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*Paola Degani, Paolo De Stefani*

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## **Addressing Migrant Women's Intersecting Vulnerabilities. Refugee Protection, Anti-trafficking and Anti-violence Referral Patterns in Italy**

*Paola Degani and Paolo De Stefani\**

### **Abstract**

The paper discusses the notion of intersectional discrimination in the context of the responses Italy has given to the challenge of protecting migrant women from persecutions, violence and severe exploitation. The essay moves from the acknowledgment that women's voices and experiences of subordination and oppression are often overlooked. Too often the different overlapping of discriminatory grounds are taken into account separately, without capturing the complexity of experiences they face with. It is argued that intersectionality is a realistic and effective way of incorporating women's human rights, not only in the analysis of their conditions, but also in the various policies and practices of governmental and nongovernmental agencies involved in such activities. The concept refers to the interrelation of the different forms of social stratification and identity such as race, gender, religion, age, class, ethnicity and disability, and to the fact that people belonging to multiple categories suffer a unique form of discrimination and face unique challenges. Intersectionality however requires a careful, flexible and context-specific proceduralisation of the respective practices, in particular through the referral from one agency to the others. Public and private actors active in Italy in the areas of asylum seeker/refugee protection, anti-trafficking/labour exploitation, and anti-violence have recently realized the crucial importance of a more substantive collaboration through 'intersectionality' in approaching situations of vulnerability and in crafting appropriate responses, while respecting the respective professional skills and mandates. The national legal framework, although theoretically committed to the imperative of protecting human rights and empowering victimised women, has not consistently supported such efforts. Legal fragmentation and a prevalent securitizing narrative, especially evident in the 2018-19 urgency legislation on asylum seekers, have posed serious obstacles to a consistent practice of cross-referral among social agencies. Margins of maneuver still exist however to elaborate alternative practices of inclusion.

**Keywords:** *human rights, women exploitation and male violence, migration, public policy*

\* University of Padova, Department of Political Science, Law and International Studies, and Human Rights Centre; e-mail: [paola.degani@unipd.it](mailto:paola.degani@unipd.it)

## Introduction

Women migrants are a particularly marginalised component in the mixed flows that since the early 2000s have interested Italy and Europe. The areas of provenance of such flows have been many: North Africa and the Middle East (namely Syria and Kurdish areas); Sub-Saharan, North-Western (Nigeria, Ivory Coast, Gambia...) and Eastern Africa (Somalia, Eritrea); Pakistan, Afghanistan, South-East Asia (Bangladesh in particular); the Western Balkans (especially Albania) and Ukraine; and, among the EU member states, Romania and Bulgaria.

The paper intends to illustrate some challenges that the reception structures designed to cope with the specific needs of such female population has had to face, in the light of both the changing characteristics of migrations and the mutating European and domestic legal frame.

In particular, we try to identify how the tripartite system dealing with persons seeking international protection, person victims of human trafficking, and women affected by gender-based violence, has used and implemented intersectional analysis and practices.

Even if the concept of intersectionality had its beginning in the analysis of the condition of Black American women's experience, it soon incorporated new identities and forms of discrimination and has been scholarly used to study women's condition, gender theory and equality policies (Crenshaw 1991; Hancock 2007; Walby 2012a, 2012b; Walby et al. 2014; Kantola and Nousiainen 2009; Verloo 2006).

The mixed flows<sup>1</sup> that have characterized irregular migration from Northern Africa and the Middle East, as well as from other parts of the world through the Mediterranean routes, towards Europe and namely Italy, have

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<sup>1</sup> 'Mixed movements' or 'mixed flows', were defined by the UNHCR since 2011 as: 'a movement in which a number of people are traveling together, generally in an irregular manner, using the same routes and means of transport, but for different reasons. People travelling as part of mixed movements have varying needs and profiles and may include, e.g., asylum-seekers, refugees, victims of trafficking, unaccompanied/separated children, and migrants in an irregular situation'. See (UNHCR 2016, Glossary). The terms 'mixed migrations' has been criticized as potentially jeopardizing the situation of asylum seekers (Devictor 2017, 50). The alternative expression has been coined of 'survival migrants' to refer to 'persons outside their country of origin because of an existential threat to which they have no access to a domestic remedy or resolution' (Betts 2010). Despite such limits, we nevertheless use the expression 'mixed migrations' and similar, as a relatively 'neutral' one and largely present in the academic and political discourse. As for the migrant/refugee dichotomy, while an exclusivist approach emphasizes the alleged diversity between the two statuses, an inclusive view seems to be more consistent with the acknowledged reality of mixed flows. Accordingly, in the present contribution, the expressions 'mixed flows', 'mixed migration flows' and 'refugees and other migrants' (Carling 2017) will be used interchangeably.

stimulated the attention of practitioners, scholars and decision makers also for ‘intersectionality’ in relation to the composition of migrants and to the procedures in identification and assistance processes.

Social workers, anti-trafficking agencies, immigration and asylum officers, humanitarian workers and law enforcement officials in Italy and in other EU Countries have gradually realized that to cope with the multifaceted needs of migrants, namely of irregular migrant women, involved in transborder flows, including as asylum seekers, a diversified and dynamic approach need be adopted.

An intersectionality lens has to be used regarding both migrant women and the multi-agency- multi-disciplinary reception system. ‘Mixed flows’ are a phenomenon that will characterize migrations also in the coming years, as a direct consequence of multiple factors, including of the shrinking of avenues for regular immigration in the EU (Degani 2017, UNODC 2018b). Irregular migrants’ flows are concentrated in some routes, the most profitable for traffickers and smugglers, but also the most dangerous for migrants and trafficked people. This trend is in some measure a consequence of such limitation in alternative legal pathways towards the EU area.

Operators of public and private agencies working with marginalized migrants, namely migrant women and girls, have increasingly acknowledged the need to adopt a more integrated *modus operandi* and join their efforts. In receiving or transit European states, reception structures strive to support the resilience of migrant women both at their arrival and in the following phases of reception and assistance, by combating discriminatory patterns, enhancing their human capital and, in most cases, preventing their victimization or re-victimization via sexual and gender-based violence and other severe forms of exploitation. The assumption in this paper is that intersectionality is key in operationalizing these joint struggles, especially as the legislation in European countries – the case at stake is Italy – tends to contrast an intersectional/multi-agency approach (that is, an approach based on the human rights of migrants), restoring a rigid typification of protection claims.

This paper presents reflections emerged from a literature review of scholarly works on mixed migration flows in Italy and Europe and on intersectionality as stemming from a feminist and human rights perspective, as well as data and observations made in a long practice of conversations and collaboration with structures that implement anti-trafficking and anti-violence policies in Italy. In particular, this paper takes stock of seminars and exchanges carried out in the framework of the project ‘Migrant Women at the Margin: Addressing Vulnerabilities in Intersectionality between

Violence and Exploitation/Mwm', funded by the Cariparo Foundation, Visiting Programme 2018.

Section 1 of the paper describes a possible narrative of the phenomenon of marginalised ('vulnerable') migrant women attempting to entry in Italy and entitled to be included in the domestic reception system, illustrating the need of adopting an intersectional lens. This is intended to characterise not only the way their socio-economic and socio-psychological condition is to be comprehended and analysed, but how public policies and a legal response ought to be framed and implemented.

Section 2 presents a short description of the operating system of receiving and accompanying the journey of 'vulnerable' migrant women in Italy. We notice that the conditions are present for deploying an intersectional mode of providing support and tackling the human rights of women involved in persecutions, trafficking, domestic and other forms of gender-based violence, despite the existence of institutional and political-cultural hindrances and rigidities. One of the main obstacles to the unfolding and mainstreaming of such approach is however the Italian legal frame. Since the 1990s, and particularly during and after the 'migrant crisis' of 2014-15, laws have been enacted following patchy and contradictory trajectory. Space still remains however to navigate the current legal and political landscape and establish practices of positive cross-referral that can effectively promote the rights of women at the margin.

## **1. Framing a Narrative on Migrant Women**

### **1.1. Mixed Migration**

Mixed flows are a complex phenomenon. The composition of migratory movements has changed deeply in the last two decades compared to previous post-World War II scenarios, due to specific economic and geopolitical factors. Since 2008, an economic and financial crisis has affected, and in some cases continues to affect, the EU countries of first arrival. This has contributed to make them less attractive to migrants and has largely transformed them (namely Italy) into transit states (Hermanin 2017). For the same reason, there has been a slight reduction in the number of third-country nationals entering the EU via regular pathways, and a parallel increase of irregular migrants.

The consequences on migrant flows of restricting the legal pathway to Europe, namely from Africa, are exemplified by the fact that between 2008 and 2017, first time permits for occupational reasons issued to African citizens by EU states decreased from 125,000 to 41,000 (65 percent) (Barslund et al. 2019,

1). A causal link between restrictive immigration procedures and a surge of irregular migration and asylum applications has not been empirically proved yet, namely because of the complex and fragmented nature of contemporary migration patterns and of many domestic labour markets (Triandafyllou et al. 2019). Nevertheless, a correlation pattern between the two trends has been clearly identified<sup>2</sup>, and receiving states tend to rely on such correlation when shaping their policies aimed at curbing irregular migration. It has maintained that providing legal access to Europe to skilled and less-skilled migrant workers, along with other systemic reforms, would reduce the number of irregular migrants (Barslund et al. 2019).

Moreover, it is quite obvious that the availability of legal paths to enter a country, compared to the use of unlawful avenues, is beneficial for the human rights of migrants, as it prevents smuggling, exploitation and abuse. In particular, restrictive visa and asylum policies have arguably induced a quantifiable process of *deflection into irregularity* of migrants. The intuitive correlation between tightened legislative and procedural requirements and an increase in the number of irregularly entered and overstaying migrants has also be measured. Czaika and Hobolth, for example, using data from 29 European countries, have estimated that a 10% increase in restrictive regulatory measures is likely to produce a 4% increase in irregular migrants (Czaika and Hobolth 2016).

Faced to a recrudescence of asymmetric conflicts in the Mediterranean basin and in the surrounding areas (Syria, Libya, the Sahel, the Horn of Africa, Middle East, Central Asia...) resulting in an increase of so-called 'forced' or 'irregular' migrants, the EU and the European states have adopted a strategy of externalization of the asylum policy. Under the umbrella of the Global Action on Migration and Mobility (GAMM), *ad-hoc* agreements have been concluded by the EU with some key-states – namely Turkey – supposed to control the flux of potential asylum seekers towards Europe (e.g. Schoenhuber 2018). Single states (in particular Spain, Italy and France) have also adopted a similar course of action, creating a web of readmission and cooperation agreements with governments of the south shores of the Mediterranean (Paoletti 2012; Wolman 2019). Moreover, an important segment of the EU-Africa cooperation agenda has been rearranged as a tool to prevent

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<sup>2</sup> 'EU politicians and policy makers have repeatedly declared they are 'at war' with the smugglers and that they intend to 'break the smugglers business model'. The evidence from our research suggests that smuggling is driven, rather than broken, by EU policy. The closure of borders seems likely to have significantly increased the demand for, and use of, smugglers who have become the only option for those unable to leave their countries or enter countries in which protection might potentially be available to them' (Crawley et al. 2016, 10).

irregular migration, combat smuggling and trafficking in human beings, and eventually reduce the number of potential asylum seekers reaching the coasts of European states (Crawley and Blitz 2019; Oette and Babiker 2017). ‘Non-cooperation’ with European states in combating irregular (but the term used is mostly ‘illegal’ or even ‘clandestine’) migration may cause a restriction of regular entry permits for nationals of a given state migrating for work purposes.<sup>3</sup> In all cases though, measures combating irregular immigration have been implemented with limited attention to human rights considerations (Crépeau 2013). All in all, a strategy aimed at tackling the phenomenon of forced migration focused on delegating to third states, including states of departure, the responsibility of handling applications for international protection, and on promoting long-term poverty reduction policies, can hardly be described as responding to present-day human rights claims (Wolman 2019, 51-52).

After the hit of the so-called migration crisis of 2014-16, the post-2016 scenario of migrations to the European space through the Central Mediterranean route, has witnessed a huge drop in arrivals. Indeed, arrivals in Italy dropped from 181,436 in 2016 to 119,369 in 2017; plunged to 23,370 (minus 80 percent) in 2018 and were 11,471 in 2019 (Italian Ministry of Interior 2020). The dramatic downsizing of flows and partial reconfiguration of entry routes has not however radically changed the scenario with regard to the mixed character of such fluxes. Indeed, a major concern in recent years is that the reduced numbers of incoming irregular migrants, far from being the consequence of a rational choice made by prospective migrants *vis-à-vis* the tougher attitude of European governments on irregular migrants, may be correlated to their systematic detention and abuse in transit countries (namely in Libya) and unsafe maritime routes to Europe through the Mediterranean.<sup>4</sup>

A consequence of these combined factors has been the increased actual and perceived ‘vulnerability’ of refugees and other migrants moving towards and within the EU. (Chuang 2014) In this context, a special space as ‘vulnerable

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<sup>3</sup> Art. 21 of the Italian migration law, as amended in 2002, provides, for example, that ‘in determining the quotas [of migrant workers], the [annual quota determination government] decree foresees numerical restrictions to the entry of workers from states that do not adequately collaborate in combating clandestine immigration or in the readmission of their own nationals who have received an order of repatriation’.

<sup>4</sup> ‘The Central Mediterranean is considered to be the deadliest migration route in the world, with more than 14,500 deaths recorded in this area since 2014. During the first seven months of 2017, 2,224 migrant fatalities were recorded by IOM in the Central Mediterranean. During 2017, 1 in 36 migrants attempting to cross the Central Mediterranean route perished. This is a significant increase compared to 2016 when 1 in 88 were reported missing or dead’ (IOM 2017a). A simple calculation based on the same IOM data (IOM 2020) shows that in 2019 the ratio was roughly of 1 in 65.

people' *par excellence* is reserved to women and children. Unsafe entry paths increasingly put them at risk of becoming victims of trafficking in human beings and of abuse, before, during and after the journey.

## 1.2. Migrant Women

Over the past decades, women have represented a significant portion of migration fluxes towards Europe. At January 1<sup>st</sup> 2018, according to Eurostat, the female share of foreigners living in European countries accounted for 49.9 percent of the total number (Eurostat 2019a), while women received in the 28 EU countries and seeking international protection were the 36 percent of the total of about 650,000: a percentage that increased by 8 percent since 2015 (Eurostat 2019b). As regards persons trafficked for purpose of severe exploitation, adult women and minor females are respectively 70 and 80 percent of all victims in Europe (West and South, and Central-Eastern-South) (UNODC 2018 a).

A separate category of vulnerable migrants and persons at risk of trafficking in the EU area is composed by nationals of Eastern EU member states, who can easily cross internal EU borders. Most of them are 'forced' to leave their country by structural determinants in the labour market and because of the gap between the increasing cost of living and stagnant average salaries.

In the case of Eastern EU migrants, the female component in the flows is particularly relevant. This is due to a complex overlapping of specific gender and family dynamics and labour market forces and processes. Gender has in any case a fundamental role in influencing individual responses to the structural determinants. For example, since the 1990s, following the collapse of the socialist system, Romanian women (after the Albanians' first flows), migrated massively towards Western Europe countries, namely Italy. Some women, involved in caring and domestic work became the principal household breadwinners, and this has hugely impacted on traditional gender roles. In any case, however, a gender-based analysis allows to identify the different trajectories of male and female migrants, the 'voluntary' or 'forced' nature of their decision to migrate, and the returnees' prospects of social re-integration. (Croitoru 2018)

Structural determinants boosting people to leave their own country and to settle abroad for an undetermined time are especially cogent in the case of refugees, leading towards European states from non-EU countries to escape persecutions or conflicts. The reasons that prompt them to migrate however are not essentially different, in many cases, from those that compel other migrants to take the same routes towards the same destinations and using the same smuggling service providers. Moreover, the predicament and

risks faced by refugee and migrant flows from non-EU countries are not fundamentally distinguishable from those characterizing migrations from Eastern EU countries towards the Central and Western Europe's states.

Indeed, the hypothesis we test in this paper is that similarities are particularly undeniable if one adopts the analytical standpoint of intersectionality in looking at the trajectories of migrant women. In particular, female asylum seekers, refugees and irregular migrants are exposed, in today's Europe, to specific forms of human rights violations. Vulnerability is the product of, on one hand reduced protection and welfare entitlements in receiving states and, on the other, the increased risk of getting entrapped in severe forms of exploitation all along the journey and in the destination country. Both trends – *de iure* and *de facto* restrictions in access to protection and a steady risk of falling into the cycle of social marginalisation and severe exploitation – justify the increasing relevance of some specialised regimes of fundamental rights protection, namely for the prevention and repression of trafficking in human beings and of gender-based violence against women and children. In other words, the human rights provisions of international instruments, like the Palermo Protocol on human trafficking (adopted in 2000, entered into force in 2003), the Council of Europe Convention against trafficking in human beings and protection of the victims thereof ('Warsaw Convention', 2005-2008), the Council of Europe Convention on domestic violence ('Istanbul Convention', 2011-2014), and the correlated international and national legal frames, potentially apply to any migrants – especially female migrants – irrespective of the particular group or type of migrants they are ascribed to.

### 1.3. Intersectionality, Vulnerability

An intersectionality prism (Crenshaw 1991; Makkonen 2002; Chow 2016; Yuval-Davis 2006; McCall 2008; Dill and Kohlman 2012; La Barbera 2019) is used in this paper to discuss the legal and public policies context in which the allocation of rights and of protection facilities to marginalized migrant women is operationalized in Italy.

Intersectionality is here understood in line with the a consolidated interpretative practice of the UN human rights Special Procedures and Treaty Bodies. To illustrate the intersectional approach of the UN, the following excerpt from the General Recommendation No. 28 of the Committee on the elimination of discrimination against women (CEDAW) can be quoted:

'Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2 [of the Convention against all forms of discrimination against women, general

clause of non-discrimination]. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties must legally recognize such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. They also need to adopt and pursue policies and programmes designed to eliminate such occurrences, including, where appropriate, temporary special measures in accordance with article 4, paragraph 1, of the Convention and general recommendation No. 25' (CEDAW 2010).

Despite the wording of the text just cited, and the corresponding application of the notion of intersectionality followed by the Treaty Bodies, it has to be maintained that intersecting discriminations are not simply multiple or compounded discriminations. A more consistent appraisal of the notion emphasizes the *inter-categorical* and *intra-categorical* dimensions of the concept (Chow 2016, 460-2). In other terms, individuals are at the crossroad of multiple social relations and therefore exposed to multiple and compounded discriminations based on categorical determinations; but they also perceive and express their subjectivity and identity along a variety of narratives and discourses that reconfigure those social categories according to a highly dynamic and context-specific trajectory.

The rigid characterization of social and subjective identities as articulated around gender, race, age, colour, nationality, etc, or of a combination thereof (the object of multiple and compounded discriminations) fails to catch the more complex and nuanced process of intersectional identity and therefore of intersectional discrimination.

An intersectional analysis shall indeed incorporate the subjectivity, identity and agency of the concrete individual affected by (potentially) endangering social patterns, with the result that the impact of discriminatory practices based on race, ethnicity, etc. on different individuals in different contexts may hugely differ. Depending on such subjective and situational re-configurations, discriminatory practices may expose a person to heightened risks, but also be lived and experienced as non-discriminatory at all. For example, discriminations affecting female members of an ethnic minority may have cumulative negative effects on women and girls, because of the multiple and compounded impact on ethnicity and gender/sex; but if women in a community deliberately 'use' their gender subordination and 'sacrifice' their entitlements to support the struggle of their ethnic group, sexual

oppression and even violence suffered from the ethnic majority may result into a powerful strategic tool to boost the strife-torn minority and achieve an advantage for the ethnic group they belong to. Intersectionality therefore identifies a dynamic and holistic terrain where to locate discriminations and differences.

Intersectionality requires a fine-tuned analysis of the situations so as to accommodate the needs, expectations, rights and agency of any individuals, especially of the most marginalized ones, as they are the most likely to be encompassed into depersonalized abstract typification, dictated by bureaucracy and domination. Intersectionality may ultimately be intended as articulating the claim of any human being for unique personhood: a call to an 'apophatic' understanding of human diversity.

Intersectionality is therefore elaborated in this paper as a theoretical and methodological tool that anti-trafficking, anti-violence and refugee reception agencies in Italy increasingly use in order to respond to the needs and claims for rights and justice of women that enter the Italian territory in mixed flows and live situations of overall marginalization and vulnerability because of the legal and regulatory framework present in Italy and the EU.

'Vulnerability' is used here as a categorical tag the precedes the application of the intersectionality lens. As we will see, what is considered in legal texts and guidelines as a 'vulnerable individual' may turn out to be a resilient and skilled agent, who needs be provided with autonomy and freedom, rather than just protection and shelter. What makes the difference is indeed the concrete situation in which a given person is actually immersed, that is, her or his 'position of vulnerability'. Such 'position' influences more or less compellingly his or her choices. Rightly, Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims (*Trafficking Directive* 2011), points out in Article 2.2 that '[a] position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.'<sup>5</sup> This clarification, on one hand rejects any essentialist interpretation of vulnerability as inevitably associated to some category of persons, namely women. On the other, it also separates the situation of vulnerability from those, closer to notions of necessity or duress, that exclude any agency of the victim of a coercive act of trafficking, or any ability to understand and/or pursue his or her own best interest. This being said, however, gender is crucial in contextualising vulnerability. Indeed, any situation of vulnerability is compounded by gendered dynamics,

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<sup>5</sup> Indeed, this language reproduces an interpretative note to the Palermo Protocol, included in the *Travaux Préparatoires* of the United Nations conference (2006, 347).

that influence power relations, ethnic and race segmentation, economic dependency, etc.

Intersectionality has also another characteristic, that turns out to be particularly relevant in the analysis of the normative discourse and of public policies addressing migration. Crenshaw (1991) accurately distinguishes between *structural* and *political* intersectionality, stressing that the latter emerges as intersecting groups (for example, in our case, women and migrants) are the target of legislative and policy patterns that pursue conflicting agendas (for example, tough measures against irregular migration, and women-friendly legislation on sexual offences). A failure to acknowledge and tackle this actual or potential discrepancy may have as an outcome a generalised mismatch, endangering the whole spectrum of measures supposedly governing the issue.

## 2. Navigating the Italian Case

### 2.1. Three Entangled Patterns

In Italy, three legal and public policy patterns have been set up to deal with migration and gender (most accurately: irregular migration and women). In the next pages we will summarise some relevant features of the national system for identification, reception and social inclusion of women seeking international protection, persons victim of trafficking for sexual or other severe exploitation purposes, and of women affected by intimate partner violence, domestic violence and other forms of gender-based violence. In so doing we will highlight the links and overlapping between such forms of referral. In the following paragraphs the focus is on adult women, and not on minors. The situation of girls – either travelling with parents or adult guardians or unaccompanied – is regulated by an *ad hoc* legislation. In the domain of unaccompanied minors, in particular, a comprehensive act was passed in 2017. The specificity of the minors' position would require a separate analysis that cannot be undertaken in this paper.

### 2.2 The Refugee Protection Path

First of all, it is worth mentioning the reception system of migrants claiming international protection (an overview and updates in Giovannetti 2019; Hein 2010; Schiavone 2011). Reception of migrants seeking international protection is not regulated by an *ad hoc* instrument (despite the fact that Article 10.3 of the Italian Constitution seems to require so), but by the Consolidated Act on immigration (a legislative decree enacted in 1998 and subsequently amended

very often) (*Italian Immigration Act 1998*). The Italian legislation in the field of asylum seekers' status recognition and reception largely incorporates the EU provisions adopted on various waves since the 1990s, in the form of directives (and in some cases, namely in the area of secondary movements, through regulations), and constituting the Common European Asylum System - CEAS. The latter though, is to be inscribed within the larger design of the European GAMM and of the EU Agenda on Migration, (European Commission 2019 2015), as well as in the framework of the Italian policies on migration. In other words, refugee policies are a subset of the migration (more precisely: immigration) policies, not a separate, strictly humanitarian issue. Political, geopolitical, economic, security and many other interests may therefore influence state policies in this regard, besides humanitarian and human rights concerns.

Since the dramatic surge in asylum applications following the 'Arab Springs' of 2010-11 and the so-called 'refugee crisis' of 2014-16, (Carrera et al. 2015), the national asylum seekers' reception system has faced several stresses and undergone severe transformations. (See, for an updated reconstruction, Giovannetti 2019) In 2018, the 1<sup>st</sup> Conte government (in so somehow preceded by the Gentiloni cabinet in 2017) enacted a reform that has harshly impacted over the pre-existing normative framework on the reception of migrants seeking international protection – in itself a work in progress, as a comprehensive reform adopted in 2015 (*DL 142/2015, Reception Law 2015*) was still far from being fully implemented.

The Italian refugee system, until the reform of 2018 – on which we shall return in a following section –, was articulated around a judicially supervised status determination procedure and a network of decentralised reception structures, from 'hot-spots' (centres of first aid and reception - CPSA) to first-line and second-line hosting structures, the latter tasked to promote social integration and accessible for both asylum seekers (in the wake of the completion of the status determination procedure) and protection status holders. Applicants whose claim for international protection was rejected were given an order to leave the country, and in some cases interned in expulsion centres pending the repatriation procedures. The overall system has underperformed. Delays in the status determination procedure and the backlog of Commissions and Courts<sup>6</sup>, along with the mismanagement of

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<sup>6</sup> In 2016, 2017 and 2018, when applicants for international protection had been respectively 122,960, 128,850, and 59,950, final decisions were respectively 9,770, 12,590, and 42,970; in the same years, rejected applications were 5,000, 9,255, and 25,755. (Eurostat 2019c) The big leap forward of 2018 was likely due to a procedural reform introduced by the Gentiloni government (DL 13,2017). The law, among other things, established in the territorial tribunals a specialised chamber to deal with the applications against the status determinations issued

some reception centres and recurrent ‘migratory emergencies’, prompting the incumbent government to enact extraordinary measures, sometimes disruptive of the overall design, were the main causes of disfunctions. The ‘Dublin system’, meant to avoid ‘asylum shopping’ practices and the secondary movements of foreigners in Europe, as ultimately articulated in the *Dublin regulation III* (2013), had a particularly troubling effect on a first-access country like Italy. In fact, it has encouraged a high number of migrants to avoid identification by the Italian authorities and to travel undocumented across the peninsula heading the north European countries.

According to the normative reception model, identified migrants receive a temporary permit to stay and, in case of successful application for international protection, are awarded a residence permit for refugee status, subsidiary protection or (until October 2018) ‘humanitarian protection’. The latter qualification was attributed based on an open-ended set of legitimate grounds. Second-line reception centres were ideally tasked to support asylum seekers and protection status holders, namely those belonging to the category of ‘vulnerable people’ (families with infants, victims of torture, unaccompanied minors, pregnant women, persons with disabilities, etc.), in their whole integration path. In fact, the unforeseen surge of arrivals and an unfavourable political environment have undermined the implementation of such model of reception and social inclusion. For a large majority of asylum seekers and refugees, the only available places were in first-line open reception centres, or in extraordinary structures, where no integration programmes were offered. Eventually, informal urban settlements and ‘camps’ near large agricultural or industrial plants have been home to many refugees and other migrants<sup>7</sup>.

Female applicants for international protection were a relatively limited share of the total, compared to the EU comprehensive percentage. In 2018, for example, female applicants in Italy were 14,270 (first time applicants: 13,340), that is roughly 24 percent of the total of almost 60,000 applicants

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by the non-judicial Territorial Commissions for refugee status determination, and cancelled the right to appeal against the specialized chamber’s decisions, only allowing for a strict legitimacy recourse at the court of Cassation. The Minniti law and other initiatives aimed at reducing the migrants’ ‘pressure’ on Italy, especially the flux of irregular migrants from Libya; such measures were complemented by further political and normative measures adopted by the Giuseppe Conte 1<sup>st</sup> cabinet (June 2018 - September 2019), largely inspired by the Minister of interior, Senator Matteo Salvini.

<sup>7</sup> In Southern Italy regions, in 2018, 58 to 63,000 seasonal agricultural workers moved from one plant to another in precarious conditions; of them, from 12,500 to 17,000 lived in irregular camps. In Rome, thousands of asylum seekers and refugees, no longer entitled to hospitality in reception centres and unable to find a suitable house (or evicted from previously occupied houses), have been living in informal shelter or squat in abandoned buildings (Cascio and Piro, 2018; IDOS, 2019, 294, 403).

(women were just 16 percent in 2017, when the applications reached the pick of 128, 850) (Eurostat 2019b).

The Territorial Commissions for the status determination, the state authorities responsible for the identification of irregular migrants, and the whole spectrum of hot-spot, first-line and secondary reception and integration structures for asylum seekers and refugees, have gradually matured a gender-specific awareness, especially after the UNCHR published its guidelines on gender-based persecution (UNHCHR 2019; UNHCR 2002). It is a well established assumption that situations that may justify awarding the refugee status include rape and other gender related abuse, including female genital mutilation, dowry-related violence, trafficking in human beings, domestic violence, etc. Gradually, Territorial Commissions and courts have consolidated a practice of awarding refugee status to women who have been victims of trafficking for sexual exploitation and who face, if returned to their country (Nigeria, most of the times) re-victimisation, grounded on their belonging to a particular social group, namely that of Nigerian women at risk of gender-based violence, including re-trafficking (see, among others, *Tribunale di Roma, Decreto*, 06.11.2019; *Tribunale di Venezia, Decreto*, 23.10.2019). The impact on such gender-sensitive good practices and jurisprudence of the recent legislative novelties remains to be tested.

### **2.3 The Anti-trafficking Path**

The second pattern that can apply to the situation of vulnerabilities affecting irregular migrant women in Italy is in the framework of the anti-trafficking dispositive. Human trafficking for the purpose of sexual exploitation is the most known form of trafficking and/or other severe forms of exploitation, but not necessarily the most serious or violent. In particular, human trafficking to Italy and Europe also pursue the labour exploitation of women in the agricultural or services sector, or in some manufacturing sectors (in particular the textile industry involving particularly Chinese women). At times, victims are exploited in criminal activities, begging, organ harvesting or for illegal international adoption and forced marriages.

The Italian anti-trafficking system was put in place before international standards were adopted in this domain. Indeed, Article 18 of the Italian Immigration Consolidated Act was used as a model for other European systems. This norm, in conjunction with Article 27 of the implementing regulation (Presidential Decree 394/99), entitles to a residence permit foreign citizens who are victims of violence or severe exploitation and who are endangered as a consequence of statements they made in the course of

court proceedings triggered against their exploiters, or as a consequence of their decision to escape exploitation. The person's situation of exploitation and danger must be verified in a criminal proceeding for an offence of facilitating or exploiting prostitution, or for other crimes for which compulsory arrest is envisaged according to the penal code, including, in particular, enslaving or holding in slavery, human trafficking and purchase or sale of slaves. Furthermore, situations of serious exploitation may also emerge during social interventions to protect victims. Thus, the residence permit provided for in Article 18 can be issued both following the victim's reporting on the crime for prosecution, and in cases where the victim cannot or does not want to contact and collaborate with the judiciary. In this sense, there is a 'double (judicial and social) track' system in place.

Italy has had programmes aiming at prevention, emergence, assistance and social integration of the victims since the 1990s. These are services aimed at ensuring assistance, protection and social reintegration measures to those who have experienced trafficking and/or serious exploitation, as well as to prevent the crime both in Italy and abroad. Implementing actions are carried out by public or private actors and financed by the Department for Equal Opportunities of the Presidency of the Council of Ministers (DPO). Since 2000, over 22,000 people have been directly assisted by the system (Degani 2019, 13). An *ad hoc* legislation for the contrast of trafficking in human beings was enacted in 2003 (*Italian Antitrafficking Act 2003*), namely introducing measures implementing the Palermo Protocol (*Trafficking Protocol 2000*), later reformed (*D.Lgs 24/2014 Antitrafficking reform Act 2014*) to integrate the EU Trafficking directive.

In 2016, the Italian Council of Ministers adopted the first 'National Action Plan against trafficking and the serious exploitation of human beings' (NAP) (Consiglio dei Ministri, DPO 2016). The Plan aimed to 'define multi-year intervention strategies to prevent and fight against trafficking and the serious exploitation of human beings, as well as actions aimed at raising awareness, social prevention, and the emergence and social integration of the victims' (3). The comprehensive and intersectional approach of the plan was built on the EU directive 36/2011 (*Trafficking Directive 2011*) and reflects the EU 'holistic' strategy in this matter (EU Commission 2012). Based on the NAP, the DPO financed, in 2019, some 'Single Programmes of Emergence, Assistance and Social Integration' (*Single Programme 2016*), supporting both Italian and non-Italian victims of slave-type crimes and of any other severe form of exploitation, including in prostitution.

The NAP and the Single Programmes have clearly incorporated an intersectional approach, as they are targeting migrants and indigenous,

of both genders, and in connection with any kind of past, present and prospected exploitation.

It has to be highlighted however that the Italian legislation on antitrafficking, although transposing the EU directive, does not adopt a particularly prominent gender-aware language and, most significantly, seems to endorse a rather essentialist views on 'vulnerability'. Indeed, the 2014 act (*D.Lgs 24/2014 Antitrafficking reform Act 2014*), Art. 1, features a list of 'vulnerable persons' that includes: 'minors, unaccompanied minors, the elderly, disabled persons, women, especially when pregnant, single parents with minor children, people with mental illness, persons who have undergone torture, rape and other serious forms of psychological, physical, sexual or gender violence'. By designating 'women' as a 'vulnerable group', the decree construes vulnerability as a constitutive element of women's identity rather than as a social-situated situation. This framing conceals women's agency and obscures the root causes of discrimination and abuse. At the same time, by typifying vulnerable people into discrete groups, it overlooks the systemic character of contemporary forms of exploitation and the fact that different factors—such as economic, legal, social, gendered and racial dynamics—simultaneously interact to render individuals vulnerable to trafficking and exploitation.

As regards the overall impact of the antitrafficking system, especially as regards victims, according to the Italian government, as reported by the Group of Experts on Action against Trafficking in Human Beings (GRETA), there were 1,172 assisted victims in 2016; 1,050 newly assisted persons joined the system in 2017 and a similar number in the following year.<sup>8</sup> By large, the majority were women (around 90 percent), while minors counted for roughly 10 percent. Around 80 percent were victims or prospected victims of sexual exploitation. The group of Nigerian women and girls was overwhelmingly the most represented – around 60 percent (GRETA 2019, 8). A certain number of trafficked persons were hosted in reception centres for asylum seekers and refugees, having applied for international protection. Indeed, an increasing number of women who applied for international protection are identified by the Territorial Commissions as victims of trafficking and referred to the dedicated structures or in any case given some specialized support (GRETA 2019, 38).

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<sup>8</sup> It should be noticed that, against these figures, the number of residence permits issued in the corresponding years under the provision of Art. 18 of the consolidated immigration act was significantly lower: 381 in 2013 (including 20 for labour exploitation), 265 in 2014 (including four for labour exploitation), 228 in 2015, 316 in 2016 and 419 in 2017 (including one for labour exploitation) (GRETA, 2019, 49).

It is also worth noticing that a significant change in the flows' composition has had a remarkable impact on the antitrafficking projects in Italy. According to IOM, 11,009 Nigerian women arrived irregularly in Italy in 2016 (they were 1,317 in 2011), plus 3,040 underage Nigerian girls. IOM esteems that 80 percent were victims of trafficking for purpose of sexual exploitation in Italy or in other EU countries (IOM 2017b, 16). Nigerian nationals entering Italy were 18,153 in 2017. In 2018, a dramatic plunge occurred: they were 1,250; and in 2019 Nigeria disappeared from the list of the first ten states of origin of migrant flows. Applicants for international protection declaring Nigerian nationality were over 25,000 in 2017; but one year later only 6,336 underwent the same procedure. (Italian Ministry of Interior 2020) The causes of such a sharp change in the social composition of irregular migration flows cannot be investigated in this paper; in any event, these factual circumstances have consequences on the *modus operandi* of anti-trafficking structures. Anti-trafficking agencies have to move from a practice targeted to meet the (supposed) needs and expectations of young Nigerian women forcefully involved in the sex industry, to a much more diversified and fluid scenario, in which sexual exploitation is one out of many other practices of abuse, and labour exploitation – in a variety of forms – involving both women and men is conspicuous. The transposition of the 2009 directive providing for sanctions against employers hiring irregular migrants (*Employers sanctions directive 2009*), operated in 2012 (*D.Lgs 109/2012 Employers sanctions law 2012*), entitled migrants victims of labour exploitation, irrespective of their previous status of irregular stayers, to a specific protection treatment, that includes also a renewable permit to stay of 6 months (*Italian Immigration Act 1998, Art. 22.12-quarter to 12-sexies*).

Indeed, until recently, the history of antitrafficking social work in Italy had overemphasized the sexual exploitation dimension, downplaying the fact that trafficking occurs in diverse types of work and, of course, also involves men. Moreover, in so doing, the antitrafficking movement overlooked the sexual vulnerability of people who are exploited in sectors other than sex work, severing forced or negotiated prostitution from other equally or even more severe situations of violence and abuse. It has also to be stressed that the unhampered diffusion of forms of works more and more closer to slavery and servitude, twined with the general decline of welfare entitlements, makes the difference between undocumented migrant workers and 'fully documented' workers in sectors like domestic work, seasonal agriculture and animal husbandry works, etc., less and less relevant (on the Italian case: Santoro 2012; Palumbo 2014; Sciarba 2019).

Such complex scenario requires to deepen the cooperation between social operators of the different structures. The Single Programme approach, as mentioned above, provides an appropriate regulatory and financial frame for integrating initiatives at the crossroad of diverse exploitative patterns, from prostitution to forced and bonded work, from petty delinquency to *caporalato* schemes in agriculture<sup>9</sup>. Referral mechanisms and protocols need be operationalized in order to capture any explicit and implicit requests for help. In this framework, a further and potentially extremely useful intersectional tool, likely to bring under the spotlight the gender dimension of sexual, labour and other exploitation, can be provided by actors in the third pattern in our analysis: the network of anti-violence centres and social workers involved in anti-violence programmes.

## 2.4 The Anti-violence Path

The anti-violence centres (Creazzo 2016, 2000) were established in Italy in the 1980s, initially in Rome and Bologna, by feminist groups and activists, as a concrete output of the feminist struggle against the ‘institutionalized’ and structural phenomenon of gender-based violence of males on women (Adami 2000). Run by women and for women, they provided a safe space where persons from a variety of social and economic backgrounds could meet and grow alternative cultural and social practices. Gradually, such centres started hosting and developing professional services in the fields of healthcare, psychological counselling, legal advice. They cultivated their political agency by supporting collective and individual struggles of women for reproductive rights, wage equality, criminalization of rape and sexual violence, equality between spouses, paid housework, etc. Feminist and anti-capitalistic activism was progressively replaced by a focus on involving local civil society and state agencies in designing and implementing social services supporting the rights of women, including the most marginalized ones and those most endangered by persisting gender-based stereotypes (Nussbaum 2000). This process was contemporary the affirmation of the ‘third sector’ as a key actor in offering health and social services to people through different level if institutionalization of its ‘public role’. Among such women at the margins targeted by anti-violence structures, prostitutes/sex workers and – since the 1990s – immigrant women featured as a specific and especially challenging group. In all dimensions of the work carried out by the professional and voluntary staffs of such centres, gender-based

<sup>9</sup> In 2016, a law on illegal brokering and labour exploitation has reformed art. 603 of the Italian penal code, enhancing the protection from the traditional practice of so-called *caporalato*.

violence affecting women, including intimate partner violence, features as a distinctive methodological pattern. In the last two decades, the anti-violence centres have evolved into a web of 338 structures (DPO et al. 2019), spread in virtually all regions of Italy.

Any centre is a hub of resources and activism based on a specific gender/women-sensitive approach, supporting a range of social and other services in close cooperation with the public health service, professional associations, civil society organisations, entrepreneurial associations and trade unions, city councils and administrations, and any other relevant state agencies, from law enforcement authorities to the prefectures and the judiciary. The associations and cooperatives that support the functioning of such structures have been advocating for legislative reforms in many fields (family law, children's rights, reproductive health, anti-stalking, equality of opportunities and women's leadership in the political and economic spheres), also getting involved in public and mixed public-private policies for their implementation.

Anti-violence legislation in Italy has been following a track set out by international and European bodies and that can be traced back to the UN convention on any forms of discrimination against women ('CEDAW', 1979-1981). Recent achievements of such global gender mainstreaming track can be exemplified, among others, by the Council of Europe conventions on preventing and combating violence against women and domestic violence ('Istanbul Convention', 2011-2014) and on combating human trafficking ('Warsaw Convention', 2005-2008).

Indeed, the anti-violence centres and the affiliated shelter facilities for women are recognized and supported by the Italian government as 'the crucial pivot in the territorial referral network' (Consiglio dei Ministri, DPO 2017, 27).

The anti-violence infrastructure has been increasingly involved in the dynamics of migration, not only in connection with the recognition of gender as a ground of persecution under the Geneva Convention, and of trafficking in human beings as a distinct form of violence particularly affecting women and girls; but also because of the specific relevance attributed to gender-based violence, including intimate partner and domestic violence, as a cause of forced migration. A turning point, in this respect, was the adoption and entry into force of the Istanbul convention<sup>10</sup> and the enactment of a law

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<sup>10</sup> Art. 59.3 of the Istanbul convention, in particular, states that: 'Parties shall issue a renewable residence permit to victims in one of the two following situations, or in both: a) where the competent authority considers that their stay is necessary owing to their personal situation; b) where the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal

decree in 2013, that amended the Immigration Act introducing Article 18-*bis*, a protection dispositive for immigrants identified as victims of domestic violence and other gender-based crimes. Based on this provision, the provincial public security authority (*Questura*) may grant a six-month permit to stay and dispose additional protective measures for immigrants in such situations of vulnerability, either in connection with criminal investigations, or on the referral of social services and anti-violence centres and structures.

Gender-based violence, in the practice of anti-violence centres and in the public narrative, is largely associated with the family environment. It has to be pointed out however that women's marginalisation and subalternity is a complex intersectional condition, where the economic dimension always plays a primary role. If subalternity to the male components of the family and intimate partner violence is the 'private' dimension of female oppression, the 'public' side of the same predicament is equally important. Women's coercion to work without benefiting of the outcomes of their work, i.e. salaries and other profits (that are appropriated by the male partner), and women's economic exploitation, also in the form of undertaking a migration path that incorporates the risk of being trafficked and enslaved, are examples of such 'public' and 'structural' form of gender-based violence. Structural gender inequality makes it paradoxically easier to detect and stigmatise 'private' violence than recognising and combating 'public' violence, strategically concealed and insulated as gender-neutral or even 'naturally' associated to female identity.

## 2.5 Cross-referral and Intersectionality

It may safely be maintained that a policy vision has gradually matured in Italy likely to support a pattern of intersectional cross-referral of migrant women, including irregular migrant women and those most marginalised in the context of mixed flows. In particular, the recent anti-trafficking and anti-violence national plans (Consiglio dei Ministri, DPO 2017, 2016) have embedded an integrated approach that systematically calls for a close cooperation between the public and private agencies and institutions operating in the three 'streams' described above. Some major challenges though do emerge in this connection.

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proceedings.' Article 60.1 provides that: 'Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.'

First of all, it may be recalled that a move towards an integrated pattern of cross-referral between the three typologies of structures, requires a fine-tuned operationalisation of practices. This is also required to allow an interaction not only between the three domains just described, but also with many other actors on other relevant fields. Cooperative protocols have to be established with, for example, the border control officers and other law enforcement authorities, the judiciary, the business sector, the health care services, etc. It should be emphasised in particular the crucial importance of involving in early cross-referral the guard coast and the border police, as a timely registration of an individual's identity and – most importantly – identification of his or her needs, is key for any subsequent strategy of referral (Giammarinaro 2018).

A pattern of cooperation and sharing of good practices between the anti-trafficking and the international protection systems is relatively well established in many territories, namely because an individual's actual or potential involvement as a victim in human trafficking may amount to 'persecution' according to Art. 1.A(2) of the Geneva convention, and because the same structures and NGOs host or provide assistance to both beneficiaries of international protection and of trafficked persons, and are involved in programmes for the prevention of trafficking. An example of an existing nation-wide cooperation and cross-referral platform in this connection is the Guidelines document on early identification of victims of human trafficking, agreed in 2016 between the UNHCR and the National Commission on refugees (Ministry of Interior)<sup>11</sup> (Ministero dell'interno - Commissione nazionale per il diritto d'asilo and UNHCR 2016). The national guidelines have been replicated by multi-stakeholder similar documents adopted at territorial level in several regions, with the key contribution of anti-trafficking NGOs and the participation, among others, of the Anti-mafia Directorates, that is the judiciary and law-enforcement units tasked to investigate the organised crime, including trafficking in human beings. In promoting such good practices, lacking a proper governance infrastructure and a national referral mechanism according to the Warsaw Convention (Art. 29), a peculiar role has been played by the national toll-free anti-trafficking helpline, run by the Municipality of Venice.

More complex has proved to be to engage the anti-violence networks. Despite the shared acknowledgement of the links existing between

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<sup>11</sup> It is worth mentioning that follow-up initiatives were undertaken by other ministries besides the Ministry of interior. In particular, the Ministry of health has adopted Guidelines on asylum seekers and refugees victims of torture, including rape (Ministero della salute, 2017).

women's victimisation and exploitation before, during and at the end of the migration journey on one hand, and a consolidated pattern of gender-based violence on the other, a cooperation platform involving the anti-violence structures seems not have been operationalised yet. This can be explained on different grounds. The historical and political trajectory of anti-violence centres, with its stress on the 'feminist' practice and approach, may be portrayed as incompatible with the 'neutrality' required by professional operators committed to the implementation of public policies established and financed by the state. A real (or just imaginary) ideological divide between a range of professional and non-professional figures involved in the wide-ranging subject of 'migrant women and gender' may have hindered an effective conversation. Operators in the different domains and services include law enforcement agents, social workers, physicians, volunteers, lawyers, psychologists, and many others professional figures. Among such practitioners there may be a huge diversity in terms of social collocation, work conditions, professional background, institutional mandate, methods of work, analytical frames and habits.

Many efforts have been made to ease and harmonise such differences via, in particular, joint training, monitoring and research programme. However, many factors concur to squeezing the space for cross-referral practices: the need to 'defend' one's professional niche; a tendency to emphasise the irreducible diversity of any specific situations, and the existence of different and sometimes hardly reconcilable political and institutional mandates. All this should also be viewed against the background of an ongoing process of reconfiguration of welfare state's policies and governance. The lack of a clearly defined nation-wide steering agency is also contributing to such difficulties. In this predicament, the 'political' dimension of social working arises. Professionals in social services are confronted to the constant dilemma of either contribute to a social change, facing conflict and career frustrations, or to just 'manage' the present unjust, gender-biased, and security-centred policies dictated by a controversial political agenda (Marston and McDonald 2012; Webb 2019, part IV).

'Ideological' differences surface in relation, in particular, to the issue of prostitution. There is no space in this paper to address the subject. However, a dichotomic pre-comprehension orients social workers and other practitioners in framing migrant women's prostitution either as invariably a case of severe exploitation and slavery, or as a 'physiological' manifestation of agency, a survival strategy that allows marginalised women to navigate a hostile environment. Both approaches have strengths and weaknesses, and the divide is more on the theoretical plan than in the practice of the different actors. It can be noticed that a risk of hyper-

victimisation of migrant prostitutes inescapably depicted as sexual slaves is still present in the influential anti-trafficking legislation and world-wide monitoring work of the United States (Chuang 2014). An intersectional/multi-disciplinary methodology in any case requires not to dismiss the agency of any 'victim' and to overcome gender- or race-based stereotypes. In both cases, the described attitudes detach themselves from a widespread and widely mediated narrative that conceives street prostitution as a security and public order issue, to be tackled essentially by increasing policing and executing criminal repressive measures.

Finally, a systematic cross-referral platform involving the three paths illustrated above should be indispensable to shed light on issues, still relatively unexplored or unaddressed, connected to the economic oppression and injustice that characterise the condition of marginalised migrant women. One phenomenon that only through a multi-level and multi-stakeholder teamwork can be operationally thematised is sexual violence experienced at the workplace, in the form of stalking, sexual harassment, psychological violence etc., as opposed to domestic violence. Gender-based violence is a component of work exploitation that risks getting unreported if women develop dependency and 'attachment' to their oppressive work and living environment. In such predicament, economic dependency and debt bonds corroborate psycho-social subjugation – both to be interpreted as gender-related phenomena. Trade unions and work providers' associations are crucial stakeholders in this domain, along with anti-violence and anti-trafficking agencies and, when existing, associations of migrants.

Another area that could benefit of such multi-stakeholder work is violence (including murders) affecting migrant street prostitutes. Going beyond the classic prohibitionist/regulationist/abolitionist debate, and the mechanical ascription of violent crimes affecting prostitutes to 'insane' clients, gang wars or 'punishments' imposed by pimps, an intersectional analysis would recognise the structural link between assassinations of prostitutes (steadily declined in Italy in the last 25-30 years) and feminicides (stable in percentage)<sup>12</sup>. Both are to be construed as expression of structural, male-inflicted discriminatory violence.

<sup>12</sup> 465 prostitutes were killed in Italy between 1988 and 2018 (plus 72 transsexuals and 4 men); in 1988 prostitutes were 25 percent of all female victims of murders; in 2018 the percentage fell to 6 percent. 44.6 percent of investigated prostitutes' murders remain unpunished (data communicated on the occasion of the Conference 'On women's rights: between violence and exploitation' (Della Valle, 2019). Feminicides in Italy have slightly decreased from 1992 to 2018: from 0.6 to 0.4 feminicides in 100.000 women; among males, the decrease was however much more important: from 4 homicides in 100.000 men in 1992 to 0.8 in 2018. In 2018, 55 percent of feminicides were perpetrated by the male partner or ex-partner of the victim ('Istat.it,' 2018).

## 2.6 Legislative Constraints: Migrants and the 2018-19 ‘Security Decrees’

As anticipated, an intersectional strategic analysis has grown especially awkward in Italy, because a fluctuating national legal framework hardly supports such an effort.

A variety of public and private actors potentially contribute to the protection of migrant women who endured trafficking, exploitation, gender-based violence, persecution on various grounds, or a combination thereof, at different stages of their journey to and in the Italian territory. In order to endorse a practice of cross-referral between those social actors, the substantial legislation should set out some broad and flexible parameters for the determination of protected statuses. A legislation sensitive to the challenge of intersectionality should allow the border control and migrant reception systems to intercept and provide a fine-grained response to any requests for protection. The regulatory frame should foresee a set of options, instead of one single response, and the possibility of shifting from one regime to another, to accommodate the specific and ‘unique’ ‘situations of vulnerability’ experienced by any woman. The goal is not only to meet the changing needs’ configuration of marginalized women, but also to keep the pace with the unfolding societal reality surrounding such situations (Fassin 2013).

The Italian constitutional design, besides the internationally imposed categories of protected persons (refugees, persons entitled to EU subsidiary protection, victims of trafficking and domestic violence, persons fearing torture in case of expulsion or refoulement...), also protects any ‘foreign national, who is denied – in his or her country – the enjoyment of the democratic freedoms established by this Constitution’ (Italian Constitution, art. 10.3).

Accordingly, Art. 5.6 of the Immigration Act, in the version in force until fall 2018, maintained that, based on ‘serious reasons, namely humanitarian or grounded on constitutional or international obligations’, a foreigner is entitled to be awarded a permit to stay in Italy, despite the fact she or he lacks any other right to remain. This ‘humanitarian permit to stay’ is consistent with the principle of *non-refoulement* and the prohibition to deport any person to a country where she or he risks torture or ill-treatment, and should be considered a (partial: see Benvenuti 2018) implementation of Art. 10.3 of the Constitution. Art. 5.6 was a closing norm in the system, permitting judicial and administrative authorities to issue protective measures when more specific (and better protective) legal frames (i.e. the ones based on the Geneva Convention or on the EU subsidiary protection

standards) did not apply, and nevertheless compelling humanitarian reasons justified such course of action.

It should also be noticed that the public security provincial authority (*Questura*) entitled to award the humanitarian permit to stay, does not necessarily have to proceed within the refugee protection path and on referral of the Territorial Commissions. Indeed, besides refugee-like situations, where the stress is on the risks endured by a migrant in the country or origin or in a third country where she or he ought to be deported, other humanitarian profiles may justify a humanitarian measure. For example, family ties established in Italy, especially if children are involved, may well constitute a 'serious reason' under Art. 5.6 to issuing a humanitarian permit to stay. The competent authority should therefore directly proceed granting a humanitarian permit to stay, lacking any other more suitable grounds (child's illness, for example: Consolidate Immigration Act, Art. 32), and there is no need for the foreign citizen to lodge a request for international protection with the Territorial Commissions for refugee status determination.

This provision was first jeopardized by the reform of the refugee determination judicial procedure in 2017 (*DL 13, 2017*); then curtailed in its normative scope by administrative instructions enacted in Summer 2018<sup>13</sup>. The norm on the humanitarian permit to stay was eventually repealed by Law Decree 113/2018.

The 2018 legislation enacted by the 1<sup>st</sup> Giuseppe Conte government replaced the open-ended provision of Art. 5.6 with a set of typified situations that are supposed to encapsulate all potential legitimate grounds for humanitarian protection. Accordingly, special permits to stay shall be issued, for short periods (6 months), in 'special cases' or specific scenarios, illustrated in various articles of the Immigration Act.

In particular, the right to stay in the Italian territory is granted to foreigners in the following 'special cases' (that reproduce pre-existing categories addressed above in this paper): when a migrant is a victim of trafficking for the purpose of exploitation (Art. 18); when the migrant is a victim of domestic violence and other gender based violence (female genital

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<sup>13</sup> Reference is made in particular to the circular of the Minister of interior dated 4 July 2018, recommending Territorial Commissions to grant humanitarian protection only based on an assessment of the critical situations endured – or likely to be endured in case of repatriation – by the applicant in the state of origin, irrespective of other elements, such as the distress experienced elsewhere or the prospect of social integration in the hosting community. The circular is also worth noticing for its recurrent stressing on the permit to stay for humanitarian protection as a measure 'conceded' to the foreigners by the state, while no reference is made to Art. 10.3 of the Italian Constitution (Ministero dell'interno 2018).

mutilation, for example) (Art. 18-*bis*); when a migrant is a victim of labour exploitation (Art. 22.12-*quater* to -*sexies*).

Moreover, new hypotheses are introduced: when a foreigner is seriously ill and cannot be cured in her or his country (Art. 19.2-*bis*, letter d-*bis*); when he or she is faced, in the country of origin, with a natural disaster (Art. 20-*bis*, but the permit cannot be converted into a work permit); finally, a permit to stay (of two years, not renewable but that can be converted into another kind of residence permit) may be awarded to a foreigner who has performed ‘acts of particular civic valor’.

When a foreigner is found non eligible for international protection, but seriously risks, if expelled or anyhow returned towards another country, torture or ill-treatment, or ‘persecution for reasons of race, sex, language, citizenship, religion, political opinions, social or personal conditions’, the Territorial Commission that has examined her or his application may refer the case to the *Questura*, that will issue a permit to stay for ‘special protection’ (Art. 19.1, 1.1).<sup>14</sup>

The principle of *non-refoulement* and the right of underage migrants and of new-parents not to be forcefully expelled, are confirmed (Art. 19, paras. 1, 1.1, and 1-*bis*), as well as the (never applied) provisions of Art. 20, concerning entry permits issued on the occasion of exceptional humanitarian disasters affecting a non-EU country.

The abolition of the humanitarian permit to stay has been complemented by other provisions of the same decree 113/2018 and of a second one, passed by the government in June and endorsed by the parliament in August 2019 (*DL 53*, 2019). This ‘security decree *bis*’ targeted in particular rescue ships operated by humanitarian NGOs, establishing extremely harsh fines and the seizing of the vessels that contravene orders of the Italian government not to entry to a port and disembark shipwrecked migrants.

The repealing of art. 5.6 of the Consolidate Immigration Act was a deeply regrettable step that contradicts the very concept of humanitarian protection.<sup>15</sup> It can be argued that the new ‘special cases’ system contravenes the provisions on asylum as a tool to affirm the universal character of the

<sup>14</sup> The ‘special protection’ is construed by combining Art. 19 of the Immigration Act and Art. 32 of Legislative Decree 25/2008 (on the refugee protection procedure). It has to be pointed out that the decree-law 113/2018 inserted in Art. 32 a new provision, stating that the expulsion can nevertheless be ordered if at least in part of the territory of the foreign state the risk of persecution is not present. This territorial clause was not present in the previous version of the same article. The permit to stay for ‘special protection’ is renewable but cannot be converted into a permit for work (Legislative Decree 25/2008, Art. 32.3).

<sup>15</sup> In November 2018, a Joint Communication criticising Decree-Law 113/2018 was sent to the Italian Government by ten Special Rapporteurs and Independent Experts of the Human rights Council (Cofelice 2019, 102).

inviolable rights granted by the Italian Constitution. The postulation that a set of typified situations could replace without any gaps an open-ended humanitarian clause is logically flawed and has consistently been rejected by the Italian jurisprudence.<sup>16</sup> Several Italian regional governments have raised the issue of constitutional legitimacy of this part of the 2018 security decree (as well as of many other provisions of the same instrument), claiming in particular that the new asset no longer can be deemed to operationalize the right to asylum as granted by art. 10.3 of the Italian Constitution. The Constitutional Court rejected as inadmissible this part of the claim, observing that the provision did not impinge on the competences of the Regions and that there was no evidence yet that the implementation of such provisions was incompatible with the international and Constitutional standards (Constitutional Court judgment of 14.07.2019).

Among the most troubling by-products of the decree-law 113/2018, in our perspective, is the partial dismantlement of the second-line asylum seeker reception system – the SPRAR: asylum seekers’ and refugees’ protection system. Legislative decree 142/2015 on the asylum procedures and reception condition were only partially implemented, and yet some cornerstones of its design were demolished by the novel decree. The second-line reception and integration network was made of small-scale structures hosting both asylum seekers and refugees (especially the most ‘vulnerable’ ones). In October 2018, SPRAR was rebranded SIPROIMI – system for the protection of persons entitled to international protection and unaccompanied minors. The denomination – in itself rather puzzling for its emphasis on protecting... the protected ones – makes clear that asylum seekers, as opposed to those holding a status of internationally protected persons, are no longer supposed to remain in those structures. Moreover, since the humanitarian permit to stay has been cancelled and only a limited share of those who were awarded it fall into one of the ‘special cases’, ‘special protection’ or further *ad hoc* hypotheses enumerated in the law, many protected persons, once elapsed the

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<sup>16</sup> In a recent judgment, the Italian Cassation, civil division, section I (15.05.2019), reiterated that ‘it is incorrect to ‘typify’ the subjective predicaments where individuals deserving ‘humanitarian’ protection can be located; the latter, on the contrary, is a-typical and residual, as it applies to a range of situations, to be identified on a case by case basis, where, lacking the conditions for awarding a typified form of protection (refugee status or subsidiary protection), an expulsion cannot be ordered and the applicant in position of ‘vulnerability’ has therefore to be admitted to the territory [...] Serious humanitarian reasons may well be found when, after a careful, case-by-case assessment of the private condition of an applicant residing in Italy, compared with the personal situation she or he experienced before leaving and ought to face in case of repatriation, an unachievable and disproportionate chasm exists between the two life contexts, in terms of enjoyment of those fundamental rights that are the indispensable premise of a dignified life’.

old permit, will have to leave the reception centers, along with losing their status of lawful residents in the state<sup>17</sup>. Another significant consequence of the new Italian approach is that public funds devoted to support reception facilities and integration policies will inevitably drop. The output is not only an increase of irregular presences of migrants – whose potentially relevant ties with the Italian society are utterly overlooked, unless twisted to fit the new ‘special cases’ –, but also a net loss in social infrastructures, professional expertise and – last but not least – jobs.

It is likely that, lacking the last resort option of Art. 5.6, many otherwise irregular resident migrants – and social actors, government authorities and bodies, courts and commissions searching to cope with their humanitarian mandates – will do their best to breach the apparent rigidity of the new taxonomy, arguably insisting on a constitutionally oriented interpretation of the law. Courts will also trigger a pronouncement on the merits of the security decree 113/2018 by the Constitutional Court in the next few years. Inevitably however, until a better balancing is achieved, the most marginalized migrants – including irregular migrant women –, unable to make their good reasons heard, will pay the price for this deplorable twist of fate. Irregularity only increases vulnerability and the exposure of already victimized persons to further exploitation and extortion.

## **Conclusion. Three Navigation Tips**

Gender is acknowledged as a crucial component of migration dynamics. Insulated from other determinants, however, its analytical impact may be limited. If associated with economic, social, religious, ethnic, racial, etc. factors, gender represents an extremely powerful and accurate lens not only to recognize the ‘positions of vulnerability’ subjectively experienced by many migrant women at the margin, but also (and this was the main target in this paper) to appreciate the actual and potential roles of social agencies and social workers.

This analysis has presented a troubled and worrisome picture of the present challenges. The overall situation is tough, both in terms of challenges posed

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<sup>17</sup> The Ministry of interior, confronted with the risks associated with the expulsion, based on decree-law 113/2018, from SIPROIMI reception centres and transferal to first-line structures of about 1.400 guests holding a ‘humanitarian permit to stay’, despite their poor social integration and the ‘vulnerable’ status of half of them, had to adopt in December 2019 an urgent measure to extend to June 2020 their chance to remain in the SIPROIMI network and be accompanied in their social and work integration. The cost of the measure was of over 8 million euro (Ministero del Lavoro, 30.12.2019).

to the human rights of migrant women and as regards the agency of the social actors involved. There is however some margin of manoeuvre.

Humanitarian and social actors, in the three dimensions that have been addressed in this paper, still have the potential to pursue strategies of resistance and resilience, jointly with the marginalized migrant women. Summarizing some observations already presented in the pages above, such strategies can be articulated around the following points.

First of all, an intersectional methodology, if consistently adopted by the whole spectrum of professionals cooperating in the governance of migrant women's flows (social workers, lawyers, reception operators, cultural mediators, humanitarian workers, etc.), could help spreading cross-referral practices in support of the most marginalized: those exposed to persecution, labour exploitation and violence. A key driver in this strategy is systematic monitoring and research. The anti-trafficking and anti-violence National Plans are an excellent platform that could support existing and forthcoming initiatives in this domain. Research and monitoring may support joint training models and the sharing of good practices.

Secondly, a counter-narrative ought to be elaborated to contrast ongoing trends taking traction at the political and societal levels that further conceal the subjugation of women in the migrants' flows and deny female victims of exploitative injustice any agency. A terrain on which this counter-narrative can be construed, alternative to the sometimes toxic domestic politics and media system, but influential on them, is the monitoring and advocacy work of international bodies mandated to promote the implementation of some dedicated treaties. GREVIO, GRETA, the CEDAW Committee, and the overall system of the UN-based human rights special rapporteurs, are open to civil society contributions. Even the UN-based UPR (Universal Periodic Review) procedure has proved to be sensitive to the matter and in the November 2019 Working Group session on Italy, many recommendations have addressed the issues of migrant women, trafficking and gender-based violence<sup>18</sup>.

A third dimension to be explored is close cross-referral between the concerned agencies. An intense cooperation is required to cope with the stricter boundaries now introduced, demarcating the typified categories of

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<sup>18</sup> In the provisional report of the Working Group, out of 306 recommendations, around 20 were on trafficking in human beings, 20 addressed gender-based violence, at least 33 were about migration, asylum and non-refoulement, and some directly addressed the intersectionality of women, migration and humanitarian protection (for example: '264. Dedicate special attention to the situation of vulnerability of migrant women and girls and expand the criteria to grant humanitarian protection as a complement to the status of refugee (Spain)' ('Draft UPR on Italy' 16.11.2019).

persons entitled to protection. Normative fragmentations can easily convert into disciplinary isolation and professional particularism, and undermine any systematic and ‘holistic’ analysis of the critical determinants underpinning the ‘refugee’, the ‘anti-trafficking’ or the ‘anti-violence’ paths. Indeed, the intersectional narrative that this paper has tried to elaborate is largely rejected by the Italian law-maker. Intersectionality can however be reinstalled at the operational level. To a strategy of social disentanglement, segmentation and segregation, social agencies and institutions, professionals, and migrant women, both individually and collectively, can oppose practices of solidarity, inclusion and re-embedding. Paradoxically, the meticulous demarcation of the different profiles of ‘vulnerable migrants’ operated by the law in spite of its dubious methodological accuracy and juridical legitimacy, in the light of international and national human rights principles and standards, may turn up to encourage among the concerned professionals a more fine-grained and dynamic approach to the determination of the legal and ‘human’ status of migrants.

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### *International treaties*

Convention on the Elimination of All Forms of Discrimination against Women, 1249 UNTS 1. 18/12/1979 (entered into force 03/09/1981)

Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw Convention). CETS No.197. 16/05/2005 (entered into force 01/02/2008).

Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). CETS No.210. 11/05/2011 (entered into force 01/08/2014)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), 2237 UNTS 319, 15/11/2000 (entry into force: 25/12/2003).

### *EU law*

Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, 2011.

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