Nigeria as a Safe Country of Origin?

On the Production and (Mis)Use of Country of Origin Information

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On May 7th 2024 Italy updated its list of safe countries of origin (SCO) for the second time after the introduction of the notion in the national legal system in 2019. Notably, the latest update retained the most contentious addition to the list from last year, Nigeria. Until then, only Cyprus considered Nigeria as generally safe. The legal issues underlying this designation illustrate how country of origin information (COI), largely provided to Member States by the European Union Agency for Asylum (EUAA), is (mis)used to produce policy-based evidence rather than evidence-based policies. Even though EUAA's expertise should in theory lead to fairer and more harmonized decisions on asylum matters, the case at issue shows why the converse is true. This is because knowledge produced by the Agency can be used by national administrations at their convenience: the Agency's opinions are neither binding nor is there a mechanism in place to oversee how the information provided is used by national authorities.

The Significance of Country of Origin Information

Country of origin information (COI) is crucial to safeguard the asylum seeker's fundamental rights, as it is necessary to examine an asylum seeker's credibility and the risk of refoulement. For example, if a third-country national claims to have been a victim of unpunished corruption in their country, COI allows authorities to verify the credibility of this statement and to assess the likelihood of persecution if the individual is returned to their country. However, COI is also increasingly used to designate ex ante some countries as generally safe, pursuant to Articles 36 and 37 of the Procedures Directive. These allow Member States to establish national lists of SCOs which create, in the words of the Court of Justice of the European Union (CJEU), "a special examination scheme based on a presumption of adequate protection in the country of origin, which can be rebutted by the applicant providing overriding reasons relating to their particular situation".

The designation of a country as safe has significant consequences for asylum seekers. While it does not relieve the administration from carrying out an individual risk assessment, the ECtHR found a high probability that the decision-maker rely on the SCO list without a thorough assessment. Asylum seekers coming from an alleged SCO also face additional procedural hurdles. First, the asylum procedure may be accelerated, which risks deteriorating the assessment's quality. Second, appealing the rejection of a claim for asylum in some Member States does not automatically suspend the decision. Instead, it merely grants the possibility to ask a national court for the suspension of the return. This exposes the asylum seeker to an increased risk of being returned before the finalization of the review of their case.

Designating a Country as Safe

To designate a country of origin as safe, article 37(3) of Procedures Directive mandates Member States to consult a range of sources, specifically mentioning information "by the EUAA, the UNHCR, the Council of Europe and other relevant international organizations". Recital 46 of the Procedure Directive also mandates the use of EUAA methodology for collecting information on third countries to be designated as safe. These provisions suggest that decisions to afford SCO status to a country should be based on standardized knowledge. However, the variety of sources could lead to fairer decisions if the sources are verified. Regretfully, none of the Member States have included

in their institutional structure an independent body to monitor the reliability of COI.

Even accurate COI is of little use if national authorities can pick and choose which sources to rely on or use the information selectively. Indeed, because the COI provided by the bodies mentioned in the Directive are used differently in different countries, national lists of SCO still differ widely today. In this respect, bodies tasked with drafting COI act like prompters in theatrical plays. The prompter suggests the lines to the actor from the darkness of the pit. The actor is dependent on the whispering of the line from the prompter, but during the performance, he will be the only one deciding which words to pronounce on stage.

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Since March 2023, Italy considers Nigeria a SCO. The COI produced by EUAA with regard to the safety of Nigeria is in stark contrast with this general presumption of safety: from the information collected by the Agency it is clear that some parts of the country are not safe because of terrorist attacks, widespread violence and the inadequate capacity of national security forces to deal with these phenomena.

The considerations that led the Italian authorities to include Nigeria in the SCO list were not made public, as this is not required by Italian law. Following a request by the Association of Legal Studies for Immigration (ASGI) to access the documents of the activity preceding the draft of the decree, the Italian Ministry of Foreign Affairs has disclosed the sheets containing the analysis of each of the countries mentioned in the decree. Yet some parts of the text were redacted, as the Ministry claimed that their publication "could cause a concrete prejudice to international relations." ASGI has since retrieved the unredacted documents through its own channels and has publicly shared them. It revealed that the Ministry had redacted the following part from the sheet on Nigeria previously shared with ASGI: "Although there are punitive rules against corrupt public officials, there is wide impunity and the protection mechanisms provided are not effective; moreover, those who refuse to pay suffer reprisals. For these reasons, complaints are discouraged and amount to only 3.6%".

The concept of SCO hinges on the premise that the third country is capable and willing of offering its citizens sufficient protection against – among others – abuses from public officials. Thus, Annex I of the Procedure Directive states that a country's suitability to be deemed safe implies the presence of an effective system of remedies against violations of the rights and freedoms laid down in the ECHR, specifically in relation to protection against persecution and inhumane treatment. Yet Nigeria's sheet documents a clear absence of entities capable of providing effective protection and effective remedies. The Italian authorities' decision to include Nigeria in the SCO list while only making public partially the COI on which this decision was taken, and that only after a request for access to information, should therefore strike us as worryingly flawed.

Notably, the information sheet retrieved mentions among its sources a 2018 report of the Agency for Asylum, which showed that many categories of people (women, LGBTQ people) in Nigeria lacked adequate protection. Even so, the decree did not provide for any exceptions to the presumption of safety (e.g. for some parts of the territory of Nigeria or for the categories mentioned in the report), a possibility allowed by Article 2-bis d.lgs. 25/2008. Instead, it labels Nigeria a safe country tout court. Referring to the Agency's report without taking up its critical aspect indicates a tendency to use the Agency's expert knowledge to validate a decision rather than to engage with it to ensure a sound basis for a SCO determination that is sufficiently sensitive to asylum-seeker's rights. The reports of the Agency are an authoritative source, but without a monitoring system on how the COI are used by national authorities, the appeal to its expertise is only functional to legitimate a political choice of the government. It is noticeable that the Nigerian community of Italy is the largest of the European Union, which makes it likely that more people from Nigeria will continue to seek asylum in Italy. The designation of Nigeria as SCO thus works as a way to erode the guarantees of prospect asylum applicants.

EUAA's Questionable Independence

This dynamic of invoking the EUAA's reports as a way to legitimate the designation of a country as safe is even more worrying if we look at the organizational and institutional structure of the Agency. Aside from the potential misuse or blatant ignorance of COI provided by EUAA, in fact, the questionable independence of the Agency from Member States' influence calls into question its ability to render SCO designations that are fair in the first place.

Article 12 of the 2022 EUAA Regulation tasks the Agency with providing information and analysis to Member States to designate SCOs. This role has been recently enhanced by the new Asylum Procedure Regulation, which puts forward SCO lists at the Union level with EUAA being designated to provide the Commission with information and analysis. The attribution of this primary role to EUAA raises some doubts. Article 1(3) of EUAA Regulation states that the Agency shall constitute a specialised centre "by virtue of the independence and scientific and technical quality of the assistance provided". However, the structure of EUAA is not undeniably independent. Its Management Board is almost entirely composed of representatives of Member States, with only one member being a representative of UNHCR with no right to vote (Art 40 EUAA Regulation). Moreover, the Agency and the Member States are obliged to cooperate and to exchange information for the performance of EUAA's tasks (Article 4 EUAA Regulation), including the processing of information underlying the safe country concept (Article 2 h EUAA Regulation).

Although the Agency is described as "a centre for gathering relevant, reliable, objective, accurate and up-to-date information on the third countries concerned in a transparent and impartial manner" (Recital 9 EUAA Regulation), EUAA is called to "support" the Member States. The concept of "support" can indicate several practical articulations of the interaction between support and supported, but certainly the knowledge produced by EUAA is intended to serve not two but multiple masters whose political priorities may not coincide. Instead of fostering the production of a more "objective" knowledge, this institutional structure of the Agency risks allowing national authorities to use EUAA's knowledge in a manner that aligns with their own preferences.

Conclusion

Italy's recent update to its list of safe countries which retains Nigeria highlights critical issues in the designation process of SCO and in the role played by EUAA in such practice. While the Asylum Procedure Regulation introduced a European list of SCO with the decisive role of EUAA, the lack of independence of the Agency raises concerns as to the potential gaps in the protection of asylum seekers and in the design of fair procedures to draft SCO lists.

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