



National Guarantor
for the rights of persons detained or deprived of liberty

**Report on the monitoring carried out on the Joint Return Operation (JRO) of Nigerian nationals organised
by Italy and co-ordinated by Frontex
(19 January 2018)**

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A. Introduction

In pursuance of art.8 paragraph 6 of Directive 2008/115/EC of the European Parliament and of the Council, the National Guarantor for the rights of persons detained or deprived of personal liberty (National Guarantor) - acting as independent monitoring body of forced returns - monitored the JRO of Nigerian nationals from Rome to Lagos (Nigeria) on 18 and 19 January 2018.

The operation was coordinated by Frontex with Italy as Organising Member State and Belgium and Switzerland as Participating Member States, the latter State present with its own monitor.

Also the Guarantor of the Region of Apulia monitored a specific phase of the mentioned operation with two collaborators, given the adhesion to the National Guarantor's project "Development of a forced-return monitoring system," funded by the Asylum, Migration and Integration Fund (2014-2020).¹

¹ The project aims at strengthening the protection of human rights during forced-return operations, cooperating with the relevant institutions in order to guarantee an effective monitoring system and full compliance with the principles laid down in both the European and international law. In particular, the purpose of the project is to train a team of monitors and relevant staff, constituted by the National Guarantor and by some local Guarantors involved in the project, on how to professionally monitor JRO.



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B. Context of the monitoring and the monitors' participation

The National Guarantor was informed, through a communication filed on 10 January 2018, of a chartered joint flight from Rome to Lagos for the removal of about 50 Nigerian nationals.

In particular, the JRO concerned:

- 38 Nigerian nationals expelled from Italy, of whom 36 men from IRCs respectively in Turin (no. 10 men), Bari (no. 24 men), Brindisi (no. 2 men) and 2 women from the IRC in Rome,
- 5 Nigerian nationals expelled from Belgium, of whom 3 men and 2 women,
- 1 male Nigerian nationals expelled from Switzerland.

The flight route was as follows: Turin - Rome Fiumicino, Rome Fiumicino - Lagos, Lagos – Rome Fiumicino. The aircraft departed from Turin at 9.30 a.m. on 19 January and returned to Rome Fiumicino around 01.40 a.m. on 20 January.

The Nigerian detainees from Bari and Brindisi arrived at Rome Fiumicino Airport by bus.

The operation was monitored by E. A. and G. L. (from the National Guarantor's Office) who, with the exception of the pre-return phase at the IRC in Bari, participated in all the phases of the operation, and by G. G. and G. M. (from the National Guarantor's Office) who monitored the pre-return and pre-departure phases carried out at the IRC in Rome.

The Guarantor of the Region of Puglia, Piero Rossi, together with two collaborators, A. P. and E.d.R., monitored the pre-return phase carried out at the IRC in Bari on 18 January 2018.

Specifically, the National Guarantor's delegations (hereafter, 'monitors') examined:

- the pre-return phase at the IRC in Bari (including written reports),
- the pre-return/pre-departure phases at the IRC in Rome (including the written reports about the women to be returned),
- the flight from Rome to Lagos and the handover procedure to the Nigerian authorities in Lagos (airport).

C. Cooperation between the National Guarantor's delegation and the Ministry of Interior

The cooperation with the Central Directorate for Immigration and the Border Police Officials was excellent. During the whole JRO, the monitors had access to all places involved in the procedure and to all documents requested.

At the end of the operation, the monitors participated in a quick debriefing coordinated by the Italian escort leaders, with the participation of the Belgian and Swiss delegation leaders, of an official representing Frontex and the Swiss monitor.



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D. Italian staff deployed in the joint forced-return flight

The Italian staff deployed on board was composed of 115 escorts, two doctors and two nurses.

On board, all people involved in the JRO were not armed nor wearing a uniform. However, they all had a vest indicating the different roles/tasks (police, blue; escort leader, light blue; backup team, yellow; boarding team, green; medical personnel, red) making them distinguishable although not identifiable (their names or personal identification number were not indicated).²

The monitors had a green vest, printed NPM Monitor, as well as their personal badge.

No interpreters or cultural mediators were present. To this regard, it is important to restate what has been indicated in many previous reports concerning the need to always guarantee the possibility to engage with the returnees in a language they understand. Indeed, bridging language gaps should be considered not only the necessary condition to effectively protect the returnees' rights but also fundamental to perform the essential verbal de-escalation techniques, useful to manage tensions and avoid the use of force and of means of restraint.

Therefore, the National Guarantor recommends

- 1. that interpreters or other persons having suitable language skills shall be present during all JRO phases so to address returnees in a language they can understand, in line with what provided for in the Annex to Decision No. 2004/573/EC of the Council of 29 April 2004 3.3(e).**

E. The monitoring activity at the IRC in Bari

This section provides details concerning the monitoring and report activities conducted by the Guarantor of the Region of Apulia.

According to what reported by the National Guarantor, at around 5:00 p.m. on 18 January the Guarantor of the Region of Puglia, Piero Rossi, and two collaborators entered the IRC in Bari to analyse the reports of the 25 returnees on the list ready to be removed from the Centre.

Had the relevant papers read, the monitors met with the personnel of the Immigration Office of the police headquarters in Bari been seconded at the IRC. They mainly discussed the juridical position of some returnees who were still pending decisions. On the basis of the monitors' remarks, the Head of the

² Nevertheless, it is important to highlight that in accordance with paragraph 4 of the commentary to the *Guideline 18 – Use of escort* of the "Twenty Guidelines on Forced Return", adopted by the Committee of the Ministers of the Council of Europe in 2005, "the members of the escort could present themselves by name or they could have their name or a number indicated on a badge". Such a guarantee currently assumes even more importance in the light of art. 72 of EU Regulation 2016/1624 of 14 September 2016, which introduced a procedure for lodging complaints (also) with regard to returnees whose fundamental rights are violated during the JRO.



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Immigration Office of the Police HQs of Bari at the IRC decided to suspend the forced-return of two Nigerian citizens.

Had all documentation checked, the monitors left the Centre since the returnees had not been informed yet of their repatriation, and came back at night to monitor the pre-departure phase.

Around 9.00 p.m., the 24 Nigerian returnees were conducted outside the detention facility in groups of 4/5 and were asked to get ready to be transferred to Rome. No information was provided about their final destination.

In a number of previous Reports, the National Guarantor has expressed its considerations and provided many recommendations to the Authorities concerned on the need to modify such an operational procedure, as returnees are to be provided with prompt and complete information concerning the various phases of the operation.

To this regard, it is hereby necessary to recall that in ECtHR³ judgements on the non-arbitrary aspect of detention, particular attention is paid to the Authorities' good faith in carrying out the measure that is the absence of bad faith or deceitful elements in the Authorities' conduct - regardless of the detention compliance with national laws. In other words, for detention to be non-arbitrary, it shall always be carried out in good faith namely with regard to fairness and transparency, though formally compliant with law.

That said, the National Guarantor, while **renewing its recommendations** already written in previous reports, recommends that JRO leaders shall give instructions to their staff so to:

- 2. have returnees provided with clear and exhaustive information throughout the whole operation in compliance with the principles of fairness and good faith, which the Authorities shall always take for reference in carrying out a liberty-restricting measure;**
- 3. have returnees informed concerning the date of their removal so that they may get ready in time for departure, gather their personal belongings, inform family members or in any case persons they trust and/or their legal adviser, thus be informed on any update to their legal situation;**
- 4. have returnees informed, at the latest immediately before the starting of the operation, on the different phases of the operation, including any stops, waiting time at possible layovers, the place and approximate time of arrival in the country of origin.**

According to what further reported to the monitor, the pre-departure phase – consisting in giving back to the returnees their personal belongings collected at arrival and in the security checks – lasted more than four hours due to the high number of returnees and several organisational issues.

In this case, the security checks were conducted in full respect of the returnees' confidentiality and dignity. They proved no positive outcome.

³ In particular, see *Saadi v. United Kingdom*, Grand Chamber, decision of 29 January 2008, application No.13229/03.



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The returnees' personal belongings were put in plastic bags (of the type generally used for waste), labelled with a hand-written piece of paper attached with some tape.

Moreover, the Nigerian returnees were not given any receipt relating to their belongings entrusted to the escort. As highlighted in detail below, such circumstance caused particular anxiety in several foreign nationals, leading to some tension between a returnee and the escort.

Another critical aspect the monitor detected was relevant to the packed meal, which was not delivered to the returnees at dinner (on 18 January) due to organisational problems. Therefore, the returnees had their meal right before leaving the Centre and remained without any food throughout the long trip (about 7 hours). Equally, the obligatory food shortage continued once arrived at the IRC in Rome (shortly after 9.00 a.m. on 19 January) where they were not served breakfast. They consumed their first meal around 2.00 p.m. when they had their lunch served on the flight directed to Nigeria. This critical incident caused serious discomfort in the returnees. In fact, some expressed their basic need to the monitor shortly after the take-off, and several of them found relief owing to the initiative of a few from the escort who offered them something to drink and/or to eat.

In the light of the above, **the National Guarantor recommends the immigration service of the Central Directorate for Immigration and the Border Police:**

5. **to organise a co-ordinated system among all actors involved in JRO ensuring a regular supply of food and beverages to the returnees throughout the whole operation.**

The bus left Bari at around 2.00 a.m. and arrived at the IRC Ponte Galeria in Rome at around 9.20 a.m., where the returnees were handed over to the escorts in charge of transferring them to Nigeria.

F. The monitoring activity at the IRC in Rome

On the day of the operation, the monitor entered the IRC in Rome at around 8.00 a.m. to check procedures prior to the departure for Fiumicino Airport (which happened at around 11.30 a.m.).

At the Centre in Rome, the monitoring was carried out in particular by examining the security checks conducted on the Nigerian detainees arrived during the night from the IRCs in Bari and Brindisi, by analysing all documentation of the female Nigerian detainees at the IRC Ponte Galeria in Rome, and by following all procedures prior to departure.

F.1 Operations relating to the returnees held in the IRCs in Brindisi and Bari

The returnees held at the Centres of Brindisi (2) and Bari (24) were transferred to Rome with two buses escorted by joint forces.



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At the Centre in Rome, the returnees were handed over to the international escorts that, as usual, carried out all preliminary security checks consisting of both a pat down search and their luggage inspection, with the aim to detect dangerous items capable of causing offence.

The operations were carried out respecting personal dignity without ever leaving the returnees completely naked.

Moreover, appreciation is expressed for equipping the room set up for checks with two rugs on which the returnees could stand.

After the security checks, at around 11.30 a.m., the Nigerian nationals were transferred to a bus and conducted to Rome Fiumicino Airport.

F.2 Operations relating to the returnees held at the IRC in Rome

a) Communication to the returnees about the JRO

Shortly before 9.30 a.m., the JRO started by gathering the returnees, who however had not been informed concerning their imminent removal and therefore psychologically unprepared. Some returnees received the unexpected communication while still in bed asleep.

One of the monitors was present when the JRO was communicated to the returnees, as she entered the accommodation compound together with the Director of the Centre, the cultural mediator and the Police officers.

The operation lasted more than one hour due to the difficulties encountered by the Managing Body staff in identifying the three female Nigerian detainees to be removed. In fact, they were identified by asking for information directly to other detainees. The fellow countrywomen's obvious opposition to refer where said detainees were in that moment, or the latter's opposition to confirm their identity for fearing repatriation or, even, their pretending not to be in the room by hiding under the bed, ended up in a very difficult identification of the persons to be removed as staff had to look for them in almost all the Centre's rooms and in the external area.

This operational modality and the fact that the list of those to be removed was not accompanied by photos led to a further mistake of identification noticed only after the collection of the returnees' personal belongings (the woman identified by mistake had already been conducted outside of the accommodation unit and subjected to security checks). In fact, the detainee realised that the personal belongings collected were not hers, but those of another fellow countrywoman. At that point, the police realised the mistake and took the erroneously identified detainee back to the housing unit. To this regard, it is superfluous to highlight the seriousness of such an error and related consequences such as the unnecessary emotional impact and stress produced on the Nigerian woman victim of the mistaken identity.



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b) The case of an asylum seeker

On the basis of the reports analysed by the monitor on the day of the operation, the youngest of the three female returnees, M. P., resulted to have applied for asylum and to have received, on 30 November 2017, the competent territorial Committee's notification concerning the rejection of her request (moreover, the resolution was translated into English only in the part referring to the decision⁴). The report analysed by the monitor did not mention any appeal against said negative decision. Taking into account the detainee's specific condition of vulnerability - her very young age and her origins, coming from a typical region characterised by trafficking (Benin city – in the State of Edo⁵) -, the monitor asked the person of reference of the Centre's Immigration Office to verify, also by consulting database, if the foreign national involved had actually renounced to lodge an appeal against the rejection to grant international protection. The person of reference of the Centre's Immigration Office explained that they highly encourage detainees to communicate promptly any lodging of appeals, stressing the fact that in the specific case Ms. M.P. did not result to be claimant.

Ms. M. P. was in her room when she was informed about her removal. When she was asked to gather her personal belongings in view of the departure, she started to get ready. Then she addressed the monitor that had accompanied the operators and the police officers during the operation, and speaking in English she said that she had not been informed about the removal, not even by her lawyer who had lodged an appeal and was waiting for a response. Upon the monitor's request to view the appeal, Ms. M. P. pulled out from underneath her mattress the receipt of the appeal lodged pursuant to art. 35 of decree 25/2008 with the territorial Committee for Rome's recognition of international protection classified in the Registry of the District Civil Litigations Computerised System (SICID) on 19 December 2017 indicating the "status: awaiting the judge's appointment."

The monitor immediately referred the circumstance to the escort leader, who reasserted that there was no indication in the detainee's file that she had lodged an appeal. Moreover, the escort leader specified that the mentioned from the receipt it could not be understood whether Ms. M.P., in her appeal against the Committee's decision, had also requested the suspension of the effectiveness of the enforcement of the decision.

Nonetheless, the monitor invited to adopt the principle of caution highlighting that by executing the removal before or anyway without any news concerning the judicial Authority's resolution on the

⁴ To this regard, it is important to highlight that limiting the translation to the sole provision is not compliant with art. 10 paragraph 4 of decree. 25/2008, as established also by the Court of Cassation in its resolution No. 18493 of 8 September 2011. Based on said resolution, in order to exercise the right to lodge an appeal, it is not sufficient to understand only the decision. In fact, all foreign nationals shall be put in the condition also to understand the relevant reasons, and therefore decide whether to lodge an appeal against the decision.

⁵ See the Information document relating to countries of origin with reference to "Nigeria; Sex trafficking of women" https://www.ecoi.net/en/file/local/1305206/1226_1457689194_bz0415678itn.pdf



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suspension of the effectiveness of the enforcement of the rejection pursuant to art. 35-bis, paragraphs 3 and 4, Decree. No. 25 of 28 January 2008, there was the risk to violate the principle of *non refoulement*.

Shortly before leaving the Centre, the monitor was informed that Ms. M.P.'s removal had been suspended and that the Nigerian national had therefore been taken back to her accommodation.

Regardless of the outcome, it is necessary to prevent situations, which risk to remove asylum seekers whose rejection decision may still be pending, as the one identified in this specific case. Therefore, as highlighted by the CPT⁶ in the monitoring conducted from 16 to 18 December 2015 on a JRO from Italy to Nigeria, and mentioned in the relevant Report on the monitoring carried out on the pre-return phase at the IRC Ponte Galeria in Rome on 23 February 2017, the **National Guarantor recommends that persons in charge at the Police HQs and at the IRCs:**

6. **verify, also immediately before departure, any updates concerning the juridical position of asylum seekers to be repatriated, making sure that the rejection decision is truly definitive or that the competent judicial Authority has rejected the request to suspend its effects.**

G. Boarding procedure and flight from Rome to Lagos

During the boarding procedure, several episodes took place in which the returnees made opposition and tried to avoid boarding. In said cases, the escorts made use of force in a proportional manner. However, it is necessary to restate the total lack of activities aimed to prevent these kind of episodes, considering that the returnees were informed about the removal only immediately before departure. In fact, as mentioned, they had not received any preliminary and complete information when leaving the detention Centre.

The flight took off from Rome at 1.00 p.m.

As mentioned, shortly after the take-off some returnees, very likely also due to the fact that they saw some escorts eating their sandwiches (brought from home), communicated to the monitor that they had not eaten since the evening before and that they were hungry.

Therefore, the monitor reported the circumstance to the escort leader asking to hasten the provision of the meal envisaged during the flight. Beverages and food were indeed served between 1.30 p.m. and 2.15 p.m.

With regard to the flight, it is important to highlight that during the six-hour trip several episodes of sudden illness took place, requiring the intervention of the medical personnel. Talking with the latter, the doctor clarified that the cases involved headaches and/or stomach aches, supposedly due to digestion problems caused by to the excessive quickness in eating their meal.

⁶ The European Committee for the Prevention of Torture, with regard to a specific forced-return by air to Nigeria, highlighted the risk of violating art. 3 of ECHR, when removing a foreign national that still has the right to ask for the suspension of the effects of expulsion or when such request is still pending before the judicial Authority.



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However, it is impossible to verify with certainty the cause/effect correlation between the sudden illnesses occurred and how the meal was eaten, after so many hours without any food available. Therefore, it is necessary to stress how organisational issues - such as the one occurred in this circumstance concerning the provision of meals during the whole operation - have to be absolutely prevented and avoided.

Overall, the flight took place in a relaxed operational context without particular critical events requiring the use of force and/or means of restraint.

H. Phase of arrival

The flight landed in Lagos at around 6.40 p.m. CET time.

The handover procedure to the Nigerian Authorities took place smoothly.

At around 8.00 p.m. the aircraft took-off heading for Rome Fiumicino where it landed at 1.40 a.m. of 20 January 2018.

It is necessary to report a moment of tension upon arrival in Lagos when returnee O. E. asked for information concerning his belongings. Against the insistence of the Nigerian national asking for reassurance, the addressed escort had an outburst of rage insulting the returnee heavily and intimating him to stop asking for information. The tension was immediately reduced owing to the intervention of a teammate that calmly explained to the returnee that the luggage had been labelled, loaded on board and that it would have been given back to him once off the aircraft.

The National Guarantor deems such episodes unacceptable and that the respect of the returnees' dignity must always be guaranteed ensuring the utmost professionalism throughout the whole operation.

As already mentioned in previous reports, also in this operation the guarantees relating to the protection of personal belongings were inadequate: the returnees were not given any receipt when handing over their luggage to be loaded on board, and once arrived in Lagos the Italian escorts did not get off the aircraft to follow the delivery phase. Therefore, the returnees got off the plane without any document to prove the deposit of their luggage to the Nigerian authorities, receiving only verbal reassurances by the Italian police officers, who remained on board the aircraft.

The procedure followed by the Italian escorts according to which the returnees were not given a receipt for the luggage given to the Police and according to which they did not get off the plane once arrived in Lagos to follow the collection of luggage is inadequate with regard to the guarantees for the protection of the returnees' property. At the same time, it is source of particular stress and anxiety for the returnees that lose sight of their personal belongings without receiving any documental confirmation capable of assuring their rendering. Such operational modality is also in contrast with the Annex to Decision No. 2004/573/EC of the Council of 29 April 2004 5(c), according to which the authorities of the country carrying out the return are responsible, during the phase of arrival, both for the handover of the returnees to the state of return and for their luggage.



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Therefore, the **National Guarantor recommends:**

7. to provide the returnees with a receipt after the handover of their luggage to be loaded on board, as for all passengers taking a flight and who are guaranteed the right of protection of private property;
8. to follow and ease the delivery of the luggage loaded on board to the returnees by ensuring that one or more Italian escort leaders get off the aircraft in the phase of arrival.

I. Complaints mechanism as provided in art. 72, par. 2 of EU Regulation 2016/1624 of 14 September 2016

For this operation too, it is important to restate what highlighted by the National Guarantor in the Report on the monitoring carried out on the JRO of Nigerian nationals on 26 January 2017 with regard to the lack of information concerning the procedure for lodging complaints aimed to protect returnees as provided for by art. 72, par. 2 of EU Regulation 2016/1624 of 14 September 2016.

Moreover, according to the implementation plan laid down by Frontex for this operation, the standard form is supposed to be available in paper during the procedure in order to enable the lodging of complaints.

Upon the monitor's specific request for clarifications concerning the non-supply of the necessary means to access the procedure (information, forms, complaint collection box...), the Italian escort leaders complained stating that the Agency had not put the relevant material at disposal.

To such regard, it is hereby highlighted that Frontex has issued multilingual information fliers on the procedure for lodging complaints downloadable also at the following address <https://frontex.europa.eu/contact/lodge-a-complaint/>

That said, in order to ensure the full implementation of the European provision and guarantee the possibility for returnees to exercise their right to lodge a complaint, the **National Guarantor recommends:**

9. to establish operational protocols capable of enabling, also through the distribution of awareness-raising material drawn up by the European Agency, the systematic provision of information to foreign nationals subject to JRO with regard to the possibility to lodge a complaint with Frontex for violations of fundamental rights which they may suffer during removal;
10. to take all initiatives useful to foster the returnees' access to the procedure making the multilingual forms available to those interested.

In issuing this Report, the National Guarantor for the rights of persons detained or deprived of personal liberty reasserts that each monitoring intervention is an intrinsic element of collaboration with the Institutions. At the same time, the National Guarantor expresses its gratitude to the Ministry of Interior and, in particular, to the departmental offices involved in the operation reported herein, as well as to the escort leader and staff for their availability and cooperation during the monitoring.



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The Report contains several recommendations and requests for clarifications to which the National Guarantor expects the Authorities concerned to reply within thirty days. The Report will be made public on the Guarantor's website without indicating any names, after the thirty days indicated, together with the feedback arrived within such date.

Rome, 6 August 2018.

The President

Mauro Palma