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## DIRETTRICE

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## Indice-Sommario 2026, n. 1

### Editoriale

La *vis expansiva* del diritto dell'Unione europea con riguardo agli *status* personali e familiari p. 1  
*Maria Caterina Baruffi*

### Saggi, Articoli e Commenti

La Carta sociale europea alla prova della rivendicazione dei diritti sociali da parte dei beneficiari di protezione internazionale con particolare riferimento al diritto alla salute e alla situazione dei rom in Italia p. 12

*Raffaele Cadin, Valentina Zambrano*

Some reflections about due diligence by the State in the protection against gender-based violence in Europe p. 43

*Elena Martínez García*

European Arrest Warrant in (post) pandemic times: challenges and opportunities p. 56

*Esther Montero Pérez de Tudela, Pilar Martín-Ríos*

(Im)mobility in the context of climate change: between legal challenges and legal experiments p. 82

*Marie Courtoy, Francesco Luigi Gatta*

Sulla tutela risarcitoria per le vittime dei crimini internazionali in Siria nello spazio giudiziario europeo p. 118

*Francesca Tammone*

### FOCUS

#### **Vulnerabilità legate al genere: nuove sfide per la tutela di migranti e richiedenti asilo**

*Il focus raccoglie i contributi selezionati a seguito di call for papers promossa dal Gruppo di interesse "Diritto internazionale ed europeo delle migrazioni e dell'asilo (DIEMA)" della Società italiana di Diritto internazionale e di Diritto dell'Unione europea (SIDI).*

Introduction to the Focus 'Gender-related vulnerabilities: new challenges for the protection of migrants and asylum seekers' p. 144

*Sara Tonolo*

Dal contesto afghano a due nuovi principi di rilevanza generale: il rafforzamento della dimensione di genere nella nozione di rifugiato dopo la sentenza della Corte di giustizia dell'UE *AH e FN* del 4 ottobre 2024 p. 154

*Mariano Manuel Bartiromo*



- Applying intersectionality to gender discrimination in International refugee law: the case of women asylum seekers p. 187  
*Elisabetta Belardo*
- Il nuovo Patto europeo su migrazione e asilo alla luce della Convenzione di Istanbul del Consiglio d'Europa: verso l'incorporazione di una prospettiva sempre più sensibile al genere? p. 210  
*Sara De Vido*
- Dialogue across Courts: the CJEU, the ECtHR, and the rights of migrant women p. 235  
*Sanna Elfving*
- L'emersione delle vulnerabilità di genere nello *screening* pre-ingresso: quale tutela effettiva per le donne vittime di tratta? p. 258  
*Elisabetta Lambiase*
- Género y desprotección en frontera: retos del Pacto europeo de migración y asilo y en el archipiélago canario p. 288  
*Marina Lara Orin López*
- Orientamento sessuale e tutela dei diritti fondamentali: quale tensione con le esigenze di valutazione della credibilità del richiedente protezione internazionale? p. 301  
*Attilio Senatore*
- Forced labour, trafficking, and structural exploitation of women migrant workers: International legal perspectives p. 332  
*Silvia Solidoro*



# APPLYING INTERSECTIONALITY TO GENDER DISCRIMINATION IN INTERNATIONAL REFUGEE LAW: THE CASE OF WOMEN ASYLUM SEEKERS

Elisabetta Belardo\*

SUMMARY: 1. Introduction. – 2. Challenging the Single-Axis Approach: The Emergence of Intersectionality. – 3. Intersectionality in International Law: Normative and Jurisprudential Developments. – 4. Intersectionality as a Hermeneutic Tool in Refugee Law. – 4.1 Assessing Gender-Based Persecution and Credibility. – 4.2 An Intersectional Reading of the ECtHR Case Law on Female Genital Mutilation. – 5. Limits and Challenges of Intersectional Reasoning in Refugee Law. – 6. Conclusion.

## 1. Introduction

A long-standing and still ongoing debate has shown how implicit gender norms embedded in international refugee law may produce discriminatory outcomes, leaving female asylum seekers inadequately protected.<sup>1</sup> This is exemplified by the so-called male paradigm<sup>2</sup> underlying the 1951 Geneva Convention relating to the Status of Refugees, namely the fact that the definition of “refugee” was constructed and historically applied through a predominantly male lens, thereby marginalizing women’s

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I am grateful to the Amsterdam Centre for Migration and Refugee Law (ACMRL) for the valuable insights I gained during my visiting research period, particularly concerning the practical application of intersectionality in international refugee law. I would like to especially thank Janna Wessels and Jordan Dez for their helpful suggestions on this topic.

<sup>1</sup> See, among the others, H. LAMBERT, *Seeking Asylum on Gender Grounds*, in *International Journal of Discrimination and the Law*, 1995, no. 2, pp. 133-154; D. ANKER, *Refugee Law, Gender, and the Human Rights Paradigm*, in *Harvard Human Rights Journal*, 2002, no. 15, pp. 133-154; J. FREEDMAN, *Gendering the International Asylum and Refugee Debate*, London, 2015; E. RIGO, *La protezione internazionale alla prova del genere: elementi di analisi e problematiche aperte*, in *Questione Giustizia*, 2018, no. 2, pp. 117-128. From a wider perspective, feminist theory has also highlighted the need to expose the false neutrality of migration control regimes and the inherently gendered nature of borders (E. RIGO, *La Straniera. Migrazioni, asilo, sfruttamento in una prospettiva di genere*, 2022, Rome, p. 42).

<sup>2</sup> H. CRAWLEY, *Refugees and Gender: Law and Process*, Bristol, 2001, p. 5; D. INDRA, *Gender: A Key Dimension of the Refugee Experience*, in *Refuge. Canada’s periodical on refugees*, 1987, no. 3, p. 3; J. GREATBATCH, *The Gender Difference: Feminist Critiques of Refugee Discourse*, in *International Journal of Refugee Law*, 1989, no. 4, p. 518.

experiences within international protection framework.<sup>3</sup> Article 1A(2) of the Convention defines a refugee as a person with a well-founded fear of persecution on grounds of race, religion, nationality, membership of a particular social group, or political opinion, without including sex among the enumerated grounds.

This omission contributed to the exclusion of gender-based forms of persecution from recognition under the Convention and rendered victims of such harms largely invisible in the early decades following its adoption.<sup>4</sup> Forms of abuse to which women are particularly susceptible – domestic, sexual, and culturally sanctioned – were long excluded from the concept of persecution, effectively denying female asylum seekers recognition of refugee status. Domestic violence constitutes a paradigmatic example.<sup>5</sup> For decades, violence occurring within the private sphere was not readily conceptualised as “persecution”, nor easily attributable to the state, given the Convention’s traditional emphasis on public, state-centred forms of harm.<sup>6</sup> As a result, women fleeing domestic abuse often struggled to satisfy the Convention requirements, and only through gradual interpretative developments did such claims begin to be systematically recognised within the international protection regime. This background helps illuminate some of the structural resistance to acknowledging gender-based harm within the refugee framework.

Since the 1990s, UNHCR has played a pivotal role in promoting a gender-sensitive interpretation of the 1951 Geneva Convention.<sup>7</sup> A particularly significant milestone in

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<sup>3</sup> “Like all legal rules, the refugee definition has been drafted in the male form.” T. SPIJKERBOER, *Gender and Refugee Status*, Aldershot, 2000, p. 1. Spijkerboer further underlines that sex is also absent from the Convention’s non-discrimination clause (Art. 3), and that this exclusion significantly contributed to the marginalization of refugee women. During the drafting of the 1951 Geneva Convention, the Yugoslav delegate proposed the inclusion of sex as a prohibited ground of discrimination, but the proposal was opposed by the representatives of Austria, Colombia, Italy, Switzerland, Turkey, the United Kingdom and the United States (P. WEIS, *The Refugee Convention, 1951: The Travaux Préparatoires Analysed with a Commentary by Dr. Paul Weis*, UNHCR, Geneva, 1990, p. 36). Particularly revealing is the explanation given for the rejection of the British delegate, according to whom “The equality of sexes was a matter for national legislation.” (UN Doc. A/CONF.2/SR.5, p. 10).

<sup>4</sup> A. DEL GUERCIO, *La protezione dei richiedenti asilo nel diritto internazionale ed europeo*, Naples, 2016, p. 38.

<sup>5</sup> “Many societies have long turned a blind eye to domestic violence, on the ground that unless it was ‘excessive’, it was not a proper matter for State involvement or State penalties.” G. S. GOODWIN-GILL, J. MCADAM (eds.), *The Refugee in International Law*, Oxford, 2007, p. 81. Gender-based human rights violations affecting women were traditionally relegated to the private sphere and only gradually recognised as persecution under the 1951 Refugee Convention, making such claims difficult to advance in asylum proceedings. The progressive affirmation of the so-called *protection theory*, as opposed to the *accountability theory*, played a crucial role in overcoming resistance to the recognition of persecution by non-State actors as a valid basis for refugee status, leading to its widespread acceptance in international refugee law. See S. MULLALLY, *Domestic Violence Asylum Claims and Recent Developments in International Human Rights Law: A Progress Narrative?*, in *International and Comparative Law Quarterly*, 2011, pp. 459-484; J. WESSELS, *the boundaries of universality - migrant women and domestic violence before the Strasbourg Court*, in *Netherlands Quarterly of Human Rights*, 2019, pp. 336-358.

<sup>6</sup> H. CRAWLEY, *Women and Refugee Status: Beyond the Public/private Dichotomy in UK Asylum Policy*, in D. INDRA (ed.), *Engendering forced migration (Theory and practice)*, New York-Oxford, 1998, pp. 308-333.

<sup>7</sup> UNHCR (Executive Committee), *Conclusion No. 39 (XXXVI): Refugee Women and International Protection*, 1985; UNHCR, *Guidelines on the Protection of Refugee Women*, 1 July 1991; UNHCR

this process was the 2002 adoption of the UNHCR *Guidelines on International Protection No. 1: Gender-Related Persecution in the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*.

In this document, UNHCR expressly recognises that women constitute a *particular social group*,<sup>8</sup> understood as a group of individuals who share a common characteristic – often innate or immutable – that is fundamental to identity, conscience, or the exercise of human rights, and which is perceived as such by society. It follows that sex may be included within this category, since women constitute a clearly identifiable social subset and are frequently subject to discrimination. This interpretative approach allows for the recognition of refugee status where individuals would face a risk of gender-based violence upon return to their country of origin or habitual residence, fostering an inclusive and gender-sensitive reading of the Convention.

Although not legally binding, these Guidelines offer an authoritative interpretation of international norms, establishing uniform hermeneutic standards for the interpretation of the Geneva Convention among State Parties, as reflected in their consolidated application in administrative and judicial practice.

While these developments constitute crucial steps towards more equitable protection for asylum seekers, the intersectional character of gender-based discrimination remains largely overlooked within international refugee law.<sup>9</sup> Against this backdrop, the present article addresses the following research question: *how can international refugee law adequately account for the intersectional nature of gender-based discrimination?*

To this end, the article explores intersectionality as an interpretative tool capable of enhancing the assessment of asylum claims and strengthening the protection afforded to women asylum seekers, who are frequently exposed to overlapping and mutually reinforcing forms of oppression. As a critical theory, intersectionality provides an analytical framework for examining how race, class, gender, ethnicity, social status, and other identity markers intersect and overlap, generating both advantages and disadvantages for individuals. It recognises that identities are multilayered and that

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(Executive Committee), *Conclusion No. 73 (XLIV): Refugee Protection and Sexual Violence*, 1993; UNHCR, *Sexual Violence Against Refugees: Guidelines on Prevention and Response*, 8 March 1995; UNHCR, *Gender-Related Persecution*, UNHCR Position Paper, 1 January 2000. In this regard, see R. HAINES QC, *Gender-related persecution*, in E. FELLER, V. TURK, F. NICHOLSON (eds.), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, Cambridge, 2003, p. 319 ff.

<sup>8</sup> “(...) sex can properly be within the ambit of the social group category, with women being a clear example of a social subset defined by innate and immutable characteristics, and who are frequently treated differently than men. Their characteristics also identify them as a group in society, subjecting them to different treatment and standards in some countries.” UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution in the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, paragraph 30 (HCR/GIP/02/01).

<sup>9</sup> See, however, the forthcoming volume edited by G. YURDAKUL, J. BEAMAN, L.M. MÜGGE, S. SCUZZARELLO, S. SUNANTA, *The Oxford Handbook of Intersectional Approaches to Migration, Gender, and Sexuality*, Oxford. The Handbook, currently in development, reflects the growing scholarly engagement with intersectional perspectives on migration, gender, and sexuality, signaling an emerging shift in the debate despite the limited incorporation of intersectionality within international refugee law.

lived experiences are shaped not by singular factors alone, but by the interaction between identities, relationships, and broader social structures. These dynamics combine to produce intersecting forms of privilege and oppression, the effects of which vary depending on the social context and prevailing power relations. In this way, intersectionality is able to grasp the complexity of discrimination as a multidimensional and structurally embedded phenomenon, rather than as the product of a single axis of inequality, thereby enabling legal analysis to move beyond formal equality and toward a more substantive and context-sensitive protection of rights.<sup>10</sup>

The proposal to conceptualise intersectionality as a legal hermeneutic tool to enhance the protection of female asylum seekers rests on two preliminary considerations.

First, women asylum seekers experience vulnerability and marginalisation at every stage of their migration process.<sup>11</sup> This structural exposure to risk begins in their country of origin (both in time of peace and armed conflict), continues throughout the journey, and persists in the host country with regard to integration (consider the labour market and the issue of the Muslim veil, for example).

Second, women asylum seekers are often subjected to multiple and intersecting forms of discrimination<sup>12</sup> linked to different aspects of their identity (gender, religion, origin, social status, etc.). However, these overlapping forms of discrimination cannot be evaluated as the mere sum of their parts because they do not just have a cumulative effect. This intersection creates a unique experience of marginalisation, which refugee law and protection frameworks must necessarily take into account.

Building on these premises, the article begins by tracing the origins of the notion of intersectionality within American Black feminism, where it emerged as a critical response to the structural limitations, shortcomings, and blind spots of anti-discrimination law (Section 2). It then examines the incorporation of an intersectional approach into contemporary international law, focusing on its normative consolidation and jurisprudential developments (Section 3). Against this background, the paper examines the extent to which intersectionality is reflected in asylum status determination and explores how it may operate as a hermeneutic tool within refugee law to strengthen the assessment of asylum claims (Section 4), with particular attention to

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<sup>10</sup> The notion of intersectionality adopted in this article draws both on doctrinal scholarship – particularly the formulations advanced by Crenshaw and Atrey, discussed further in Section 2 – and on its development and application within United Nations human rights mechanisms, including both Special Procedures and Treaty Bodies.

<sup>11</sup> See IOM, *World Migration Report, 2024*, Chapter 6 *Gender and Migration: Trends, Gaps and Urgent Action*, particularly section *Beyond numbers: Gender dimensions throughout the migration cycle*: “This section explores how gender influences migration experiences, including displacement, throughout the migration cycle, from pre-departure to entry and stay in destination countries and, if applicable, return to the country of origin”, available at: <https://worldmigrationreport.iom.int/what-we-do/world-migration-report-2024-chapter-6/beyond-numbers-gender-dimensions-throughout-migration-cycle>. Cf. also UNWOMEN, *Women on the move: FAQs on migration and gender*, 2025; available at: <https://www.unwomen.org/en/articles/faqs/women-on-the-move-faqs-on-migration-and-gender>.

<sup>12</sup> E. PITTAWAY, L. BARTOLOMEI, *Refugees, Race, and Gender: The Multiple Discrimination against Refugee Women*, in *Refuge: Canada's Journal on Refugees*, 2001, no. 6, pp. 21-32.

female asylum seekers as a case study. By demonstrating that gender discrimination is inherently intersectional in nature, it contends that an intersectional lens is especially valuable in evaluating gender-based persecution and credibility assessments (Section 4.1). To substantiate this contention, an intersectional framework is applied to the case law of the European Court of Human Rights concerning female genital mutilation, illustrating its practical utility in the adjudication of gender-based asylum claims (Section 4.2). The discussion then addresses the principal conceptual and methodological challenges associated with intersectional reasoning, while maintaining that – if accompanied by appropriate safeguards – it remains a necessary and effective analytical tool (Section 5). The article concludes by arguing that adopting an intersectional lens can enhance both the coherence and the effectiveness of refugee law in responding to gender-based persecution, which is intrinsically intertwined with multiple and overlapping forms of discrimination (Section 6).

## 2. Challenging the Single-Axis Approach: The Emergence of Intersectionality

The concept of intersectionality emerged as a critical notion to highlight structural and systemic processes of marginalisation and discrimination. The term was first coined in 1989 by the African-American jurist and feminist activist Kimberlé Crenshaw in her influential article “*Demarginalising the Intersection of Race and Sex*”: *A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*.<sup>13</sup>

In her study, Crenshaw analysed the interplay of power relations between social class, race, and gender. She argued that these interactions generate complex systems of oppression that cannot be understood in isolation, positing that discrimination is not merely cumulative but mutually reinforcing, resulting in unique, multidimensional forms of exclusion.

Crenshaw illustrated this insight through an analysis of employment discrimination cases involving African-American women,<sup>14</sup> revealing that courts frequently treated claims of race and gender discrimination in isolation and often dismissed them and preventing recognition of the claimants’ intersectional experiences.

A paradigmatic example is *DeGraffenreid v. General Motors*, in which five Black women filed a lawsuit claiming that the company’s seniority system perpetuated historical discrimination. Trial evidence showed that General Motors had not employed any Black women before 1964, and that all Black women hired after 1970 were laid off under a seniority-based system during a subsequent economic downturn. The corporate

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<sup>13</sup> K. CRENSHAW, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, in *University of Chicago Legal Forum*, 1989, no. 1, pp. 139-167.

<sup>14</sup> Crenshaw considers three Title VII cases: *DeGraffenreid v. General Motors*, 413 F. Supp. 142 (E.D. Mo. 1976); *Moore v. Hughes Helicopters, Inc.*, 708 F.2d 475 (9th Cir. 1983); *Payne v. Travenol Laboratories, Inc.*, 673 F.2d 798 (5th Cir. 1982).

defences argued that there was no sexism, as women (all white) were hired, and no racism, as African Americans (all men) were employed.

The Court rejected the claim, holding that Title VII protects race and sex only as separate categories and does not recognise discrimination against Black women as a distinct, intersectional form. This reasoning effectively erased the specific experiences of Black women, demonstrating how legal frameworks failed to account for intersecting forms of discrimination. In this regard, Crenshaw refers to the striking title of the Black feminist book *All the Women Are White, All the Men Are Black*,<sup>15</sup> which vividly captures the cultural and social biases that shaped – and continue to influence – both anti-sexist and anti-racist frameworks. As Crenshaw argued, this reflects the limits of single-axis frameworks,<sup>16</sup> which protect individuals only insofar as their experiences align with a single, dominant identity group.<sup>17</sup>

Crenshaw highlighted how courts tended to reduce claims of intersectional discrimination — based jointly on race and sex — to mere instances of racial or sexual discrimination, thereby failing to recognise the composite and simultaneous nature of subjugation. In doing so, her analysis demonstrated the need for legal and theoretical tools capable of recognising discrimination intersecting multiple identity markers, ensuring protection against complex and overlapping forms of oppression.

Crenshaw argued that anti-discrimination law's single-axis framework<sup>18</sup> failed to protect against structural forms of marginalisation, which cannot be captured by “mutually exclusive categories of experience and analysis.”<sup>19</sup>

In light of the foregoing, it is therefore essential to distinguish between multiple discrimination – claims based on several grounds treated separately – and intersectional discrimination, which recognises the interdependent and indivisible nature of overlapping m n Jurisprudence provides, once more, illustrative examples of the challenges in recognising intersectional claims.

In *Bahl v. The Law Society* (Court of Appeal, UK, 2004), an Asian woman alleged both racial and gender discrimination, but the Court required each ground to be proved

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<sup>15</sup> G. T. HULL, P. BELL SCOTT, B. SMITH (eds.), *All the Women Are White, All the Blacks Are Men, But Some of Us Are Brave*, New York, 1982.

<sup>16</sup> “The approach of the Missouri District Court in *DeGraffenreid* was to splinter the claim of Black women into individual claims of race and sex discrimination and ask which was the case in fact. (...) This is an incorrect characterization of the claim because it fails to reckon with the nature of intersectional disadvantage suffered by Black women” S. ATREY, *Intersectional discrimination*, Oxford-New York, 2019, p. 85.

<sup>17</sup> “The court’s refusal in *DeGraffenreid* to acknowledge that Black women encounter combined race and sex discrimination implies that the boundaries of sex and race discrimination doctrine are defined respectively by white women’s and Black men’s experiences. Under this view, Black women are protected only to the extent that their experiences coincide with those of either of the two groups. Where their experiences are distinct, Black women can expect little protection as long as approaches (...)” K. CRENSHAW, *Demarginalizing the Intersection of Race and Sex*, cit., pp. 142-143.

<sup>18</sup> “This adoption of a single-issue framework for discrimination not only marginalizes Black women within the very movements that claim them as part of their constituency but it also makes the illusive goal of ending racism and patriarchy even more difficult to attain” K. CRENSHAW, *Demarginalizing the Intersection of Race and Sex*, cit., p. 142.

<sup>19</sup> K. CRENSHAW, *Demarginalizing the Intersection of Race and Sex*, cit., p.139.

separately, preventing recognition of their combined effect.<sup>20</sup> Similarly, in *Parris v. Trinity College Dublin* (CJEU, 2016),<sup>21</sup> a claim of age and sexual-orientation discrimination was rejected because EU law does not recognise a distinct category of “combined” discrimination. These cases show that even where courts acknowledge multiple grounds, intersectional experiences are often treated additively rather than as a unified form of oppression. Consequently, the multiplicity of grounds tends to fragment the claimant’s identity, preventing the court from recognising how patterns of discrimination based on intersecting factors may coexist and mutually reinforce one another. In other words, the legal framework still fails to capture the co-constitutive nature of intersecting disadvantage. “Multiple discrimination is thus no more sophisticated than strict single-axis discrimination, other than the fact that it is based on more than one ground. Yet, it is a mischaracterization of the causal basis of multi-ground discrimination which cannot be so neatly segregated into multiple single-axis claims.”<sup>22</sup>

The distinction between multiple and intersectional (or “overlapping”) discrimination is crucial as it shows how intersecting systems of marginalisation – rooted in power structures, social biases and linked to various identity markers – produce a unique and indivisible form of oppression, placing individuals in a one-of-a-kind position.

Because intersecting discrimination is not merely cumulative, the law must recognise these patterns of systemic exclusion in order to protect the rights of structurally marginalised individuals.

### **3. Intersectionality in International Law: Normative and Jurisprudential Developments**

Although intersectionality was initially developed to examine the experiences of Black American women, it has since expanded to address other identities and forms of discrimination and is now widely applied in the study of women’s status, gender theory, and equality policies.<sup>23</sup> Today, intersectionality is increasingly understood as a legal theory that offers a normative approach for moving beyond formal neutrality toward a substantive conception of equality, one capable of addressing structurally embedded disadvantage. The concept has been widely embraced within the United Nations.

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<sup>20</sup> “The multiplicity of grounds basically multiplied and disintegrated the identity of the claimant as a Black person and as a woman. This in turn delimited the possibility of seeing how patterns of discrimination based on race and sex co-existed and co-constituted one another, denying any recognition of similar and different patterns of group disadvantage suffered by Dr Bahl as a Black woman.” S. ATREY, *Intersectional discrimination*, cit., p. 109.

<sup>21</sup> Court of Justice, First Chamber, judgement of 24 November 2016, *David L. Parris*, case C-443/15.

<sup>22</sup> S. ATREY, *Intersectional discrimination*, cit., p. 113.

<sup>23</sup> P. DEGANI, P. DE STEFANI, *Addressing Migrant Women’s Intersecting Vulnerabilities. Refugee protection, Anti-trafficking and Anti-violence Referral Patterns in Italy*, in *Peace Human Rights Governance*, 2020, p. 114.

Numerous reports by special rapporteurs<sup>24</sup> and several treaty bodies<sup>25</sup> recognise intersectionality as a key framework for the protection of human rights.

Among these, the Committee for the Elimination of Discrimination Against Women (CEDAW) is particularly advanced.<sup>26</sup> In General Recommendation No. 28, the Committee highlights that women's experiences of discrimination are inextricably linked to other factors – such as race, ethnicity, religion, health, age, class, caste, sexual orientation, and gender identity – and urges States parties to legally recognise these intersecting forms of discrimination and adopt measures, including temporary special measures where appropriate, to address them.<sup>27</sup>

Intersectionality is also increasingly recognised by regional and domestic courts, though often cautiously.

The 2012 case *B.S. v. Spain* before the ECtHR<sup>28</sup> is a landmark example of an intersectional approach. In this case, a woman sex worker of Nigerian origin alleged that the Spanish police mistreated her physically and verbally on the basis of race, gender and profession. The Court found a violation of articles 3 (prohibition of torture or other inhuman and degrading treatments) and 14 (prohibition of discrimination) of the European Convention on Human Rights, reflecting that the domestic courts in Spain failed to take into account the applicant's intersectional vulnerability<sup>29</sup> as an African woman engaged in sex work. Thus, the Court recognized the applicant's specific

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<sup>24</sup> “Gender-based discrimination intersects with discriminations based on other forms of ‘otherness’, such as race, ethnicity, religion and economic status, thus forcing the majority of the world’s women into situations of double or triple marginalization.” Special Rapporteur on Violence against Women, its Causes and Consequences, *Report to the Commission on Human Rights Council*, 29 February 2000, para. 52, (E/CN.4/2000/68); Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance, *Report to the Human Rights Council*, 25 April 2018, (A/HRC/38/52). For a detailed analysis see B.G. BELLO, *Intersezionalità. Teorie e pratiche tra diritto e società*, Milan, 2020.

<sup>25</sup> See, among others, CESCR, *General Comment No. 20 on non-discrimination in economic, social and cultural rights*, E/C.12/GC/20, 2 July 2009; CERD, *General recommendation No. 32 on the meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination*, CERD/C/GC/32, 24 September 2009; CEDAW, *General recommendation No. 33 on women’s access to justice*, CEDAW/C/GC/33, 3 August 2015; CMW-CRC, *Joint general comment No. 3 on the general principles regarding the human rights of children in the context of international migration*, CMW/C/GC/3-CRC/C/GC/22, 16 November 2017; CRPD, *General comment No. 3 on women and girls with disabilities*, CRPD/C/GC/3, 25 November 2016; CEDAW, *General recommendation No. 35 on gender-based violence against women*, CEDAW/C/GC/35, 26 July 2017; CRPD, *General comment No. 6 on equality and non-discrimination*, CRPD/C/GC/6, 26 April 2018.

<sup>26</sup> For further discussion on CEDAW and intersectional discrimination, see M. CAMPBELL, *CEDAW and Women’s Intersecting Identities: A Pioneering New Approach to Intersectional Discrimination*, in *Revista Direito Gv, São Paulo*, 2015, no. 2, pp. 479-504. For a critical perspective, see C. BRIDDICK, *Unprincipled and unrealised: CEDAW and discrimination experienced in the context of migration control*, in *International Journal of Discrimination and the Law*, 2022, no. 3, pp. 224-243.

<sup>27</sup> CEDAW, *General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/GC/28, 16 December 2010, para. 18.

<sup>28</sup> European Court of Human Rights, Third Section, judgment of 24 July 2012, application no. 47159/08, *B.S. v. Spain*. For an in-dept analysis of the case see M.C. LA BARBERA, M. CRUELLS LÓPEZ, *Toward the Implementation of Intersectionality in the European Multilevel Legal Praxis: B.S. v. Spain*, in *Law & Society Review*, 2019, no. 4, pp. 1167-1201.

<sup>29</sup> European Court of Human Rights, Third Section, *B.S.*, cit., para. 62.

marginalisation based on her race, gender and employment status, marking the first time its jurisprudence applied an intersectional interpretation of discrimination.

However, other cases illustrate the limits of judicial recognition. In disputes concerning the ban on religious face veils,<sup>30</sup> the ECtHR failed to consider the intersectional dimensions of discrimination affecting Muslim women, showing that the Court's approach remains inconsistent.

At the EU level, recent legislation explicitly acknowledges intersectionality in the protection of vulnerable groups. Article 33 of Directive (EU) 2024/1385 on combating violence against women and domestic violence requires Member States to provide targeted support to victims facing intersecting forms of discrimination, including women with disabilities, third-country nationals, and those in institutional or reception settings. This recognition signals a growing awareness of the need to address compounded vulnerabilities through tailored policies and services.

Scholars have also proposed using intersectionality as a legal tool in international human rights law<sup>31</sup> to achieve substantive equality rather than merely formal equality. Needless to say, substantive equality and the prohibition of discrimination are intrinsically intertwined, representing two sides of the same legal coin. Intersectionality provides a framework for operationalising these fundamental principles, capturing how multiple and overlapping factors shape individuals' lived experiences of marginalisation.

#### **4. Applying Intersectionality in Refugee Law as a Hermeneutic Tool**

As previously mentioned, this paper argues that integrating intersectionality into International Refugee Law can provide a more comprehensive framework for analysing

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<sup>30</sup> In a series of cases concerning Muslim veil (European Court of Human Rights, Grand Chamber, judgment of 10 November 2015, application no. 44774/98, *Leyla Sahin v. Turquie*; European Court of Human Rights, Fifth Section, judgment of 4 December 2008, application no. 27058/05, *Dogru v. France*; European Court of Human Rights, Fifth Section, judgment of 30 June 2009, application no. 43563/08, *Aktas v. France*; European Court of Human Rights, Grand Chamber, judgment of 1 July 2014, application no. 43835/11, *SAS v. France*) the ECtHR failed to adequately consider the intersectional discrimination affecting Muslim women, particularly regarding the ban on religious face veils. This issue was again highlighted in the more recent case, European Court of Human Rights, Second Section, judgment of 9 April 2024, application no. 50681/20, *Miikyas and others v. Belgium*, which involved three minor students. Although the Court briefly notes that “les élèves mineurs présentent, pour leur part, un plus grand degré de vulnérabilité” (para. 75), it did not take into account how age, combined with gender and religion, exacerbated their vulnerability. This is particularly concerning because, under international human rights law, the principle of the best interests of the child (Article 3(1) of the CRC) requires that the child's interests be a primary consideration in all decisions affecting them, underscoring the need to assess and protect children experiencing intersecting forms of discrimination. In this regard, see S. GUPTA, *ECtHR's Veil of Ignorance: Intersectionality and Indirect Discrimination in the Belgian Headscarf Ban in School*, in *Blog of the European Journal of International Law*, 2024.

<sup>31</sup> V.A.N. DAVIS, *Intersectionality and International Law: Recognizing Complex Identities on the Global Stage*, in *Harvard Human Rights Journal*, 2015, pp. 205-242; A.J. PETROZZIELLO, *Intersectionality as method for human rights research: Identifying who is made stateless and how through UN treaty body reviews*, in *Journal of Human Rights*, 2025, pp. 182-198.

asylum claims, and for better addressing the specific needs of particularly vulnerable refugee groups, especially in terms of human rights protection.

By challenging the homogenisation<sup>32</sup> of migrant categories and recognising multiple axes of discrimination, intersectionality enables a legal approach that more accurately reflects the realities of those it aims to protect. It also exposes the limitations of “false universal” norms that the law often codifies, which may inadvertently exacerbate the vulnerability of certain groups.<sup>33</sup>

An intersectional approach is particularly valuable in international refugee law, where legal status, identity, and vulnerability are closely interconnected. The condition of being an asylum seeker or a refugee often places individuals in a structurally disadvantaged position, operating as an initial axis of vulnerability within the asylum process itself. This status-related disadvantage may intersect with other identity markers – such as gender, race, ethnicity, religion, or cultural background – shaping both the forms of harm experienced and the degree of protection required.

Applying an intersectional lens allows for a more nuanced evaluation of key elements of refugee status determination, including the assessment of persecution, risk upon return, and the adequacy of state protection. By accounting for the cumulative and mutually reinforcing effects of multiple grounds of discrimination, this approach overcomes the limitations of fragmented, single-axis analyses and supports a context-sensitive understanding of harm.

In doing so, intersectionality strengthens the capacity of refugee law to respond to complex patterns of exclusion and to deliver protection that is better aligned with the lived realities of individuals facing intersecting forms of oppression. Consequently, it is argued that an intersectional approach is of pivotal importance in assessing risk factors in refugee claims.<sup>34</sup>

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<sup>32</sup> “It is now well established in contemporary feminist thinking that women cannot be viewed through an essentialist lens, as a homogenous group with a ‘natural’ shared identity, experience or agenda.” N. REILLY, M. BJØRNHOLT, E. TASTSOGLU, *Vulnerability, Precarity and Intersectionality: A Critical Review of Three Key Concepts for Understanding Gender-Based Violence in Migration Contexts*, in J. FREEDMAN, N. SAHRAOUI, E. TASTSOGLU (eds.), *Gender-Based Violence in Migration. Interdisciplinary, Feminist and Intersectional Approaches*, 2022, London, p. 36.

<sup>33</sup> “Crenshaw’s conceptualisation was intended to challenge forms of ‘identity-based politics’ that asserted the homogeneity of a group’s identity by falsely universalising from a particular perspective.” N. REILLY, M. BJØRNHOLT, E. TASTSOGLU, *Vulnerability, Precarity and Intersectionality*, cit., p. 38.

<sup>34</sup> See L.P. NIELSEN, *An intersectional approach to access to justice for women under the Common European Asylum System*, in *Master Thesis of Tilburg University*, 2013; D. VENTURI, *Beyond the Rainbow? An Intersectional Analysis of the Vulnerabilities faced by LGBTIQ+ Asylum-Seekers*, in *European Journal of Migration and Law*, 2023, no. 4, pp. 474-500; C. FLAMAND, F. RAIMONDO, S. SAROLÉA, *Examining Asylum Seekers’ “Other Vulnerabilities”: Intersectionality in Context*, in *European Journal of Migration and Law*, 2023, no. 4, pp. 501-524; J. J. SARKIN, *The importance of adopting an intersectionality approach to refugee status determination procedures: lessons from Greece, Israel and Uganda*, in *International Journal of Migration, Health and Social Care*, 2022, no. 3, pp. 193-206.

#### 4.1. Assessing Gender-Based Persecution and Credibility

The choice of female asylum seekers as a case study to advocate for integrating an intersectional approach within the International Refugee Law framework is not incidental. Women asylum seekers provide a particularly suitable analytical lens through which to evaluate the added value of intersectionality, as they are frequently positioned at the intersection of multiple and mutually reinforcing grounds of discrimination, including gender, nationality, ethnicity, religion, age, and migratory status. Their experiences thus offer a paradigmatic example of how single-axis legal frameworks may fail to capture the cumulative and compounded nature of gender discrimination.

Specifically, women asylum seekers can be in a particularly vulnerable position because, by virtue of their gender, they may face specific human rights violations<sup>35</sup> such as forced pregnancy, female genital mutilation, wartime rape, and forced marriage. These practices constitute complex forms of inhuman and degrading treatment, fundamentally incompatible with both the core values of the international community and the system for the protection of fundamental human rights. Such forms of violence rarely occur in isolation; they are often embedded in broader structures of inequality and oppression that disproportionately affect women and girls, especially in situations of displacement and forced migration. In this context, an intersectional approach allows for a more accurate assessment of persecution by considering the interaction between gender-based harm and other relevant vulnerability factors.

As emphasized by Iermano,<sup>36</sup> it is also essential to distinguish between *gender-related* and *gender-specific* persecution. Gender-related persecution refers to forms of persecution grounded in gender affiliation and may affect both men and women, but in women's case often reflecting practices intended to preserve female structural subordination, such as rape perpetrated in the context of armed conflict.<sup>37</sup>

By contrast, gender-specific persecution encompasses acts directed exclusively at women or that affect them in a markedly disproportionate manner when compared to men, including female genital mutilation, forced abortion, and coerced sterilization. In short, the distinction lies between women persecuted *as women*, due to social or cultural

<sup>35</sup> See N. KELLY, *Gender-Related Persecution: Assessing the Asylum Claims of Women*, in *Cornell International Law Journal*, 1993, no. 26, pp. 625-674; R. HEINES QC, *Gender-related Persecution*, cit.; A. DI STASI, R. CADIN, A. IERMANO, V. ZAMBRANO (eds.), *Donne migranti e violenza di genere nel contesto giuridico internazionale ed europeo*, Naples, 2023; G. YURDAKUL, J. BEAMAN, L.M. MÜGGE, S. SCUZZARELLO, S. SUNANTA, *The Oxford Handbook of Intersectional Approaches to Migration, Gender, and Sexuality*, cit.

<sup>36</sup> A. IERMANO, *Donne migranti vittime di violenza domestica: l'interpretazione "gender-sensitive" dei giudici nazionali in conformità alla Convenzione di Istanbul*, in *Ordine internazionale e diritti umani*, 2021, no. 3, p. 734.

<sup>37</sup> Historically, women have disproportionately suffered in armed conflicts, facing sexual violence, exploitation, physical and psychological abuse, and forced pregnancies. Such acts often serve as deliberate military strategies targeting communities' ethnic and cultural identities. Article 7 of the 1998 Rome Statute of the International Criminal Court (ICC) explicitly lists rape, sexual slavery, forced prostitution, and forced sterilization as crimes against humanity.

roles, and women persecuted *because they are women*, for reasons related to biological or anatomical characteristics.

In light of the foregoing, it is evident that considering gender<sup>38</sup> among the reasons for persecution under the 1951 Geneva Convention is necessary, as gender can determine the nature of the harm inflicted.<sup>39</sup> Yet gender discrimination can be understood as a prism, reflecting multiple, intersecting dimensions of power that collectively contribute to subordinating women. An intersectional approach can highlight “the inextricability of racial, gendered, sexual, and class power relations.”<sup>40</sup> In this context, it is essential to recognize that the intersectional nature of gender-based discrimination must be taken into account to fully assess the vulnerability and persecution of women asylum seekers.<sup>41</sup>

Furthermore, the present article posits that an intersectional approach is particularly crucial in assessing both the credibility of asylum claims and the seriousness of gender-based persecution.

Credibility assessment is central to determining an applicant’s need for protection.<sup>42</sup> Singer<sup>43</sup> notes that it constitutes one of the main obstacles faced by women asylum seekers in Europe. She shows that asylum authorities often rely on credibility criteria – such as coherence, consistency, and prompt disclosure – which are formally neutral but, in practice, may disadvantage women survivors of gender-based violence. Trauma, stigma, and fear may lead women to provide fragmented or delayed accounts, which are frequently misinterpreted as indicators of unreliability, causing gender-based persecution to be underestimated or excluded from refugee protection.

Women are also less likely to possess evidence to corroborate their claims, due to political, social, or economic marginalization or the nature of the persecution they endured. Gender-based harm – such as rape, sexual assault, domestic violence, forced marriage, female genital mutilation, or threats of honour crimes – rarely leaves

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<sup>38</sup> It is important to emphasise that gender-related persecution is not limited to women. Gender should not be automatically equated with biological sex, as it encompasses multiple identities and social positions. Consequently, claims for international protection on gender-related grounds can be made by both men and women. Nevertheless, this article focuses specifically on women asylum seekers, a choice that is methodological rather than exclusionary.

<sup>39</sup> “The Committee emphasizes that gender is a key factor. Being female intersects with other identifying characteristics or status of the person such as race, nationality, religion, sexual orientation, age, immigrant status etc. to determine the ways that women and girls are subject to or at risk of torture or ill-treatment and the consequences thereof.” Committee Against Torture (CAT), *General Comment No. 2 Implementation of article 2 by States parties*, 24 January 2008, para. 22 (CAT/C/GC/2).

<sup>40</sup> A. CARASTATHIS, N. KOURI-TOWE, G. MAHROUSE, L. WHITLEY (eds.), *Introduction: Intersectional Feminist Interventions in the “Refugee Crisis”*, in *Refuge: Canada’s Journal on Refugees – Special Issue*, 2018, p. 3.

<sup>41</sup> As Rigo pointed out, even in the context of asylum, it is important to consider how the concept of intersectionality has revealed the limitations of the way gender has traditionally been incorporated into legal frameworks. E. RIGO, *La Straniera. Migrazioni, asilo, sfruttamento in una prospettiva di genere*, cit., p. 49.

<sup>42</sup> See J. FREEDMAN, *Gendering the International Asylum and Refugee Debate*, London, 2015, pp. 88-90.

<sup>43</sup> D. SINGER, *Falling at Each Hurdle: Assessing the Credibility of Women’s Asylum Claims in Europe*, in E. ARBEL, C. DAUVERGNE, J. MILLBANK (eds.), *Gender in Refugee Law: From the Margins to the Centre*, Abingdon, 2014, pp. 98-115.

documentary evidence.<sup>44</sup> An intersectional approach, which takes into account the interaction between gender, trauma, cultural background, and socio-legal marginalization, helps to identify structural biases embedded in apparently neutral credibility criteria. In this sense, it does not lower evidentiary standards but enhances the fairness and accuracy of credibility assessments.

Similarly, the seriousness of persecution cannot be adequately evaluated without accounting for intersectionality. Harm that may appear isolated or insufficiently severe when assessed in abstraction can amount to persecution when situated within a broader pattern of cumulative and intersecting forms of discrimination and violence. Incorporating intersectionality into credibility and seriousness assessments would strengthen both the equity and correctness in refugee determinations.

Intersectionality provides a framework to understand and assess vulnerability along the entire migratory path, from the country of origin through transit to arrival, encompassing not only personal traits of identity, but also situational, and administrative factors.<sup>45</sup> These factors often intersect and exacerbate already vulnerable situations, underscoring that vulnerability is a “continuous process with multiple layers, rather than a fixed status interpreted from the perspective of presence/absence”.<sup>46</sup>

The UNHCR similarly emphasizes that the intersection of gender, sexual orientation, and gender identity is integral to the assessment of asylum claims,<sup>47</sup> noting that gender-related claims may implicate one or more Convention grounds, such as religion, political opinion, or membership of a particular social group.<sup>48</sup>

Intersectionality as an analytical tool captures how different grounds of discrimination interact, rather than merely accumulate, shaping individual asylum experiences. More specifically, an intersectional feminist perspective recognizes that women encounter gender-based disadvantage in diverse ways, requiring legal and policy responses that account for these differences. Applying this lens in migration contexts involves examining how geographical and political location interacts with gender and other forms of power.<sup>49</sup>

<sup>44</sup> D. SINGER, *Falling at Each Hurdle*, cit., p. 113.

<sup>45</sup> C. FLAMAND, F. RAIMONDO, S. SAROLÉA, *Examining Asylum Seekers’ “Other Vulnerabilities”*, cit., p. 504.

<sup>46</sup> *Ibid.*

<sup>47</sup> “The intersection of gender, sexual orientation and gender identity is an integral part in the assessment of claims raising questions of sexual orientation and/or gender identity.” UNHCR, *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 23 October 2012, (HCR/GIP/12/09), para. 13.

<sup>48</sup> “In many gender-related claims, the persecution feared could be for one, or more, of the Convention grounds. For example, a claim for refugee status based on transgression of social or religious norms may be analysed in terms of religion, political opinion or membership of a particular social group.” UNHCR, *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, 7 May 2002, para. 23.

<sup>49</sup> N. REILLY, M. BJØRNHOLT, E. TASTSOGLU, *Vulnerability, Precarity and Intersectionality*, cit., p. 36.

In the literature,<sup>50</sup> scholars note that framing gender-based asylum claims solely in terms of membership in a particular social group risks portraying women as passive victims, rather than situating gender-based violence within broader political, racial, and religious contexts. Focusing exclusively on gender can minimize the political, social, and cultural causes of persecution, as well as the agency of women in responding to these challenges.<sup>51</sup> Indeed, “Women are constituted through the complex interaction of class, culture, religion, and other ideological institutions”<sup>52</sup> – they cannot be understood as a homogeneous group defined by a single characteristic. In this respect, an intersectional approach may offer a more nuanced and context-sensitive way of assessing asylum applications.

Existing legal instruments also reflect the relevance of an intersectional approach. The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention)<sup>53</sup> is a landmark treaty establishing a gender-sensitive framework for protecting women victims of violence. Chapter VII, devoted to the protection of women asylum seekers, sets binding standards for access to international protection procedures and safeguarding against refoulement in cases of gender-based violence. In the author’s view, the Convention implicitly embraces an intersectional logic, as it expressly addresses the overlapping and compounded forms of marginalization women may face in situations of displacement.

Moreover, it is worth briefly noting that the European Union’s ratification of the Istanbul Convention marked a further significant development, as it appears to have broadened the scope of international protection for women seeking asylum. In its judgments in *WS* (C-621/21)<sup>54</sup> and *KL* (C-646/21),<sup>55</sup> the Court of Justice of the European Union affirmed the need to interpret the provisions of the Qualification Directive in conformity with the Istanbul Convention, recognising the latter as an interpretative tool for EU law,<sup>56</sup> including in the assessment of asylum claims. These rulings illustrate the emergence of a new jurisprudential trend capable of providing increasingly effective protection for women seeking asylum<sup>57</sup> and demonstrate how the

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<sup>50</sup> H. CRAWLEY, *Women and Refugee Status*, cit.; H. CRAWLEY, *Saving Brown Women from Brown Men? “Refugee Women”, Gender and the Racialised Politics of Protection*, in *Refugee Survey Quarterly*, 2022, pp. 355-380.

<sup>51</sup> A. EDWARDS, *Transitioning Gender: Feminist engagement with international refugee law and policy 1950–2010*, in *Refugee Survey Quarterly*, 2010, no. 2, p. 21.

<sup>52</sup> C. TALPADE MOHANTI, *Feminism without borders. Decolonizing Theory, Practicing Solidarity*, Durham and London, 2003, p. 30.

<sup>53</sup> Council of Europe, *Convention on Preventing and Combating Violence Against Women and Domestic Violence*, Istanbul, 11 May 2011, CETS No. 210, entered into force 1 August 2014.

<sup>54</sup> Court of Justice, Grand Chamber, judgement of 16 January 2024, *WS*, case C-621/21.

<sup>55</sup> Court of Justice, Grand Chamber, judgement of 11 June 2024, *KL*, case C-646/21.

<sup>56</sup> See, with this regard, S. DE VIDO, *La Convenzione di Istanbul quale strumento interpretativo del diritto derivato dell’Ue in situazioni di violenza contro le donne: la sentenza C-621-21 della CGUE*, in *SIDI Blog*, 2024.

<sup>57</sup> E. BELARDO, *Protezione internazionale e tutela delle donne: profili evolutivi della recente giurisprudenza della Corte di giustizia alla luce della Convenzione di Istanbul*, in *Ordine Internazionale e Diritti Umani*, 2024, no. 3, p. 543.

EU's accession to the Convention has positively influenced the interpretation of secondary EU legislation.<sup>58</sup>

#### 4.2. An Intersectional Reading of the ECtHR Case Law on FGM

Once again, one of the clearest ways to understand how intersectionality can serve as a hermeneutic legal tool within the international refugee law framework is by examining judicial decisions. This section applies an intersectional approach to European Court of Human Rights (ECtHR) case law on female genital mutilation (FGM), illustrating its potential utility in assessing gender-based asylum claims.

Naturally, while the 1951 Geneva Refugee Convention and the non-refoulement obligation under Article 3 of the European Convention on Human Rights constitute distinct legal frameworks, applying an intersectional lens to ECtHR case law still provides a useful test for demonstrating how such an approach can enhance the identification of overlapping vulnerabilities and compounded risks within asylum assessment.

Female genital mutilation comprises “all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons.”<sup>59</sup> Performed for non-therapeutic and socially entrenched reasons, the practice can result in severe and long-term physical and psychological harm, often exacerbating already vulnerable living conditions.

According to most recent data, more than 230 million girls and women alive today have undergone FGM in 30 countries across Africa, the Middle East, and Asia.<sup>60</sup> UNICEF further estimates that at least four million girls are at risk of undergoing the practice every year.<sup>61</sup> FGM is typically inflicted at a young age<sup>62</sup>, most commonly

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<sup>58</sup> M. MOSCHEL, *The EU Court of Justice strengthens women's rights (Case C-621/21 WS)*, in *EU Law Live*, 2024; S. DE VIDO, M. MOSCHEL, *WS: A turning point for women's rights?*, in *Common Market Law Review*, 2024, no. 6, pp. 1661-1682; L. STAMME, *Nota a margine della sentenza della Corte di Giustizia del 16.01.24 nella causa c-621/21: la Corte di giustizia riconosce la violenza sulle donne come forma di persecuzione contro un determinato gruppo sociale*, in *Diritto, Immigrazione e Cittadinanza*, 2024, no. 2; T. ERTUNA LAGRAN, S. NICOLSI, *A Further Step to Gender-Sensitive EU Asylum Law: The Case of 'Westernised Women'*, in *Eu Law Analysis*, 2024; J-Y CARLIER, E. FRASCA, *A better Group Protection for Refugee Women*, in *EU Migration Law Blog*, 2025; M.M. BARTIROMO, *Il riconoscimento della protezione internazionale alle donne esposte a discriminazioni e violenze di genere nella recente giurisprudenza della Corte di giustizia dell'Unione europea*, in *Eurojus*, 2025, no. 4, pp. 218-249.

<sup>59</sup> World Health Organization (WHO), *Female genital mutilation*, 2025 (<https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>).

<sup>60</sup> *Ibid.*

<sup>61</sup> UNICEF, *Female genital mutilation (FGM)*, 2024 ([https://data.unicef.org/topic/child-protection/female-genital-mutilation/#\\_edn1](https://data.unicef.org/topic/child-protection/female-genital-mutilation/#_edn1)).

<sup>62</sup> “FGM is carried out for cultural, religious and social reasons, mostly on young girls between infancy and the age of 15.” R. SHREEVES, *Zero tolerance for female genital mutilation: A call to action*, European Parliamentary Research Service, 2026, (Document number: PE 595.916)

during early childhood or pre-adolescence, for reasons rooted in social norms, cultural expectations, and gendered power structures.<sup>63</sup>

FGM constitutes a “human rights violation and a form of gender-based violence against women and girls that is inherently linked to deep-rooted gender inequality and stereotypes”.<sup>64</sup> From a human rights law perspective, FGM violates a range of fundamental rights, including the right to health, security and physical integrity, as well as the absolute prohibition of torture and other cruel, inhuman or degrading treatment. Given that FGM is predominantly performed on minors, it also engages the protection of children’s rights. In the most extreme cases, where the procedure results in death, it further amounts to a violation of the right to life.<sup>65</sup>

In light of these grave human rights’ violations, several United Nations treaty bodies have consistently condemned FGM<sup>66</sup> as a harmful practice incompatible with international human rights law and have stressed States’ obligations to prevent and prohibit the practice, to criminalise it, and to ensure access to effective remedies and redress for victims.

The risk of female genital mutilation may compel girls and women to flee their countries of origin, thereby bringing FGM within the scope of international refugee protection. The UNHCR has recognised female genital mutilation as a form of persecution for the purposes of the 1951 Refugee Convention.<sup>67</sup> In this regard, the

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<sup>63</sup> The age during which FGM is performed varies “but most performed between 5 and 9 years old.” United Nations Population Fund (UNFPA), *Female genital mutilation (FGM) frequently asked questions*, 2025, available at: [https://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions#practice\\_origins](https://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions#practice_origins).

<sup>64</sup> Report of the Office of the United Nations High Commissioner for Human Rights, *Cross-border and transnational female genital mutilation*, 17 April 2024, (A/HRC/56/29).

<sup>65</sup> World Health Organization (WHO), *Female genital mutilation*, 2025 (<https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>); B.D. WILLIAMS-BREAULT, *Eradicating Female Genital Mutilation/Cutting: Human Rights-Based Approaches of Legislation, Education, and Community Empowerment*, in *Health and Human Rights*, 2018, no. 2, pp. 223-233.

<sup>66</sup> “(...) States have a duty to prohibit and criminalize the practice and to provide redress, including legal remedies, to the victims. The Committee has condemned female genital mutilation as a practice contrary to the Convention, which violates women’s human rights.” United Nations Human Rights Office of the High Commissioner, *Reporting under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Training Guide, Part I - Manual*, New York and Geneva, 2024, p. 90. See also – *ex multis* – Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, *Good practices and major challenges in preventing and eliminating female genital mutilation*, 27 March 2015 (A/HRC/29/20); Committee on Economic, Social and Cultural Rights, general comment No. 22, 2 May 2016 (E/C.12/GC/22); Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child, 8 May 2019 (CEDAW/C/GC/31/Rev.1–CRC/C/GC/18/Rev.1).

<sup>67</sup> “There is no doubt that rape and other forms of gender related violence, such as dowry-related violence, female genital mutilation, domestic violence, and trafficking, are acts which inflict severe pain and suffering – both mental and physical – and which have been used as forms of persecution, whether perpetrated by State or private actors.” UNHCR, *Guidelines on International Protection: Gender-related persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 7 May 2002, para. 9; “UNHCR considers FGM to be a form of gender-based violence that inflicts severe harm, both mental and physical, and amounts to persecution. The recognition of FGM as a form of persecution is supported, in the first instance, by developments in international and regional human rights law.” UNHCR, *Guidance on refugee claims relating to female genital mutilation*, Geneva, May 2009, para. 7.

UNHCR has emphasized that “a girl or woman seeking asylum because she has been compelled to undergo, or is likely to be subjected to FGM, can qualify for refugee status under the 1951 Convention relating to the Status of Refugees.”<sup>68</sup>

Successful asylum claims require proof of a well-founded fear of persecution linked to one of the Convention grounds. In FGM-related cases, although gender is not explicitly listed among those grounds, it plays a crucial role in shaping both the form of persecution and its underlying causes. In practice, the risk of FGM is widely recognised as persecution based on membership of a particular social group.

FGM constitutes a paradigmatic example of intersectional harm against women, resulting from the interaction of gender with other intersecting factors such as age (often of minors), social status, ethnic and cultural contexts, and unequal power relations, producing effects that cannot be adequately captured through a single-axis analysis.

Thus, a concrete illustration of how intersectionality can act as a hermeneutic tool is provided by the case law of the European Court of Human Rights (ECtHR) concerning the expulsion of women who sought asylum to escape – or to protect their daughters from – female genital mutilation (FGM). In this context, the Court has, somewhat surprisingly, adopted a highly restrictive approach.<sup>69</sup>

The ECtHR’s case law on FGM exhibits a clear pattern: although FGM is recognized as a form of ill-treatment prohibited under Article 3 of the ECHR, the Court is extremely cautious in admitting applications and ruling on the merits. The majority of cases are declared inadmissible<sup>70</sup> due to insufficient evidence of a real and personal risk of FGM.

In the few cases in which the Court has ruled on the merits, such as *Sow v. Belgium* and *R.B.A.B. and Others v. The Netherlands*, the Court emphasized that the central criterion for protection is the demonstration of a real and concrete risk of FGM upon return. Article 3 applies even where the threat comes from private actors, but without strong evidence of risk, the claim cannot succeed. For instance, in *Sow v. Belgium*, the

<sup>68</sup> UNHCR, *Guidance on refugee claims relating to female genital mutilation*, cit., para 1.

<sup>69</sup> A. MIDDELBURG, A. BALTA, *Female Genital Mutilation/ Cutting as a Ground for Asylum in Europe*, in *International Journal of Refugee Law*, 2016, no. 3, pp. 416-452; On this topic, see also F. NOVAK-IRONS, *Female Genital Mutilation: a Case for Asylum in Europe*, in *Forced Migration Review*, 2015, pp. 77-79; A. CRESCENZI, *La questione del rimpatrio di donne migranti a rischio di subire mutilazioni genitali femminili*, in *Diritti umani e diritto internazionale*, 2021, no. 2, p. 469 ff.; V. ZAMBRANO, *Le vittime di mutilazioni genitali femminili tra riconoscimento dello status di rifugiato e (discutibile) giurisprudenza europea sui rimpatri*, in this *Journal*, 2023, no. 2, pp. 121-145; R. M. MESTREI MESTRE, L. WENDEL, S. JOHNSDOTTER, *Cultural Expertise and Female Genital Mutilation/Cutting*, in L. HOLDEN (ed.), *Cultural Expertise, Law, and Rights*, London, 2023, pp. 73-85.

<sup>70</sup> European Court of Human Rights, Third Section, judgement of 8 March 2007, application no. 23944/05, *E. Collins and A. Akaziebie v. Sweden*; European Court of Human Rights, Fifth Section, judgment of 17 May 2011, application no. 43408/08, *Izevbekhai and Others v. Ireland*; European Court of Human Rights, First Section, judgement of 20 September 2011, application no. 8969/10, *Omeredo v. Austria*; European Court of Human Rights, First Section, judgement of 13 December 2011, application no. 22255/11, *Okon and Okon v. Ireland*; European Court of Human Rights, Fifth Section, judgement of 10 April 2012, application no. 35745/11, *R.W. and Others v. Sweden*; European Court of Human Rights, Fourth Section, judgement of 30 August 2011, application no. 4539/11, *Ameh and Others v. The United Kingdom*; European Court of Human Rights, First Section, judgment of 13 March 2018, application no. 32207/16, *A.L. v. The United Kingdom*.

Court initially granted an interim measure under Rule 39 of the Rules of Court to prevent removal while the application was pending, reflecting the urgency of the alleged risk, but later found no violation of Articles 3 and 13, as there was no demonstrated real and concrete risk of FGM.

Similarly, in *R.B.A.B. and Others v. The Netherlands*, although the Court acknowledged the potential harm posed by FGM, it concluded that the applicants had not demonstrated a sufficiently real and concrete risk to warrant protection.

The Court's cautious and selective approach carries significant implications for an intersectional analysis of risk, as additional factors – such as age, family situation, and social context – can influence the perception of concrete risk and the assessment of the applicant's credibility.

Middelburg and Balta highlighted that “The recurrent reasoning behind the Court's decisions is that the cases are ill-founded, or the applicant is not credible,<sup>71</sup> or the fact that the applicants were granted residence permits in the defendant country. In the majority of cases, the Court considered that an Internal Flight Alternative (IFA) was a viable, alternate option for the applicant.”<sup>72</sup> Indeed, the ECtHR has frequently dismissed FGM cases because it considered that relocation to a safe area within the applicant's country of origin would remove the risk.

In the previous Section, we have already analysed the crucial role that credibility assessment plays in asylum procedures. Similar dynamics can also be observed under the European Convention on Human Rights, highlighting that an intersectional lens remains valuable for identifying overlapping vulnerabilities and assessing protection needs. In FGM-related claims, women asylum-seekers often face practical difficulties in demonstrating the existence of a real risk, the inadequacy of state protection, and the impossibility of internal relocation.<sup>73</sup> In this context, principles such as the precautionary approach and, where a gender-sensitive analysis is warranted, the presumption of credibility of applicants at risk of FGM, until proven otherwise, become essential to ensure appropriate protection and avoid underestimation of the harm suffered.<sup>74</sup> These patterns underscore the need for an intersectional and context-sensitive assessment of risk in FGM-related asylum claims.<sup>75</sup>

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<sup>71</sup> “For instance, in the case of *Ameh v UK*, the ‘well-founded’ fear of the applicant was challenged as not being genuine because the applicant did not apply for asylum as soon as she reached the UK. (...) A myriad of reasons could justify why an applicant did not immediately engage with State authorities (including lack of knowledge of the legal system or the application process), but in *Ameh* the ECtHR failed to address this issue and concluded that the fear was not well founded.” A. MIDDELBURG, A. BALTA, *Female Genital Mutilation/ Cutting as a Ground for Asylum in Europe*, cit., p. 442.

<sup>72</sup> A. MIDDELBURG, A. BALTA, *Female Genital Mutilation/ Cutting as a Ground for Asylum in Europe*, cit., pp. 440-441.

<sup>73</sup> L. HOOPER, *Gender-Based Asylum Claims and Non-Refoulement: Articles 60 and 61 of the Istanbul Convention. A collection of papers on the Council of Europe Convention on preventing and combating violence against women and domestic violence*, p. 19.

<sup>74</sup> V. ZAMBRANO, *Le vittime di mutilazioni genitali femminili*, cit., pp. 136-137.

<sup>75</sup> K.M. ZWAAN, *Urgency in Expulsion Cases Before the European Court of Human Rights and the UN-Committees. A Bird's Eye View*, in E.R RIETER, K.M. ZWAAN (eds.), *Urgency and Human Rights. The Protective Potential and Legitimacy of Interim Measures*, 2021, The Hague, pp. 135-160.

Furthermore, the issue of internal flight is particularly salient in gender-based claims. Relocation within the country is often insufficient to mitigate risk, as lack of protection in one area frequently indicates that the State is also unable or unwilling to provide safety elsewhere.<sup>76</sup>

Despite this, the Strasbourg Court has often considered the State of origin capable of protecting the applicants, thereby legitimising their expulsion. However, this assessment was based on purely formal considerations – such as the existence of domestic legislation prohibiting female genital mutilation – and failed to engage in a concrete and individualized examination of the applicants' circumstances.<sup>77</sup>

From an intersectional perspective, considering factors such as minor age (in some cases), female gender, and asylum-seeker status – together with the ways applicants were constrained by social norms – reveals the full complexity of their situations. If the Court had applied this approach, applicants would have been more likely recognized as beneficiaries of international protection (and not been expelled), thereby preventing exposure to the inhuman treatment constituted by FGM, a practice that clearly violates Article 3 of the European Convention on Human Rights.

Within this analytical framework, it is even more important to recall that the Council of Europe has adopted a landmark treaty for the protection of women's human rights, namely the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). The Convention represents the first legally binding international instrument to provide a comprehensive definition of gender-based violence against women and to frame such violence as both a cause and a consequence of structural gender inequality.

As a binding treaty, the Istanbul Convention has played a crucial role in strengthening the legal system for the protection of women against gender-based violence.<sup>78</sup> It requires States Parties not only to prevent and combat violence against women, but also to ensure gender-sensitive policies and procedures across a range of legal areas, including asylum and migration. In particular, the Convention obliges States to recognise gender-based violence against women as a form of persecution within the meaning of Article 1A(2) of the 1951 Refugee Convention, or as serious harm giving

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<sup>76</sup> “Another gendered aspect of non-refoulement is the argument used with regard to the risk of women to be subjected to FGM, that there is a possibility of ‘internal flight’, meaning women can return and live safely in another part of the country. In particular in gender-based refugee claims, the lack of State protection in one part of the country is often an indication that the State is also not able or willing to protect the woman or girl in any other part of the country. Furthermore, if the woman or girl relocates, for example from a rural to an urban area to avoid FGM, the protection risks in the place of relocation would have to be carefully assessed.” Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to develop*, 15 January 2008, para. 60 (A/HRC/7/3).

<sup>77</sup> A. CRESCENZI, *La questione del rimpatrio di donne migranti a rischio di subire mutilazioni genitali femminili*, cit., p. 480.

<sup>78</sup> For an in-depth analysis, see S. DE VIDO, M. FRULLI (eds.), *Preventing and Combating Violence Against Women and Domestic Violence*, Cheltenham, 2023.

rise to subsidiary protection, and to apply a gender-sensitive interpretation of the Convention grounds.

Specific relevance is attributed to female genital mutilation. Article 38 of the Istanbul Convention explicitly requires States Parties to criminalise all forms of female genital mutilation,<sup>79</sup> thereby confirming its character as a serious human rights violation and a form of gender-based violence. The Convention further reinforces the principle of non-refoulement, prohibiting the return of women and girls to countries where they face a real risk of being subjected to torture or inhuman or degrading treatment, including FGM.

Against this strengthened normative backdrop, the case law of the European Court of Human Rights on FGM-related asylum claims offers an instructive lens for critically examining the degree to which a gender-sensitive and intersectional approach is (un)reflected in judicial practice.

## **5. Limits and Challenges of Intersectional Reasoning in Refugee Law**

Although intersectionality has gained increasing recognition in international law, its application in refugee law is not without challenges. This section outlines the main complexities associated with intersectional reasoning, while arguing that – if applied with appropriate safeguards – it remains a valuable and necessary analytical tool.

A first objection could be that the 1951 Refugee Convention already allows for the recognition of persecution on multiple grounds. In principle, an individual may qualify for refugee status if a well-founded fear of persecution is linked to one or more Convention grounds. However, while the Convention does not formally exclude plural grounds, it offers little guidance on how to assess claims in which persecution arises from the interaction of several identity markers. In practice, this gap may lead to the under-recognition of complex forms of harm, particularly where each ground, considered in isolation, appears insufficient to trigger protection. Intersectionality addresses this shortcoming by revealing forms of persecution that single-axis analyses risk overlooking, ensuring that structurally disadvantaged applicants are not excluded from protection.

A second challenge could concern methodological indeterminacy. Intersectionality encourages attention to multiple, overlapping grounds of discrimination, yet it does not always provide clear criteria for determining which intersections are legally relevant or how they should be weighed. This may introduce a degree of discretion and inconsistency in decision-making, especially in asylum procedures already characterised

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<sup>79</sup> In this regard, see S. DE VIDO, *Culturally motivated crimes against women in a multicultural Europe. The case of criminalization of FGM in the 2011 CoE Istanbul Convention*, in L. ZAGATO, M. VECCO (eds.), *Citizens of Europe. Culture e diritti*, 2015, Venice, pp. 93-114; R.M. MESTRE I MESTRE, *Article 38: Female genital mutilation*, in S. DE VIDO, M. FRULLI (eds.), *Preventing and Combating Violence Against Women and Domestic Violence*, cit., pp. 459-470.

by evidentiary constraints and credibility assessments. Nevertheless, intersectional reasoning offers a more realistic and context-sensitive evaluation of risk, capable of capturing patterns of harm that would otherwise remain invisible within rigid analytical frameworks.

A third complexity could relate to the risk of hyper-fragmentation. International refugee law is structured around a set of protected grounds, whereas intersectionality highlights the fluid and dynamic nature of identity and vulnerability. In the absence of a coherent normative framework, there is a risk that intersectionality could lead to *ad hoc* interpretations, potentially undermining legal certainty and predictability. The proliferation of increasingly specific categories may result in divergent outcomes in similar cases. Yet, what may appear as fragmentation is also what allows intersectionality to tailor protection to the specific needs of asylum seekers, challenging structural barriers rooted in social and cultural biases and enhancing the substantive effectiveness of human rights protection.

Finally, it could be argued that intersectional reasoning may reproduce victimising narratives, particularly in relation to women asylum seekers.<sup>80</sup> In seeking to capture multiple layers of disadvantage, there is the possibility of portraying women primarily as passive victims, thereby obscuring their agency and resilience. However, when applied carefully, intersectionality can illuminate systemic patterns of discrimination without reducing individuals to stereotypes, offering a balanced and nuanced analysis that acknowledges both vulnerability and agency.

To mitigate these complexities, methodological safeguards – such as clear analytical criteria, decision-maker training, and procedural standards – are essential. With these measures, intersectionality strengthens refugee protection, delivering assessments that reflect the multidimensional realities of applicants' lives. Despite these challenges, intersectionality remains a highly effective tool to capture the complex, multi-dimensional nature of persecution in refugee law.

## 6. Conclusion

The analysis of women asylum seekers as a case study demonstrates how applying an intersectional lens can enhance the coherence and effectiveness of refugee law in addressing gender-based persecution, which is intrinsically intertwined with other forms of discrimination. Recognizing the intersectional dimensions of gender discrimination ensures that vulnerability is understood as a dynamic, multi-layered process rather than

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<sup>80</sup> In this topic, a huge part of literature pointed out the risk of always describe women as vulnerable. See: J. FREEDMAN, *The uses and abuses of "vulnerability" in EU asylum and refugee protection: Protecting women or reducing autonomy?*, in *Papeles del CEIC*, 2019, pp. 1-15; H. CRAWLEY, *Saving Brown Women from Brown Men? "Refugee Women", Gender and the Racialised Politics of Protection*, in *Refugee Survey Quarterly*, 2022, pp. 355-380; M. BENSLAMA-DABDOUB, *Epistemic Violence and Colonial Legacies in the Representation of Refugee Women: Contesting Narratives of Vulnerability and Victimhood*, in *International Journal of Law in Context*, 2024, no. 1, pp. 54-73.

a fixed status.<sup>81</sup> Indeed, intersectionality provides a valuable framework to identify and analyse the multiple, overlapping forms of discrimination experienced by asylum seekers.

By showing how international refugee law often treats grounds of persecution in isolation – such as gender separately from religion – an intersectional approach enables a more accurate and nuanced assessment of asylum claims. In practice, it allows judges and legal practitioners to consider the combined effects of identity-based factors, ensuring that protection measures are tailored to the specific vulnerabilities of asylum seekers.

In this sense, intersectionality operates not merely as a theoretical tool, but as a concrete legal device capable of addressing structural barriers rooted in social and cultural biases. Although this article focused primarily on the assessment of individual asylum claims, the principles of intersectionality should inform the entire asylum process, including reception policies,<sup>82</sup> protection measures, and remedial actions following human rights violations.<sup>83</sup>

Integrating intersectionality into International Refugee Law would enhance both the theoretical and practical capacity of the system to respond to the real needs of particularly vulnerable groups. Its adoption would move the field closer to substantive equality, ensuring that all asylum seekers exposed to overlapping forms of discrimination receive protection that reflects the complexity of their lived experiences.

**ABSTRACT:** This article proposes intersectionality as a legal hermeneutic tool to enhance International Refugee Law, providing a comprehensive framework for analysing asylum claims and addressing the needs of particularly vulnerable refugee groups. Gender-based discrimination is inherently intersectional, rarely occurring in isolation but intersecting with other identity markers – such as nationality, ethnicity, religion, age, and migratory status – to produce compounded and distinctive forms of oppression. Traditional single-axis approaches often fail to capture these overlapping harms, potentially leaving applicants without adequate protection. The article posits that intersectionality is particularly crucial in assessing both the

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<sup>81</sup> C. FLAMAND, F. RAIMONDO, S. SAROLÉA, *Examining Asylum Seekers' "Other Vulnerabilities"*, cit., 2023, p. 504.

<sup>82</sup> P. DEGANI, P. DE STEFANI, *Addressing Migrant Women's Intersecting Vulnerabilities. Refugee protection, Anti-trafficking and Anti-violence Referral Patterns in Italy*, in *Peace Human Rights Governance*, 2020, pp. 113-152.

<sup>83</sup> In the field of anti-discrimination law, Atrey provides an in-depth analysis of remedies in cases of intersectional discrimination, see S. ATREY, *Intersectional discrimination*, cit., pp. 197 – 206: “the whole project of intersectionality is about transforming structures of disadvantage and systems of powers which are co-constituted. The goal is to upturn the structures and systems which cause intersectional discrimination and to reimagine societies as truly equal where no one is intersectionally disadvantaged. The fundamental goal of transformation is what inspires intersectionality as a theory and in turn what must inspire discrimination lawyers to redress it as a category of discrimination.” (p. 197).

credibility of asylum claims and the seriousness of gender-based persecution. Using women asylum seekers as a paradigmatic case, it analyses FGM-related caselaw before the European Court of Human Rights and illustrates how intersectional reasoning can strengthen both the theoretical and practical capacity of refugee law, advancing substantive equality.

**KEYWORDS:** intersectionality – gender discrimination – women asylum seekers – international refugee law – female genital mutilation – ECtHR.