

# EXTERNALISATION OF BORDERS

detention practices and denial of the right to asylum

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## The victim of trafficking and the recognition of refugee status

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In order to have a picture of the situation in Italy - a country where many victims of trafficking are landing - it is useful to review some STATISTICAL DATA.

The number of “potential” victims of Nigerian trafficking in Italy has grown dramatically in recent years. According to the International Organization for Migration (“IOM”), **the increase was 600%** and it is estimated that it affects 80% of girls arriving from Nigeria.<sup>1</sup>

**The 2017 IOM Report**, *The trafficking of human beings through the central Mediterranean route: data, stories, and information gathered by the International Organization for Migration*,<sup>2</sup> states that **in 2016, 11,009** women (predominantly Nigerian) and 3,040 children arrived in Italy, while in 2015, 5,000 women and 900 children arrived. The IOM believes that “*about 80% of Nigerian migrants arriving by sea in 2016 are likely to be victims of trafficking for sexual exploitation in Italy or other EU countries*” (p. 9).

According to the **UNHCR data**, women from Nigeria and arriving by sea decreased in 2017: **5,400 in 2017** and **324 in 2018**.

These data do not mean that trafficking in human beings has ceased, but that, presumably, the ways of trafficking have been reviewed.

In addition, many people, including women, are detained in detention centers, either formal or informal, in Libya or in that country due to Italy’s and the European Union’s external border policy since 2017.

**The GRETA<sup>3</sup> 2018 Report<sup>4</sup>** reports that in Italy there have been **1,050 victims of assisted trafficking in 2017**.

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<sup>1</sup> <https://ilmanifesto.it/dalla-nigeria-allitalia-via-libia-prego-di-morire/>

<sup>2</sup> [https://italy.iom.int/sites/default/files/news-documents/RAPPORTO\\_OIM\\_Vittime\\_di\\_tratta\\_0.pdf](https://italy.iom.int/sites/default/files/news-documents/RAPPORTO_OIM_Vittime_di_tratta_0.pdf)

<sup>3</sup> Group of Experts on Action against trafficking in Human Beings (GRETA) of the Council of Europe

<sup>4</sup> [https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP\\_2018\\_BOOK\\_web\\_small.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf)

There is a clear **difference between** the likely victims of trafficking who have arrived in Italy and those actually identified and assisted.

Data regarding **residence permits ex art. 18 of the Single Immigration Code are not positive**, because in the cited 2013 study of the IOM it is estimated that between 2004 and 2011 in Italy about **500-600** residence permits for social protection have been issued.

**The connection or encounter between the victim of trafficking** in human beings (whatever the purpose of trafficking) **and the political refuge** is an issue that could be abstractly simple, but in practice, it is extremely complex and complicated.

### **Some legislative definitions.**

“TRAFFICKING OF PEOPLE” means: “*recruitment, transport, transfer, hosting or receiving persons, through the use or threat of the use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability or by giving or receiving sums of money or benefits to obtain the consent of a person who has authority over another for exploitation. Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or forced benefits, slavery or similar practices, the enslavement or withdrawal of organs.*” (Additional Protocol to the United Nations Palermo Convention of 2000).

THE POLITICAL REFUGE is, instead, a right recognizable to those who “... *have a well-founded fear of being persecuted for reasons of race, religion, nationality, belonging to a particular social group or political opinion, are located outside the territory of the country of which they have citizenship and cannot or, because of this fear, do not want to avail themselves of the protection of that country*” (Art. 1, par. A 1951 Geneva Convention on Refugees – Art. 2 Legislative Decree 251/2007).

THE REASON for persecution, for the trafficked persons, can only be related to belonging to a “*certain social group*”, because the trafficked people share **a common history** or **an innate characteristic** and suffer persecution AS **women** (victims of a patriarchal and masculinist culture, who subject them to domestic violence, or domestic work, or sexual violence), or **minors** (*a condition of ex-lege* vulnerability, used in forced labor or sexual exploitation), or **persons in a condition of extreme objective vulnerability** (for example: migrants on the path of migration, in my opinion always forced as it is in the last decades and in particular in this third millennium).

The decision-makers (administrative and judicial) do not always seem to accept this qualification. It is useful, however, to recall that, according to UNHCR, “**gender** can be properly regarded as a category that identifies **a social group**, women being a clear example of a social subset defined by innate and immutable characteristics, and being often treated differently from men”<sup>5</sup>; definition that was then extended to other social groups, such as minors, LGBT and transgender persons, conscientious objectors, soldiers, etc.<sup>6</sup>

It is always the UNHCR that, with respect to the trafficking, specifically states that “*among children or women in general in a particular society, certain specific categories of children or women may be*

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<sup>5</sup> UNHCR, GUIDELINES FOR INTERNATIONAL PROTECTION: Membership of a particular social group in the context of Article 1A(2) of the 1951 Convention and/or The 1967 Protocol on the Status of Refugees”, HCR/GIP/02/02, 7 May 2002 [http://www.unhcr.it/wp-content/uploads/2016/01/ITA-Gruppo\\_Sociale.pdf](http://www.unhcr.it/wp-content/uploads/2016/01/ITA-Gruppo_Sociale.pdf)

<sup>6</sup> See also art. 7 and 8 d.lgs. 251/2007

*particularly vulnerable to trafficking and may constitute a social group as a refugee”*<sup>7</sup>.

This is because these people **share a common story**.

It is worth pointing out a further aspect, given that the so-called economic migrants want to be distinguished from the asylum seekers which are indifferent to the migration path.

Even people who migrate for the need to find job opportunities that allow them to live in dignity (the so-called **economic migrants**) and who rely on traffickers in the absence of regular migration channels, very often **they become victims of trafficking**. **There are numerous reports that testify this transformation**, through extortion of money for the continuation of the journey, forced and unpaid work, often in a state of slavery, or becoming victims of unshared sexual relations or rape, or subject to slavery due to the debt undertaken for emigration, with repercussions also on the whole family, or, again, sold as goods.

There are treatments following the “choice” of emigrating, which are independent from the will of the person and are implemented within the management of the migration path operated by the various criminal organizations and exposed migrants to particular vulnerability, that have no longer a right of choice. This phenomenon concerns not only women but also children and adults who, in my view, are fully covered by the definition of trafficking in the Palermo Protocol.<sup>8</sup>

In general, the difference between smuggling and the trafficking is identified, as far as the first is concerned, in the termination of the relationship between the migrant and the trafficker once they arrive in the destination country, while continuing in the trafficking with continuous exploitation.

**It is a difference that we should rethink, precisely because the phenomenon of migration has changed profoundly in recent years** and trade in human beings has changed its characteristics (moreover, a direct or indirect link cannot be excluded with labor exploitation in Italy) and also because **having undergone those inhuman treatments leads to a condition of further vulnerability that could expose victims, in the event of their return to their country of origin, to the risk of new persecution** of stigma, for the social and family marginalization resulting from repatriation, for the impossibility of having adequate psychological support to elaborate the persecutory experience, in the absence of a suitable welfare system.

The same risk that the victims of “classic” trafficking are generally exposed to.

Italian (European) legislation also defines **ACTS OF PERSECUTION** which are “*serious enough, by their nature or frequency, to represent a serious violation of fundamental human rights , in particular of the rights for which any derogation is excluded, pursuant to Article 15(2) of the Convention on Human Rights*” (Art. 7(a) Legislative Decree 251/2007).

The reference to the rules of the Convention does not end with the definition of acts of persecution and therefore attention must be paid to the “*serious violation of fundamental human rights*”.

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<sup>7</sup> UNHCR. INTERNATIONAL PROTECTION GUIDELINES NO. 7. The application of Article 1A(2) of the 1951 Convention and/or the 1967 Protocol on the status of refugees to victims of trafficking and persons at risk of trafficking – 2006 – p. 13.

[http://www.unhcr.it/wp-content/uploads/2016/01/linee\\_guida\\_protezione\\_int.pdf](http://www.unhcr.it/wp-content/uploads/2016/01/linee_guida_protezione_int.pdf)

<sup>8</sup> In this sense, see also UNHCR, *the application of Article 1A(2) of the 1951 Convention and/or The 1967 Protocol on the status of refugees to victims of trafficking and persons at risk of trafficking* , 2006 - **para. 4:**“... *traffic and trafficking are often closely related, as both take advantage of the vulnerability of people seeking international protection or access to the labor market abroad. Irregular migrants using the services of traffickers - voluntarily hired - could also become victims of trafficking if the services they originally requested turned into trafficking situations based on abuse and exploitation.*”

[http://www.unhcr.it/wp-content/uploads/2016/01/linee\\_guida\\_protezione\\_int.pdf](http://www.unhcr.it/wp-content/uploads/2016/01/linee_guida_protezione_int.pdf)

**In the possible meeting between trafficking and political refugee**, the two elements on the basis of which international protection can be recognized must be examined:

- 1) The assessment of credibility; and
- 2) The well-founded fear in case of return.

As regards the first - THE CREDIBILITY ASSESSMENT of the asylum seeker/s - the specific nature of the condition as a victim of trafficking must be taken into account, and this involves primarily the exact identification of the condition itself.

It should be said that in **the guidelines published in 2017 by the Ministry of the Interior and UNHCR**,<sup>9</sup> to be used in the international protection procedure, SOME INDICATORS are described FOR THE IDENTIFICATION OF THE VICTIM OF TRAFFICKING and in the specific case of **Nigerian women** are as follows (page 38):

- *Young woman from Nigeria, in particular Edo State or Lagos*
- *very young age, sometimes under-age (between 15 and 24 years old), although the applicant claims to be over-aged*
- *Low level of education and economic conditions*
- *Statements of origin from a large family, of which you are the first daughter or to be orphaned*
- *A Story of forced marriage to man often much older than the applicant*
- *General information is different from those shown on the C3*
- *History which is unclear and/or credible in relation to certain elements, such as in particular:*
  - *inaccurate statements regarding the journey stages*
  - *the change from person to person entrusted to during the journey (the applicant reports of people who appear and disappear along the journey they are entrusted to **without paying anything**)*
  - *the liberation from a situation of sexual exploitation in the connection houses in Libya thanks to some “benefactor”*
  - *the journey through the sea to Italy faced without paying anything.*
- *A Story of facts which, **in a fragmented way**, constitutes elements of human trafficking (the methods of recruitment, the violence suffered, the sale) but which are often partial.*
- ***Control Signals.** Sometimes the applicant receives phone calls during the interview or immediately outside. Sometimes it is waiting for someone outside the interview.*

Indicators that are the result of years of study and analysis of the phenomenon, which, therefore, are included in an institutional reference document, are an essential parameter of evaluation both for the Territorial Commissions and for the judicial Authority.

However, this does not always happen and very often **the refusal of protection** is motivated by THE POOR COLLABORATION and the GENERALITY or CONTRADICTIONS in the narrative.

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<sup>9</sup> <https://www.unhcr.it/wp-content/uploads/2017/09/Vittime-di-tratta-Linee-guida-compresso.pdf>

**Exactly the characteristics of the victim as described in the Guidelines.**

Above all, THE LACK OF COOPERATION seems to be of decisive importance, and this **is also the case when the indicators of trafficking are recognized by the same decision-makers**, to the extent that the applicants are referred back to the anti-trafficking Bodies, in the context of *the referral* envisaged (ex. Art. 10 Legislative Decree 24/2014), that is, the referral to these Bodies to consider whether the applicant is a victim of trafficking.

In several cases examined in preparing this intervention, it was found that **anti-trafficking Bodies also give negative reports if the woman does not collaborate**, if she shows herself unpleasant at the meetings, if she repeats stereotyped stories, although the same body considers that there are strong indicators of trafficking. Reports showing that the applicant continues to tell a story that is unclear or confused or contradictory or not founded on facts (for example: moving from one country to another in the European Union without aid; exercising prostitution freely on its own; having partially paid the debt without being threatened by the remnant; being generic on the reasons for the departure and its modalities; etc.), shows nervousness in the talks and is, indeed, NOT VERY COOPERATIVE.

Only **in front of the courts** sometimes it happens that the very poor likelihood and/or contradictory nature of the story itself is considered an expression of the trafficking and this is because the literature confirms that the stories are often suggested by the exploiters and that the discretion to tell them underlies, in itself, subjugation to exploiters.

In a system - that of international protection - based largely on subjective credibility and which presents itself with considerable problems, the demand for protection that comes from a person victim of trafficking is denied on the basis of characteristics that should allow the recognition of protection. **AND THIS IS A PARADOX.**

**There is a fear, on the part of the authorities, that asylum applications will be instrumental** in acquiring a residence permit and that, therefore, they will be filed in order to allow traffickers to continue criminal exploitation in Italy (or in Europe).

A need which is understandable in itself, **but the solution given to it - that is, the refusal of protection in the absence of cooperation - is not consistent either with the legislation protecting the victim of trafficking** or with the Italian and/or European asylum system, because it makes that concern prevail over the need to protect a fundamental right, without taking into account the specific nature of the victim of trafficking, in which the lack of cooperation proves the trafficking itself.

The result is a kind of **blaming of the victim**, to whom, in fact, **full collaboration with the authorities is required**, claiming that the victim shall:

- Acquire in pre-determined times from the decision-makers fully awareness of their condition and decide to detach themselves from the exploiters, without fear of any risk for themselves or for their family members in the country of origin;
- agree to enter into a social Program which, as it is structured, risks maintaining the already busy person to an inferior condition, still and always under protection.

**In addition, one might wonder whether the anti-trafficking system is suitable for processing by the victim of trafficking**, or whether, instead, the face remains in a “under protection” and therefore inferior condition, with **effects of re-victimization**. Such system has been created under Art. 18 of

the Legislative Decree on immigration N. 286/98 and it has been an important instrument of protection for many trafficked women (and today also for victims of labor exploitation), but over the years it has lost its effectiveness in the claim of the authorities to cooperate fully with the criminal authorities, by denouncing the exploiters, by taking the alternative on the road, that is to say, to include it in a social program without the need for denunciation. This system presents other critical issues that cannot be addressed here, but the low statistics of the people protected in it demonstrate its ineffectiveness.

As for the second aspect, the **VALIDITY of FEAR**, many decision-makers believe that, in order to obtain the recognition of political refuge, it is not enough to belong to a particular social group and to have suffered persecution or discrimination on the grounds, because “*the question to be asked in each case is WHETHER the person in question will face a real risk of persecution due to his or her membership in that group.*”<sup>10</sup>

This question refers to the verification of the risk of further persecution in the event of a return to the country of belonging, but the assessment of the validity of the fear often coincides **with the fear expressed by the victim**; the risk should also be established above all with regard to the objectivity of the risk of being reintroduced in a context where new persecution is likely to occur.

**Having been a victim of trafficking should, in fact, be sufficient for the recognition of strong protection**, such as political refuge, because that becoming a victim is a consequence of a condition of gender and/or social subordination and of the inability of the State of belonging to prevent the cause of trafficking and therefore of the victims from occurring.

Failure of the State which finds confirmation that **the phenomenon originates in certain social contexts** that literature and sources of information have explored for a long time:

- poverty, lack of job opportunities
- a poor, often violent, family context
- the absence of schooling
- social and gender discrimination
- the social irrelevance and exploitation of children (sometimes gender goes together with social discrimination)

Contexts **in which social measures are lacking** that favor economic, work, education, especially women, and in which the family is the social pivot around which all relations revolve. But IF the family is poor, if it is in the family that violence takes place and there is no protection from the state, it is likely that the most subordinates person (usually the woman, or the minors, or the LGBT people) are staring at false promises to traffickers who exploit these disabilities and the person is soon to be transformed into goods for a trade, sexual or work that it is.

**The failure of the State of origin to prevent a person from becoming a victim of trafficking in itself represents a risk of perpetuating persecution**, even if it can take different forms in the event of repatriation, such as discrimination, social exclusion, the inability to process your own intimate

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<sup>10</sup> The approach is well summarized in Report Home Office, *Country Policy and Information Note. Nigeria: Trafficking in women*. July 2019 – p.to 2.2.2.).

injuries as a result of being a victim and not forgetting the risk of re-trafficking which, precisely on subjective vulnerability and the absence of state protection, finds a formidable recruitment ground.

In addition to this aspect, it should also be considered **that it is often impossible to repay the debt** originally contracted at the beginning of the route, which poses serious risks not only to the victim but also to the family members in the country of origin.

But if all this is known, **the well-founded fear of persecution is objective and therefore illegal victims of trafficking are repatriated**, or because they are not identified as such or because the justification of fear is denied because they do not explain it.

Nor can we rule out that in certain cases, which we do not know how much they affect in statistical terms, the victim of trafficking is “voluntarily” entrusted to the traffickers, although aware of the serious risks, it is seen as the only way out of a condition in which discrimination and subordination are extremely strong. **Also in this case there is a well-founded fear of being re-entered into a context in which there is no choice.**

In conclusion, the encounter between the victims of trafficking and international protection is not at all obvious or simple, since no attention is given to the legal status of women, almost as if it is “natural” that they are discriminated and abused, as there is great indifference to the fate they encounter when they are repatriated, in social, legal and economic contexts that have allowed them to become victims of trafficking.

A short circuit that seems difficult to break.