

2000 Italy – Nigeria

“Agreement between The Government of the Italian Republic and the Government of the Federal Republic of Nigeria on migratory issue”

Background

Nigeria, a former British colony, achieved its independence recently, in 1960. Notwithstanding this, Nigeria nowadays is one of the leading countries of the Economic Community of West African States (ECOWAS) and a member of the African Union and the Commonwealth of Nations. It is the most populous state in Africa, with 150 millions individuals belonging to around 250 different ethnic groups. In 1999, after three decades of military governments, the Federal Republic of Nigeria started its still on-going democratization process.

The Federal Republic has been defined as a «country of strong emigration» since the ‘80s, due to the economic depression caused by the second oil shock, which contributed to the exacerbation of social conflicts, especially in the border areas. Structural corruption and widespread violence have been the common threats of the African State, and the situation escalated with the emergence in 2002 of Boko Haram, a terroristic organization controlling the North-East area of the Country which has, and still to date remains a perpetrator of numerous massacres and the main actor of human trafficking and sexual exploitation. Indeed, the country is afflicted by violence, carried out by terroristic cells, armed groups and the Special Anti-Robbery Squad (SARS), a police unit addressing crimes such as kidnapping and robbery, as denounced since 2017 by Nigerian human rights defenders and activists. Already in 2014, the SARS was under the Amnesty International’s spotlight for the human rights violations which include torture, rape, ill-treatments, and extrajudicial executions. Moreover, in the past years, Human Rights Watch provided evidence of the degraded, inhuman and abusive conditions in government mental health and psychiatric facilities and hospitals. The country is also known as «source, transit and destination country for victims of trafficking», especially of women and children, with 1890 victims rescued in 2017. The purpose of trafficking Nigerians to Europe is mainly of sexual exploitation, indeed, according to the IOM, «an estimated 80 percent of girls arriving in Italy from Nigeria, most of whom are between 13 and 24 years old, are potential victims of trafficking for sexual exploitation». As far as the type of internal trafficking is concerned, it is possible to report exploitative domestic work, farm labour and prostitution, but also forced marriage and for the purposes of using child soldiers and organ removal.

The cooperative frameworks aiming at enforcing the respect of human rights and combating human trafficking, despite the long lasting existence, both with the EU and Italy, is still in an on-going process. As far as the relationship between Italy and Nigeria is concerned, it is relevant to point out the Nigeria was included among the sub-Saharan states of origin and/or transit of illegal immigration flows with whom Italy has launched pilot projects for the development of forms of enhanced cooperation. In particular, the 2009 agreement between the Italian Police Chief Prefect Antonio Manganelli and the Nigerian Police Chief Mike Mbama Okiro aims at institutionalizing forms of cooperation between the two States to combat illegal immigration, human trafficking, prostitution and drug trafficking. Unfortunately, the text of this agreement has not been disclosed to the public yet.

Nigeria is Italy's main economic partner in sub-Saharan Africa, and the two countries have recently concluded several agreements attempting to tackle directly the issues of criminality and human traffic, namely the Extradition treaty, the Agreement on mutual assistance in criminal matters, and the Agreement on the transfer of sentenced persons. These agreements, concluded in 2016 and later ratified in 2019, try to counterweight the power of Nigerian mafia, whose main clans Black Axe, Eye and Maphite are also significantly active in Italian territories.

At the Union level, the dialogue between Europe and Nigeria is rich, albeit rather new. Despite being a party to the 2000 Cotonou Convention, the first relevant form of cooperation between the parties is the (undisclosed to the public) 2009 EU-Nigeria Joint Way Forward, enhancing both the political and the technical cooperation. Under article 13 of the Convention, the Joint Way Forward calls for a more systemic cooperation between the Parties. The 2012 Working Arrangement establishing operational cooperation between Frontex and the Nigerian Immigration Service partially answers this need. This arrangement, which is not considered as an international agreement (part 6), promotes the involvement of Nigerian authorities in Frontex joint return operations (part 4.9). A general framework governing Nigerian-European relationship is given by the 2015 Common Agendas on Migration and Mobility, whose main priorities in the field of irregular migration are the prevention and fight against irregular migration, the eradication of human traffick and the promotion of international protection. Its implementation requires the adoption of both political and legal instruments, among which figure action plans, visa and readmission agreements. From the political perspective, a prominent example is the 2015-2020 Regional Action Plan for the Sahel. On the other hand, the legal dimension has not significantly developed, as the negotiations of a european readmission agreement are still on-going.

Procedure

The Agreement was signed on 12th of September 2000 in Rome, and the President of the Republic later ratified it: the agreement entered into force on 12th of June 2011 pursuant the solemn "presidential" procedure.

Parties

The Government of the Federal Republic of Nigeria and the Government of the Italian Republic.

Signature

The Agreement was signed in Rome, on 12th September 2000 by the Undersecretary to the Foreign Affair Minister Rino Serri on behalf of the Italian Government.

Legal basis

The Agreement is considered as self-legitimating and thus representing its own legal basis, in consideration of its solemn form and ratification.

Aims

The Agreement aims at fighting efficiently illegal migration through a facilitation of the repatriation of individuals located illegally in one of the Contracting Parties, and at treating those individuals with dignity and by respecting their rights, as stated in the 1951 Convention on the Status of Refugee, and its 1967 Protocol.

Content

The Agreement is structured in a Preamble explaining the aims and nineteen Articles.

The following Articles are to be highlighted:

Article III whereby each Contracting Party, upon proof of nationality and on the request of the other Party, accepts any person who is not eligible to enter or reside in the territory of the State of the Requesting Contracting Party (para 1); the reason of such request shall be stated in the letter of request (para 3).

Article IV, providing that the repatriation procedure shall occur without the issuance of a travel document if the person in concerned is in possession of a national passport or an international recognised and current travel document (para 1).

Article V, according to which the person to be repatriated shall be identified and issued a travel document where nationally recognised documents are not present (para 1), and the issuance of such documents shall be within two to four working days from the day of the receipt of the above stated documents (para 2).

Article VI provides the authorities of the Requesting Contracting Party with the possibility - in cases where it is not possible to obtain the necessary documents to establish the nationality of the person concerned, but evidence exists making it possible to presume nationality - to request the diplomatic and consular offices to assist in ascertaining the nationality of the person by an interview within a period of five days from the date of the receipt of the request (para 1.a). The interview shall take place where the person is located and, where impracticable, it shall be conducted at any convenient place (b). The result of the interview shall be conveyed to the requesting Party within a period of three to five days (c), and on the positive affirmation of the nationality of the person, a travel document valid for thirty days shall be issued accordingly (d).

Article X states that the repatriation carried out applying the Agreement will not prejudice the possibility of the interested person to re-enter the territory of the Contracting Party who has applied for re-admission if the same has not been repatriated following the adoption of an expulsion order.

Article XI, providing that the Agreement does not affect any rights and obligations undertaken under any international agreement, treaty, convention or protocol by the Contracting Parties.

Article XVI, whereby the Government of the Italian Republic guarantees, within the limits of its capabilities and resources, assistance to the Government of the Federal Republic of Nigeria with technical assistance on Immigration matters (para 1.a), training facilities for Nigerian Immigration and Consular Officers (b), cooperation in the field of control of the HIV/AIDS and other sexually transmitted diseases as part of the process of the resettlement and integration into the society of the person concerned (c).

Article XVIII provides that the Contracting Parties shall not use undue force, torture, cruel, inhuman or degrading treatment in the implementation of the Agreement.

Final dispositions

The Agreement entered into force thirty days after the last letter of notification whereby the Contracting Parties informed each other of the compliance with their internal constitutional requirements.

The Agreement may be terminated by one of the Contracting Parties by serving six months' notice to the other Party.

At the termination of the Agreement, its provisions and the provisions of any separate protocols, accords or complementary agreements made in that respect, continue to govern any

unexpired and existing obligations assumed or connected thereunder, and any such obligations are carried out on to completion.

Cases and secondary legislation

In addition to those courses envisaged and called by this Agreement, Italy delivered several training courses for the police forces operating in Sub-Saharan Africa within the context of the 2016 Military International Missions. Despite being bilateral operations, in this case it was preferred to tackle the matter with a regional approach. Indeed, the mission operating in Niger may provide for the intervention in neighboring countries, hence calling for police training outside the country party to the Military mission.

Within the context of the 2020 International Missions conducted by Italy, the Government allocated to the Guinea Gulf (Nigeria, Ghana, Ivory Coast) one air-naval device, for activities of presence, surveillance and security of the region.

Critical issues

The Agreement, concluded by the Government in 2000, was ratified by the President of the Republic only several years later, namely in 2011. Additionally, it was concluded pursuant the presidential procedure (art. 87 Const), hence without the involvement of the Parliament (art. 80 Const). By looking at the content of the treaty, the political nature of this treaty seems flagrant, hence raising doubts on the compatibility of the procedure adopted with the Constitutional constraints.

The long delay in the ratification raises doubts on a possible provisional application of the Treaty, whose lack of explicit mention in the text of the agreement would be incompatible with the Law of the Treaties. Despite the lack of comprehensive statistics and of data transparency, there is evidence of returns carried out by Italy in 2006, namely before the ratification of the 2000 agreement and before the adoption of the 2009 agreement. Additionally, repatriations took place also in 2010, the year between the adoption of the 2009 pilot project and the ratification of the 2000 Treaty. This seems to suggest that the 2000 agreement was provisionally applied until 2011, despite the lack of an explicit reference in the text of the agreement.

The 2009 Agreement, boosting Nigerian authorities' capacity-building, seems to be adopted on the basis of the 2000 agreement. However, the 2000 agreement provides for the adoption of supplementary protocols / understandings, while the 2009 pilot project seems to be part of an Italian strategy applied horizontally to countries of origin and transit. Therefore, the 2009 agreement does not amount to a supplementary protocol, but to an autonomous and independent treaty.

According to art. XI, this Agreement shall not be in prejudice to the international obligations arising from international conventions, treaties and protocols. Despite the lack of an explicit reference, this article seems to refer to the Human Rights obligations to which the parties are committed. Additionally, the agreement includes a safe-guard clause (art. XVIII) in relation to the prohibition of torture and inhuman treatment. What strikes the most is the formulation of this clause, because it

notably differs from the common wording employed in other agreements. This article does not generally refer to the prohibition of the latter pursuant international obligations, but it provides that the parties undertake *not* to rely on violence, torture, inhumane and degrading treatment, cruelty. This choice would easily go unnoticed in other agreements. However, in light of the widespread use of violence in the country and the frequent abuse committed by police forces, this wording gains another meaning: it recognises the need to explicitly prohibit this obnoxious and terrible practices, as they could indeed be employed. This finding is particularly worrisome in light of the absence of a control mechanism over the activities carried out by governmental authorities, especially after the repatriation took place.

Sources

- Amnesty International, June 2020, “Nigeria: Time to end impunity: Torture and other human rights violations by special anti-robbery squad (SARS)”, available at <https://www.amnesty.org/en/documents/afr44/9505/2020/en/>.
- EU-Nigeria Joint Way Forward 2009, content summary available at https://ec.europa.eu/commission/presscorner/detail/en/PRES_09_171
- EU Common Agenda on Migration and Mobility, 2015: https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration_en
- Frontex working arrangement 2012, text available at https://frontex.europa.eu/assets/Key_Documents/Working_Arrangements/WA_with_Nigeria.pdf
- Human Rights Council, April 2017, “Report of the Special Rapporteur on the human rights of internally displaced persons on his mission to Nigeria”, <https://www.refworld.org/docid/593a958e4.html>.
- Human Rights Council, April 2019, “Report of Special Rapporteur on trafficking in persons, especially women and children”, <https://reliefweb.int/report/nigeria/visit-nigeria-report-special-rapporteur-trafficking-persons-especially-women-and>.
- Human Rights Watch, November 2019, “Nigeria: People With Mental Health Conditions Chained, Abused Ban Chaining; Provide Mental Health Services”, <https://www.hrw.org/news/2019/11/11/nigeria-people-mental-health-conditions-chained-abused>.
- InfoMercatiEsteri, October 2020, http://www.infomercatiesteri.it/relazioni_internazionali.php?id_paesi=23.
- ISPI, October 2014, “La Nigeria in Africa e la politica dell’Italia”, https://www.ispionline.it/sites/default/files/pubblicazioni/rapporto_nigeria_271114.pdf.