



1. INTRODUCTION

In Italy, male violence against women and trafficking in human beings have been generally considered two distinct phenomena, both by many organizations that counter these scourges, as well as government institutions engaged in mitigating them.

Consequently, two different national plans of action (one on gender violence, and the other on human trafficking) are currently in place.¹ Yet trafficking for the purpose of sexual exploitation is one of the many forms of violence against women. It is not by coincidence that approximately 90% of trafficked persons are women and girls who seek to escape gender-related ill-treatment and discrimination, including the feminization of poverty, domestic or communal violence, forced marriages, unequal power relations, and social inequality, including disparities in access to economic and work opportunities, health care, and education.

Since the 1980s, Italy has been a country of destination for migrants of different nationalities. Soon it became apparent that “one size fits all” was not an option in managing such flows. There was an early recognition that many migrants had not freely chosen their paths, that many of them were actually victims of trafficking forced into work in which they had no rights and from which there was no escape.

That is why in 1998, Italy equipped itself with a norm for the protection of victims of trafficking in human beings, that is, *article 18 of Law 28 286/98*.² This provision grants them a social protection path, predicated on proper *identification of victims, and the issuance of residence permits. Article 18 predates the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* that entered into force on 25 December 2003 to complement the 2000 *United Nations Convention against Transnational Organized Crime*. Visionary and potentially far-reaching at the time of its conception, article 18 has seen a progressive shrinkage in its application, and in some jurisdictions it has been increasingly applied only when trafficking survivors had been willing to press charges against the perpetrators. This requirement was not envisaged by the law, but it became acceptable in practice. Such enfeebling interpretations and applications have grown apace with the solidification of anti-migrant sentiment and policies.

¹ Relevant legislation is *Legislative Decree No. 24 of 4 March 2014, implementing Directive 2011/36/EU of the European Parliament and the Council on preventing and combating trafficking in human beings and protecting its victims*.

² Decreto Legislativo 25 luglio 1998, n. 286 *Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*, pubblicato nella *Gazzetta Ufficiale* n. 191 del 18 agosto 1998 - Supplemento Ordinario n. 139, available at <http://www.camera.it/parlam/leggi/deleghe/98286dl.htm>

Another pathway available to survivors of human trafficking to obtain residence, and thus the possibility of rebuilding their lives, has been access to international protection.

A foreign person who entered Italy has the right to apply for international protection, as established by the *European Directive 83* of 2004 implemented in Italy by *Legislative Decree 251* of 2007. The application is then examined by the competent Territorial Commission (TC) --a semi judicial body--which, after hearing a case, may grant refugee status, or a subsidiary form of protection. In 1998, Italy had introduced an additional and residual form of protection, known as humanitarian protection.³ Refugee status is granted according to the Geneva Convention and entails a residence permit for a renewable 5-year term.

Subsidiary protection is bestowed when a person did not fulfil the requirements of the Geneva Convention, but would suffer serious harm if returned to the country of origin. A 5-year residence permit is issued in these cases and can be renewed upon verification of the persistence of risk factors. Humanitarian protection could be obtained for reasons of a specific humanitarian nature, such as health or age conditions, threats or risk of violence stemming from political instability, famines or environmental disasters. The duration of such protection varied, although in practice it has been extended for a maximum of two years renewable. This latter form of protection has now been scrapped, as discussed below.

2. THE WORK OF BEFREE IN COUNTERING HUMAN TRAFFICKING, PARTICULARLY WOMEN AND GIRLS

BeFree Social Cooperative, a Rome-based women's nongovernmental organization, began its work of countering violence against women and girls, human trafficking and discrimination in 2007. These are three interlinked domains. BeFree drew from the long-standing experience of its members and staff in shaping assistance to victims with a gender-based approach.

To date, BeFree has been able to steer thousands of women and girls into social protection programs under Article 18 and/or assisted them in obtaining international protection. This is a process that requires months, actually years, of painstaking individual assistance, including providing shelter, as well as social, psychological, cultural mediation, and legal and job-orientation support. We also litigate cases in court on their behalf. In one landmark judgment in 2012, we obtained compensation for 17 Nigerian women victims of trafficking against the assets of 14 perpetrators. The compensation of Euro 50,000 each was awarded during criminal proceedings, thereby sparing the victims a lengthy pursuit of their rights and possible re-traumatization involved in a separate civil suit.⁴ Today, we are also retracing victims of trafficking who are entitled to compensation under a new law.

³ Article 5, paragraph 5, item 6, of Legislative Decree No. 286/98.

⁴ BeFree, *Inter/rotte: Storie di Tratta, Percorsi di Resistenze* (Edizioni Sapere Solidale, Roma 2016), pp. 84-86.

We have mostly intercepted victims of trafficking in the Center of Identification and Expulsion of Rome (now Center for Reception and Repatriation, Centri di Permanenza e Rimpatrio), a place of administrative detention where irregular migrants are kept pending their repatriation. Many other trafficking survivors get in contact with BeFree upon referral from other non-governmental organizations, law enforcers and concerned citizens.

Today, the vast majority of victims come from Western Africa, particularly Nigeria, through Niger and Libya. Most of them are trafficked for sexual exploitation. Most are enslaved and experience sexual violence and a vast array of other gross human rights abuses throughout their travels.⁵

Indeed, human trafficking is a gender issue. In Europe from 2013-2014, 15,846 persons were identified as victims of human trafficking. Seventy-six percent of them are women; 67 percent are victims of forced prostitution. According to data of the Department of Equal Opportunities, in 2017 the total number of newly assisted victims of trafficking in human beings (THB) was 1050 (of whom 85.6% were female); 121 (11.5%) of the victims were children. In 2018 (up until 16 October 2018), there were 569 newly assisted victims (of whom 92.6% were female); 42 (7.38%) of the victims were children. The main countries of origin of the victims in 2017-2018 were Nigeria, Romania, Morocco, Bangladesh, Pakistan, Albania and Bulgaria. The majority of the assisted victims were subjected to sexual exploitation (78% in 2017, 90% in 2018), followed by labour exploitation (13% in 2017, 7% in 2018), forced begging (1.9% in 2017, 1.5% in 2018) and forced criminality (0.2% in 2018, 2.7% in 2017).⁶

The women and girls we support leave their countries because of gender-related factors mentioned above.⁷

These factors have remained constant during the years. And so has the traffickers' ability to adapt their strategies to a context that, instead, has profoundly mutated, due to the political upheavals in Northern Africa coupled with increasing intolerance towards migrants in Europe and elsewhere. These changes have also influenced the profile and vulnerabilities of victims and have made our job at identifying them and obtaining protection all the more difficult.

⁵ IOM estimates, more than 80% of the Nigerian women and girls arriving in Italy are likely to be victims of trafficking for sexual exploitation in Italy or in other countries of the European Union (EU), IOM, Human Trafficking through the Central Mediterranean Route, Rome, 2017, p.9. Available at: http://www.italy.iom.int/sites/default/files/news-documents/IOMReport_Trafficking.pdf.

⁶ GRETA, the Group of Experts on Trafficking of The Council of Europe, GRETA(2018)28, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings*, GRETA, Second Evaluation Round (Italy), Adopted 7 December 2018, Published 25 January 2019, available at <https://rm.coe.int/greta-2018-28-fgr-ita/168091f62>

⁷ Forty Nigerian women a year are supported by BeFree thank to a grant by the UN Voluntary Trust Fund on Contemporary Forms of Slavery.

3. NEW TRENDS IN TRAFFICKING TO ITALY

In 2016, we set out to investigate the trends we had observed. We did so with follow up research to our 2010 publication *Storie di Ponte e di Frontiere, Stories of a Bridge and Frontiers*. This research, drawn mostly from our own work, was detailed in the study *Inter/rotte: Storie di Tratta, Percorsi di Resistenze, Inter/rupted- Inter/routes: Stories of Human Trafficking, Paths of Resilience* that BeFree released in 2016.⁸

First, we took stock of factors underlying the increased numbers of trafficked victims. In 2015, 5,000 Nigerian women arrived in Italy, a four-fold increase over the previous year. Through more than 100 in-depth interviews, we concluded that this escalation was due not only to the general spike in migration flows, but also to a fragmentation of criminal networks and to the emergence of opportunistic exploiters who have mushroomed in Libya. These often competing and multiplying traffickers required more and more victims at their disposal to keep profits flowing at a constant level.

Second, African women arriving to our shores were increasingly younger and less educated and, thus, more easily exploited and less likely to seek help.

Third, there was an escalation in asylum requests. Traffickers force their victims to claim asylum in order to avoid or forestall their expulsion, thereby making it more difficult for them to be identified as victims of trafficking and obtain appropriate protection. Traffickers often force women to narrate fabricated stories which, in the traffickers' view, would facilitate a favorable reception of asylum applications. It is largely thanks to BeFree's and other organizations' advocacy that some Territorial Commissions (CTs) have now come to regard such implausible narratives as indicators of human trafficking in and of themselves.

Once the asylum request process has been put in motion, however, traffickers have no interest in ensuring that it comes to a satisfactory conclusion. Rather, the uncertainties of a limbo-status make their victims more vulnerable and more dependent on traffickers' networks.

The work of the Territorial Commissions is thus crucial in properly identifying survivors of human trafficking and in fulfilling the requirements of international law by ensuring the rights of survivors of trafficking are upheld.

For these reasons, we found it important to assess the operations of the TCs and provide the following analysis which is based on direct observations by BeFree and experiences rooted in the practice of the migration legislative framework established since 1998.

⁸ Op. cit., pp. 23-32.

4. TERRITORIAL COMMISSIONS AND TRAFFICKING IN HUMAN BEINGS

The UNHCR Anti-Trafficking Guidelines for Territorial Commissions, The identification of victims of trafficking among applicants for international protection and referral procedures" aim at a "correct and early identification of victims of trafficking", as well as identifying and establishing "an appropriate referral mechanism to achieve coordination and collaboration between the commissions and the anti-trafficking bodies in order to ensure adequate protection".⁹ This can be achieved through the development of "standard operating procedures to be adopted during the process of bestowing international protection".

These Guidelines represent an important starting point in the protection of women survivors of trafficking. However, in their concrete applications they cannot fully do justice to the complexity and many facets that characterize the stories of women survivors of trafficking. Their experiences are different and are characterized by individual strategies of resistance to overcome, violence and exploitation.

When trafficking indicators appear in a woman's narrative, the Guidelines envisage the possibility for the Commission to request the woman's consent to consult and be supported by anti-trafficking organizations. Once such consent is granted, the decision of the CT on the case is suspended for four months in order to allow sufficient time for the anti-trafficking organization to study and report on the case. This report is merely informative for, but not binding on, the CT's decision. The suspension period is useful in those cases in which survivors, for a variety of reasons including fear of retribution, have not been able or willing to relate their stories. However, women who have already related their stories and have made plans for their lives may perceive the suspension as punishment, since such suspension forces them to postpone their plans and relegates them to a waiting limbo. The result is that women survivors of trafficking remain more than other migrants in these emergency centers which do not provide adequate wellbeing conditions and where women are exposed to re-victimization and hampered in both their seeking support and pursuing their life plans. This practice is in violation of international law and reinforces an outcome in which justice delayed is justice denied.

The lengthening of processing time of asylum requests is a major hindrance to the provision of support for survivors of trafficking. In this perspective, the requirement of subsequent interviews by the CT is applied too rigidly. For example, why should contact with an anti-trafficking organization and the consequent suspension time and follow-up interview/s be required when either the survivor took the initiative to present the case herself or when it was brought before the CT by an anti-trafficking organization in the first place? And why should this requirement persist even when the survivor decides to pursue a path different from

⁹ *L'identificazione delle vittime di tratta tra i richiedenti protezione internazionale e procedure di referral, Linee Guida per le commissioni territoriali per il riconoscimento della protezione internazionale*, available at <https://www.unhcr.it/wp-content/uploads/2017/09/Vittime-di-tratta-Linee-guida-compresso.pdf>.

international protection, namely that afforded by art. 18 of Law 286/98? The paradox becomes even more evident when a woman does not give her consent to be put in contact with an anti-trafficking organization and is, nonetheless, forced to appear several times before the CT, and accept a suspension time with the likely consequences of psychophysical harm.

An additional and very troubling issue is some CTs' unduly inquisitive approach into the conduct of women residing in migrant centers, particularly regarding whether they are still providing sexual services, or how they employ their personal time. This attitude both stems from and reinforces a culture of suspicion and stigmatization, as well as prejudices concerning women's supposed and uncritical compliance with somebody else's wishes and instructions. Those are the very same "characteristics" of perceived passivity and subservience that made them desirable "sexual objects" to begin with. These women, and consequently anti-trafficking organizations, are asked for information that is not relevant to their experience of trafficked victims, especially when they have escaped such condition, survived it, and are concentrating on strategies to rebuild their lives.

Moreover, the continuous updates on cases required by the CTs risk relegating anti-trafficking operators to a role of mere "controllers" and "enforcers" or to being perceived as such by trafficking survivors. This is a perception that effectively hampers or, at least complicates the construction of a meaningful relationship of trust between survivors and operators that is indispensable to account for the experience of trafficking, to overcome it, and mitigate its consequences.

We recognize that there is a difference between an asylum seeker as defined in international law and protection systems, and a woman who has survived trafficking. In Italy a refugee should be "safe" from the dangers from which she escaped. Conversely, a trafficking survivor is still exposed to the exploitation from which she has tried to escape, since the exploitation does not cease or is meant to be carried out in the countries of transit and destination.

Dangers of exploitation in Italy must be taken into serious consideration. However, if approaches that are not gender-oriented and do not include empowerment strategies are employed, re-traumatization looms large and entails disastrous consequences. These affect not only the individual survivors. They also bolster perceptions of women as powerless victims, incapable of agency and even in need to be saved from themselves.

A state of danger is to be assessed on the basis of the perception of women themselves. All too often there exists a gap regarding perceptions of danger by operators and the institutions involved and those of survivors. And all too often the latter's perceptions are not duly taken into account. Some survivors, for example, do not feel the need to be residing in protected structures. This should not relegate them into the "humanitarian protection" category, while other women who have chosen to live in protected structures and/or have pressed charges against traffickers are afforded stronger forms of international protection.

CTs seem to be overly concerned with the risk of granting forms of protection to women who will then continue to prostitute themselves. They dread that their decisions may facilitate traffickers. In fact, while traffickers have a pre-eminent interest in their victims' access to protection upon arrival and in forestalling repatriation, they have no interest in ensuring more stable forms of support and paths to regular status for trafficked women. It is indeed an "irregular" or "not-yet-defined" situation or a protracted limbo status that make victims more vulnerable to blackmail, exploitation and re-trafficking.

5. THE EVOLVING POLITICAL AND LEGISLATIVE CONTEXTS

The situation of victims of human trafficking in conditions of slavery, particularly women, in Italy has become even more precarious in the face of a changed political environment now dominated by the populist Movimento 5 Stelle and the ultra-rightist Lega whose public pronouncements have been marked by intolerance and xenophobia. One of the new government's priorities has been a reform ostensibly of the security sector which, however, carries dire consequences for irregular migrants in Italy. The first effect of this legislation has been the closure of Italian ports to asylum seekers and migrants which has resulted in a steep drop in arrivals. The abolition of humanitarian protection is also a provision that, although still largely untested, will soon deny basic protection to many asylum seekers in Italy, including victims of human trafficking.

On September 24, 2018, the Council of Ministers approved the so-called decree on migration which later became law 132/2018.¹⁰

As noted above, one of its most troubling provisions pertains to the abolition of humanitarian protection which has been replaced by three typologies of protection in recognition of "acts of particular civil value", or flight from "contingent and exceptional calamity", or to obtain medical care. Protection will be extended also to "special cases", including migrants who are entitled to protection under Article 18 of law 286/98, that is survivors of human trafficking, victims of domestic violence, and victims of labor exploitation. These typologies involve (renewable) residence permits spanning from 6 months to a year. In practice, this means that migrant people who do not fulfill these are left in a limbo that cuts them out of basic services.¹¹

¹⁰ *LEGGE 1 dicembre 2018, n. 132 Conversione in legge, con modificazioni, del decreto-legge 4 ottobre 2018, n. 113, recante disposizioni urgenti in materia di protezione internazionale e immigrazione, sicurezza pubblica, nonché misure per la funzionalità del Ministero dell'interno e l'organizzazione e il funzionamento dell'Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata. Delega al Governo in materia di riordino dei ruoli e delle carriere del personale delle Forze di polizia e delle Forze armate. (18G00161) (GU Serie Generale n.281 del 03-12-2018), <http://www.gazzettaufficiale.it/eli/id/2018/12/03/18G00161/sg>.*

¹¹ For an analysis of these cases, see ASGI. "Le principali novità introdotte sui permessi di soggiorno dal decreto legge 113/18, scheda per operatori."

Further, the new law restricts access to the residential and support system known as SPRAR, that is the Protection System for Asylum Seekers and Refugees. The SPRAR is made up of the network of local authorities which have access to the National Fund for Asylum Policies and Services for the implementation of integrated reception projects. The SPRARs are secondary reception centers that, in collaboration with civil society, today host 23,000 refugees and asylum seekers in 400 municipalities. As opposed to primary reception centers—an unwieldy number of privately managed large facilities notoriously ripe with abuse--the SPRARs have offered dignified lodging and a path of integration.

However, now the new security law will restrict access to the SPRAR only to those who have already obtained international protection and unaccompanied minors leaving out applicants whose cases are still pending. Evacuation of asylum seekers from SPRARs and other refugee facilities has already started. The case of the SPRAR in Riace, whose guests have been forced to leave the facilities where they had started rebuilding their lives, has captured national and international attention and outrage.

A vast variety of civil society organizations and faith-based institutions have pointed out how the effects of the new law will push further underground asylum seekers, prolong administrative detention, benefit traffickers, and further exacerbate social tensions.¹²

Available data already give an idea of the scale of violations that the new law will trigger, because in 2017 a majority of asylum seekers were granted humanitarian protection. According to ISMU (Foundation for Initiatives and Studies on Multi-ethnicity), out of the 81 thousand requests for asylum examined in Italy in 2017, 16.8% yielded international protection: 8.4% of asylum seekers have obtained refugee status, 8.4% received subsidiary protection, while 24.7% of asylum seekers qualified for humanitarian protection. The number of women's applicants has quadrupled from 2014 to 2017, as it increased from about 5,000 to more than 21,000.

The vast majority of women trafficked for the purpose of sexual exploitation apply for international protection as asylum seekers in Italy. The vast majority of them are Nigerian and have suffered violence, including rape and torture, in the course of their migratory trajectory. As noted above, they are instructed by the traffickers to claim asylum in order to avoid or forestall their expulsion, thereby making it more difficult for them to be identified as victims of trafficking.

Women are forced to narrate fabricated stories which are often very similar to one another and are based on traffickers' knowledge of the asylum system in Italy and what, in their view, could facilitate favorable results. Only when anti-trafficking operators gather a true rendition of the facts on the part of the trafficking survivors can a second audience with the Commissions be obtained.

¹² https://www.unhcr.it/news/unhcr-richiama-lattenzione-sullimpatto-provvedimenti-sulla-protezione-internazionale-oggi-discussione-al-senato.html?fbclid=IwAR30_0oTCpapMEPMutXP093Z48XmbZ90uocEhnHcMX9R-YJINY4xVZszavg.

Humanitarian protection has been used to provide a residence permit for numerous women victims of trafficking. Indeed, many of the migrants who have arrived in Italy in recent years have received humanitarian protection, rather than refugee status or subsidiary protection. It remains unclear what would happen to those migrants, asylum seekers and victims of trafficking who would not be able to resort to humanitarian protection and thus would be prevented from obtaining access to basic services.

In many cases even particularly vulnerable people ended up on the streets. The situation is very uneven on the Italian territory and depends on the guidelines of the various prefects who in some cases have issued administrative acts to ask first reception centers to release the beneficiaries of humanitarian protection.

The new law has also triggered a reaction from some mayors of Italian cities such as Palermo and Naples who have refused to apply it on the territory they administer. These mayors have noted that the law is in violation both of international standards and the Italian Constitution.

Significantly, the connection between violence against women and human trafficking was underscored on November 24, 2018 by the women's movement Non Una di Meno that took to the streets also denouncing the new security law.