozzallo after setting off from Libya, as part of a group of 69 likely victims of trafficking, were deported from Rome's airport in Fiumicino. They had been held in Rome's Ponte Galeria detention centre (CIE, identification and expulsion centre) since 23 July 2015, and MPs and civil society organisation had asked that they be informed of the possibility of them benefiting from protection measures.

In two letters to authorities including the director for immigration and the border police and head of the civil liberties and immigration department (both within the interior ministry) and the Frontex executive director, dated 14 and 15 September 2015, MEP Barbara Spinelli reconstructed the events of 17 September. Providing contextual details, she explained that they were rescued at sea and many of them had declared they had suffered violence by Boko Haram in Nigeria and/or been sold to human traffickers to be exploited in the European prostitution market. Many of them bore scars, burns and signs of the torture they had undergone.

In the early morning, lawyers and activists noticed that procedures to repatriate a group of (20 to 25) Nigerian woman were underway, although some of them were awaiting a court's decision on an appeal against the prior rejection of their applications for protection by the territorial commission. A positive response would have suspended the order to execute the repatriations. The same applied to four Nigerian men who were detained in Ponte Galeria.

At around 12.30, activists saw riot police officers descend from two armoured vehicles, who pushed them away towards a side alley outside the CIE. The centre's gate opened and a bus carrying the women came out, as the passengers asked for help and hit the windows. Alongside the centre's staff and the law enforcement agencies officers, the operation was directed by three men wearing a bib on which "Boarding Team" was written. An activist was told by an officer that they were Frontex officials.

Activists followed the bus to Fiumicino's *Leonardo da Vinci* airport. They tried to tell the airport police that a court (first section of the Rome tribunal) was evaluating their lawyers' arguments submitted to suspend execution of the returns. The court accepted the applications for at least three Nigerian women.

After they were identified by the police, the activists headed for Terminal 5, where the group had load into a Lagos-bound aeroplane of the *Meridiana* airline, "presumably" chartered by Frontex.

As copies of the notifications of suspension of the returns were arriving, the activists called for the people concerned to be allowed off the aeroplane. Yet, only one Nigerian woman was disembarked. Hence, at least two other women were repatriated, despite the suspension of their deportation decreed by the court.

As the aeroplane's departure operations began, the activists were moved away, while further positive decisions from the court were arriving. They later learned that fifteen orders for the suspension of returns were decreed, just on 17 September, although lawyers were not informed if any of them were on board. A delegation of the UN's subcommittee against torture was visiting Italy on that day to "monitor the treatment, detention conditions and the guarantees of migrants' protection against torture and ill-treatment". The mission would visit detention and reception centres in Rome, Trapani, Pozzallo, Turin and Bari, meeting officials and civil society organisations. They had asked to board the bus carrying the women to Fiumicino, but their request was refused. They followed the bus to Terminal 5, but were only able to observe proceedings from a distance, as the police chief's office [*questura*] had refused them access. A member of the delegation reported that a Nigerian woman was taken to the runway by ambulance and boarded on a stretcher.

In the evening, lawyers discovered that the Nigerian woman who was disembarked had been allowed to leave Ponte Galeria, but no provisions were made for her to be accompanied to a structure in north Italy which had agreed to receive her.

Following this account, Spinelli asked to be informed about the modality, planning and the people who were responsible for executing these forced returns, including their costs and the personnel who were deployed. She requested an "accurate reconstruction", as the only available information had been collected by citizens who witnessed the events, including how many people were returned, who they were and the reasons for each case, to safeguard their right to a legal defence, including their repatriation orders. She also sought explanations as to why the returns were carried out without awaiting the outcome of their appeals, what would happen in the cases involving repatriated people who the court had granted a suspension, and who stopped members of the UN's sub-committee from boarding the bus, and for what reasons.

With regards to Frontex, she asked if it was true that a team was in the detention centre, and what their task and mandate were, adding that witnesses saw the Frontex personnel in a bus which followed the bus carrying the Nigerian women to the airport. She enquired as to whether it was a Frontex-coordinated joint return flight, whether it had collected people in other countries, what personnel was on board, and whether 14 Nigerians taken from Turin's CIE at 4 a.m. the same morning, as reported by activists, were on board. Further, Spinelli asked what Frontex would do to enact its director's obligation under art. 3(1a) of Regulation no. 1168/2011, to suspend or terminate joint operations if they entail serious human rights violations or contravene international protection commitments. The agency was asked to specify how it would guarantee human rights protections detailed in national and international legislation, guaranteeing the transparency of procedures (including appeals and

access to national jurisdiction bodies) if they are refused entry, as envisaged by the Commission's Returns Handbook.

Spinelli noted that this case is "paradigmatic" of the risk of Frontex being involved in human rights violations including summary repatriations of so-called "economic migrants" who are not recognised as enjoying international protection by the 2008 Returns Directive.

If Frontex's participation in this operation were confirmed, it should explain the reasons for non-compliance with provisions in the Returns Handbook about providing information and the presence of NGOs to monitor returns. Spinelli added that the Ombudswoman's investigation into Frontex had found that 40% of joint returns are not monitored by independent observers.

With regards to the interior ministry's policies, Spinelli asked for the ministry's assessment of the presence and operative support offered by Frontex, which interior minister Angelino Alfano had recently sought from the EU. The ministry should also clarify the relationship between the current CIEs and the hotspots system, and hence, the different modes of detention, expulsion and repatriation of migrants which the government has enacted. Citing the Council's "Migration: EU actions and state of play" document, dated 9 September, Spinelli asks whether Italy will request the deployment of RABIT teams, also to manage the hotspots. The document closely linked fingerprinting operations to the effective repatriation of subjects who do not qualify for protection, which Frontex will coordinate to assist member states, which it called upon to swiftly decide whether the deployment of RABITs (Rapid Border Intervention Teams) is needed at the Italian, Greek and Hungarian borders.

The ministry was also asked why there were four pregnant women among the 69 women transferred to the Ponte Galeria CIE on 23 July. In one case, the pregnancy was obvious and the Italian normative framework forbids the forced return of pregnant women. Moreover, the Italian foreign affairs ministry's travel advice for Italian tourists in Nigeria, which warns of widespread security risks including terrorism, was disregarded.

With regards to the detainees' identification by Nigerian consular authorities in the Ponte Galeria CIE and other Italian CIEs, Spinelli asked how they are undertaken, and how they are informed of their rights. She noted that the human rights associations which followed the case and spoke to the women were told that they were not informed of their rights and applicable legislation until they reached the CIE. No interviews to find out about their trip were conducted, and this may have clarified whether they were victims of trafficking. Instead, the Nigerian consul awaited them at the gates of the CIE, a presence Spinelli described as "inappropriate", considering that most of them had requested international protection when they disembarked. Thus, the ministry was asked what precautions are adopted for the entry of consular authorities in CIEs and care and first aid centres (CSPA, *centri per il soccorso e la prima assistenza*) like those in Pozzallo and Lampedusa to safeguard asylum applicants whose request has not yet been formalised.

Spinelli notes that this operation cannot be framed within the agreement between Frontex and the Nigerian immigration service, as it ensures respect for human rights in achieving the goal of "combating illegal/irregular immigration". This is true unless they fall under the "obscure" statement of Frontex and the Nigerian authorities' aim to "promote an improvement in operational interoperability" between EU and Nigerian authorities.

Concerning the women's arrival in Nigeria, Spinelli asks for their number and names, the safeguards that are envisaged, considering their risk of suffering further abuses upon their return, and what institutions or organisations they were handed over to in Lagos.

Spinelli “protests” about the lack of transparency with which these events occurred, the lack of information provided to associations and particularly to the lawyers of the women subjected to expulsion measures. Noting that civil society’s involvement is crucial for CIEs not to become “opaque places outside the law”, she notes that the *LasciateCIEEntrare* campaign managed to enter Ponte Galeria alongside journalists on 7 and 14 August. They were only allowed back in on 19 September, but the press was banned. Allowing independent monitoring is becoming increasingly discretionary, and the problem appears to be worsening with the conversion of certain centres into hotspots.

Spinelli “expresses concern” about modes of repatriation which seem aimed at avoiding the fundamental rights guarantees which all migrants enjoy, especially if they are vulnerable or asylum seekers. Four of the women who entered Ponte Galeria on 23 July were pregnant following rapes during their trip from Nigeria to Libya. Among those who were in Ponte Galeria awaiting their expulsion, several claimed they had suffered violence at the hands of Boko Haram, while others said they were bought by traffickers to be sold on the European prostitution market. They suffered psychological blackmail, and many bore the scars, burns and signs of torture they were subjected to. Sending them back means they will again risk suffering the same violence, or risking their lives, drawing on reports by UNHCR (concern for refugees repatriated from Niger to Nigeria), Amnesty international (extrajudicial executions, torture, round-ups, and mass casualties in prison) and UNICEF (the displacement of 1.4 million children by Boko Haram’s violence).

The situation is such that UNHCR asked for the suspension of returns of asylum seekers to Nigeria on the 16 January 2015.

Spinelli “recalls” that forced returns to Nigeria constitute a “violation of fundamental rights”. If conducted as they were on 17 September 2015, they are objectively a “mass expulsion”, forbidden by art. 19 of the EU’s Charter of Fundamental Rights, as confirmed by the ECtHR’s *Khlaifia et al vs. Italy* sentence of 1 September 2015. The ECtHR defined “collective refoulements” envisaged by art. 4 of the 4th Protocol of the ECHR as any measure which forces foreigners, as a group, to leave a country, unless such a measure is adopted on the basis of a reasonable and objective assessment of each individual belonging to the group.

Following what was probably a summary recognition of their nationality by the Nigerian consul (as envisaged by the current bilateral readmission agreement between the two countries), the immediate execution of the joint repatriation flight violates the ban on collective refoulements. It does not allow individual proceedings within which, beyond the possibility of appealing against expulsion or refusal of entry measures adopted by the Italian authorities, the interested parties may uphold valid reasons that make them unexpellable. These are provided for by art. 19 of the Italian immigration law (no. 286/1998) and include health conditions, pregnancy, family ties or sanitary or political-military conditions in their country of origin.

Sources

[Letter from Barbara Spinelli to Prefetto Giovanni Pinto, Prefetto Mario Morcone and Frontex Executive Director Mr. Fabrice Leggeri. Brussels, 14 October 2015.](#) [pdf]

[Letter from Barbara Spinelli to Prefetto Giovanni Pinto, Prefetto Mario Morcone and Frontex Executive Director Mr. Fabrice Leggeri. Brussels, 15 October 2015.](#) [pdf]

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