



# Looking at the Vulnerabilities of Migrants Seeking Protection through an Intersectional Prism

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There is an increasing trend, in the policy and advocacy discourse on asylum and migration, to call for specific protection measures towards ‘vulnerable’ refugees, asylum seekers, and migrants. This trend is yet again exemplified in the EU New Pact on Migration and Asylum, which states that ‘the EU asylum and migration management system needs to provide for the special needs of vulnerable groups’,<sup>1</sup> and in the UN Global Compact for Safe, Orderly and Regular

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1 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum [2020] COM/2020/609.

Migration, which calls on states to ‘reduce vulnerabilities in migration.’<sup>2</sup> The case-law of the European Court of Human Rights (ECtHR) is also increasingly mobilising ‘vulnerability’ in its rulings on asylum and migration cases.<sup>3</sup> However, there is a lack of clear and consistent methodology, which would allow state actors (such as public servants within asylum authorities, social workers, and asylum judges) to identify vulnerable positions and their legal consequences on states’ obligations.<sup>4</sup>

At the same time, there is a long-standing trend in sociological and anthropological research on migration to mobilise ‘vulnerability’ as an analytical tool to empirically study migrants’ lived experiences.<sup>5</sup> This trend is often explicitly or implicitly rooted in the ‘vulnerability theories’, which have been mainly developed as part of the ‘ethics of care’, a U.S. based school of thought that advocates attention and solicitude to others as the main ethical paradigm, thereby challenging traditional paradigms of personal autonomy.<sup>6</sup>

2 UNGA Res 73/195 (11 January 2019) UN Doc A/RES/73/195, objective 7. Atak, I.; Nakache, D.; Guild, E. and Crépeau, F., 2018. Migrants in vulnerable situations and the Global Compact for Safe, Orderly and Regular Migration. *Queen Mary University of London, School of Law, Legal Studies Research Paper* 273.

3 Peroni, L. and Timmer, A., 2013. Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law. *International Journal of Constitutional Law* 11(4), pp. 1056–1085; Ippolito, F., and Sanchez S.I. (eds.). (2015). *Protecting Vulnerable Groups. The European Human Rights Framework* pp. 247–270. Hart Publishing, Oxford, United Kingdom; Baumgärtel, M., 2020. Facing the challenge of migratory vulnerability in the European Court of Human Rights. *Netherlands Quarterly of Human Rights* 38(1), pp. 12–29; Ippolito, F. (2020). *Understanding Vulnerability in International Human Rights Law*. Editoriale Scientifica, Naples, Italy.

4 In the EU, the newly founded EU Agency for Asylum (EUAA) has developed particular expertise in setting-up operational tools that assist the EU member states in identifying specific protection needs among asylum seekers. See EUAA’s Vulnerability Toolkit <<https://euaa.europa.eu/asylum-knowledge/vulnerability>> accessed 29 September 2023. See further: UN International Organization for Migration (IOM) (2019). *Determinants of Migrant Vulnerability*. <<https://emm.iom.int/handbooks/migrants-vulnerable-violence-exploitation-and-abuse/determinants-migrant-vulnerability>> accessed 29 September 2023. See also United Nations High Commissioner for Refugees (UNHCR) (2017). *Migrants in vulnerable situations. UNHCR’s perspective*. <<https://www.refworld.org/docid/596787174.html>> accessed 29 September 2023; UNHCR (2010). *The Heightened Risk Identification Tool*. <<https://www.refworld.org/docid/4c46c6860.htm>> accessed 29 September 2023.

5 See also the literature review in the field, made by Virokannas, E., Liuski, S., and Kurnonen, M., 2018. The contested concept of vulnerability. A literature review. *European Journal of Social Work* 23(2), pp. 327–339.

6 See, among others, Martha Fineman’s leading work: Fineman, M.A., 2008. The Vulnerable Subject: Anchoring Equality in the Human Condition. *Yale JL & Feminism* 20(1). See further Fineman, M.A. (2018). Injury in the Unresponsive State: Writing the Vulnerable Subject into Neo-Liberal Legal Culture. In Bloom A., Engel D.M. and McCann M. (eds.) *Injury and*

Vulnerability theories warn against essentializing vulnerable individuals, who can develop resilience (and even resistance) strategies when empowered to do so.<sup>7</sup> Rather, they emphasise vulnerabilities' embodied dimensions and how experiences of vulnerability are embedded in social and intersubjective dynamics.<sup>8</sup> They highlight the need to unpack these dynamics, through adequate consideration for their implied power dimensions and how they are influenced by broader structural factors that contribute to generating unequal positions in society.

The various empirical models that have been developed to document migrants' vulnerabilities commonly emphasise the need to connect the personal and innate characteristics of individuals with their broader social environment, including the broader social and political factors that structure that environment. They often consider lived experiences of vulnerabilities as resulting from a combination of 1. innate characteristics, mainly with corporeal dimensions (such as age and the health status); 2. situated experiences, which relate to interpersonal relationships as part of everyday social interactions; and 3. structural factors and dynamics, which relate to the organisation of society.<sup>9</sup>

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*Injustice: The Cultural Politics of Harm and Redress*, Cambridge University Press, Cambridge, United Kingdom, pp. 50–75.

- 7 Freedman, J., 2019. The uses and abuses of «vulnerability» in EU asylum and refugee protection: protecting women or reducing autonomy? *Papeles del CEIC*, available at <<https://shs.hal.science/halshs-02128324/document>> accessed 30 September 2023; Butler, J., Gambetti, Z., and Sabsay, L. (2016). *Vulnerability in Resistance*. Duke University Press, Durham, U.S.A.
- 8 Boubilil, E., 2018. The Ethics of Vulnerability and the Phenomenology of Interdependency. *Journal of the British Society for Phenomenology* 49(3), pp. 183–192; Virokannas E., Liuski S., and Kuronen M. 2018 n 5; Browne, V., Danely, J., and Rosenow, D. (eds.). (2021). *Vulnerability and the Politics of Care. Transdisciplinary Dialogues*. OUP, Oxford, United Kingdom. Gilson, E. (2014). *The Ethics of Vulnerability: a Feminist Analysis of Social Life and Practice*. Routledge, London, United Kingdom; Mackenzie, C. (ed.). (2013). *Vulnerability: New Essays in Ethics and Feminist Philosophy*. OUP, Oxford, United Kingdom. Fineman, M.A. (2013). Equality, Autonomy, and the Vulnerable Subject in law and Politics. In Fineman, M.A. and Grear, A. (eds), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics*, Ashgate, London, United Kingdom, pp. 17–19; Fineman, M.A., 2017. *Vulnerability and Inevitable Inequality*. 133 *Oslo Law Review* 4(3), pp. 1378–1380.
- 9 Cortina, A., and Conill, J. (2016). Ethics of Vulnerability. In Masferrer, A. and Garcia-Sanchez, E. (eds.), *Human Dignity of the Vulnerable in the Age of Rights: Interdisciplinary Perspectives*. Springer, Basel, Switzerland, pp. 45–6; Brown K., Ecclestone, K. and Emmel, N., 2017. The Many Faces of Vulnerability. *Social Policy and Society* 16(3), pp. 497–510; Gilodi, A.; Albert, I.; and Nienaber, B., 2022. Vulnerability in the Context of Migration: a Critical Overview and a New Conceptual Model. *Human Arenas*. See also the 10M model of the determinants of migrant vulnerability, which recommends combining the analysis of 1. individual factors with 2. household and family factors, 3. community factors, and 4. structural factors (10M, 2019, n 4). See further UNHCR (2017), n 4; and UNHCR (2010), n 4.

This special issue aims at adding an additional layer to these analyses, by mobilising ‘intersectionality’ as an analytical tool to deepen empirical understandings of the vulnerabilities faced by migrants seeking protection in Europe. When researching on, and exploring, the vulnerabilities lived by migrants seeking protection (such as asylum seekers, victims of human trafficking, and unaccompanied minors), it emerges clearly that their identities are not monolithic, and that their experiences are not one-dimensional. As the contributions in this special issue argue, ‘intersectionality’ can thus become a lens to better understand vulnerabilities among migrants seeking protection. Moreover, the special issue identifies strategies on how best to address these vulnerabilities as part of the relevant legal norms and systems, which are aimed at answering protection needs with a legal status (including, but not limited to, the refugee status). Contributions to the special issue thereby mobilise some of the data that were collected as part of the VULNER project, an international research initiative funded by the EU under the Horizon Europe programme in view of improving knowledge on migrants’ vulnerabilities, and of identifying best practices and strategies to address them.

## 1 A Brief Primer on Intersectionality

‘Intersectionality’ is a concept that has its roots into black, anti-racist, feminist movements, which observed that ‘different grounds of oppression interact and result in unique forms of oppression.’<sup>10</sup> The African American jurist Kimberlè W. Crenshaw introduced this concept in her critical study of U.S. anti-discrimination law in 1989, in her pivotal article “Demarginalizing the Intersection of Race and Sex”.<sup>11</sup> Referring to the image of the road junction, Crenshaw intended to describe the peculiar condition of black women who, being at the intersection of several marginalised groups – such as ethnic and

10 Ajele, G. and McGill, J. (2020). ‘Intersectionality in Law and Legal Contexts’, <<https://www.leaf.ca/publication/intersectionality-in-law-and-legal-contexts/>> accessed 29 September 2023. According to some authors, intersectionality also has roots in Latinas and indigenous movements (Danisi, C., Dustin, M., Ferreira, N. and Held, N., (2021), *Queering asylum in Europe: Legal and social experiences of seeking international protection on grounds of sexual orientation and gender identity*, Springer, Basel, Switzerland, pp. 68–69). On tracing the concept’s many travels, see Davis, K., 2020. Who owns intersectionality? Some reflections on feminist debates on how theories travel. *European Journal of Women’s Studies*, 27(2), pp. 113–127.

11 Crenshaw, K., 1989. Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics. *University of Chicago Legal Forum* 1, pp. 139–167.

gender minorities – suffer from heightened and unique forms of discrimination. They undergo the deteriorating effects of sharing social attributes that, each on their own, contribute to putting individuals in marginalised positions. The combination of these attributes thus places them in a position in which they face more serious, but above all qualitatively different, discrimination – which, as Crenshaw explained, is not merely the sum of different inequalities.

In this regard, reference should be made to tripartition that distinguishes between ‘intersectional discrimination’, ‘multiple discrimination’, and ‘compound discrimination’.<sup>12</sup> ‘Multiple discrimination’ occurs when a person is discriminated against due to the operation of multiple discrimination grounds, which manifest themselves independently in different social settings and situations. ‘Compound discrimination’ occurs when several discrimination grounds manifest themselves conjointly in the same situation without interacting with each other, so that their discriminatory effects can still be distinguished. In the case of ‘intersectional discrimination’, instead, not only there are multiple discrimination factors at play in the same situation, but their interaction is such that they are deeply intertwined, thereby giving rise to yet another kind of discrimination. Against this backdrop, an intersectional approach makes it possible to unveil power structures and hidden biases as well as to identify such discriminatory experiences, which otherwise would remain invisible.

‘Intersectionality’ helps recognize and name social complexities, but Crenshaw herself has later warned against using her theory on ‘intersectionality’ as a ‘blanket term’,<sup>13</sup> which would end up merely recognizing complex forms of discrimination without supporting strategies to address them. From her perspective, ‘intersectionality’ is not intended as a ‘grand theory’, but rather as an analytical perspective that sheds light on compounded forms of oppression, which should be actively addressed – including by tackling the power structures and dynamics that underpin them.<sup>14</sup> Forms of discriminations, oppressions, disadvantages are linked to power structures and dynamics operating in a given context. Power relations and distributions are central to Yuval-Davis’ ‘situated intersectionality analysis’.<sup>15</sup> She argues that multiple axes of social division – e.g. gender, ethnicity, class – involve complex power

12 Makkonen, T. (2002). *Multiple, Compound and Intersectional Discrimination: Bringing the Experiences of the Most Marginalized to the Fore*. Abo Akademi University, Turku, Finland.

13 Kimberlé Crenshaw on Intersectionality, *More than Two Decades Later*, 8 June 2017, <<https://www.law.columbia.edu/news/archive/kimberle-crenshaw-intersectionality-more-two-decades-later>> accessed 29 September 2023.

14 Ajele, G. and McGill, J. (2020) n 10.

15 See, among others, Yuval-Davis, N., 2020. Situated Intersectionality and Social Inequality. *Raisons Politiques* 58(2), pp. 91–100.

dynamics, and as such they shape one's experience in a constitutive, rather than additive way.<sup>16</sup> Yuval-Davis frames 'intersectionality' in broader terms as 'applicable to any grouping of people, advantaged as well as disadvantaged'<sup>17</sup> and as such, it becomes a relevant analytical tool that steers away from exceptionalism and essentialism.

Attempts have also been made at connecting 'intersectionality' with legal debates on how best to design and implement anti-discrimination laws,<sup>18</sup> identify human rights violations<sup>19</sup> and assess asylum applications.<sup>20</sup> This raises additional questions, including on how to integrate dedicated attention to the intersectional dimensions of human experiences within legal norms and reasonings, without affecting the ability of 'intersectionality' to act as a concept sustaining radical criticism against systemic inequalities.

## 2 Deepening the Understanding and Criticism of State Practices towards Vulnerable Migrants Seeking Protection

This special issue is among the outputs of the VULNER project, which gathered researchers across Europe (Belgium, Germany, Italy, and Norway), Canada, Lebanon, and Uganda, in view of deepening empirical knowledge of migrants' lived experiences of their vulnerabilities, and of the current practices of states

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- 16 Yuval-Davis, N., 2006. Intersectionality and Feminist Politics. *European Journal of Women's Studies* 13(3), pp. 193–209, p. 198.
- 17 *Ibid.* p. 201. See also Yuval-Davis (n 15); Anthias, F., and Yuval-Davis, N., 1983. Contextualizing feminism: Gender, ethnic and class divisions. *Feminist Review* 15, pp. 62–75.
- 18 Solanke, I. (2021). The EU approach to intersectional discrimination in law. In Abels, G., Krizsan, A., MacRae, H., van der Vleuten, A. (eds.) *The Routledge Handbook of Gender and EU Politics*, 1st. ed., Routledge, London, United Kingdom, p. 12.
- 19 UN CRPD (2016) *General Comment No 3, Women and Girls with Disabilities*; Bond, J. (2021). Intersectionality in Treaty Body Decisions. In Bond, J. *Global Intersectionality and Contemporary Human Rights*. OUP, Oxford, United Kingdom, p. 130; Moreno-Lax, V. (2021). Intersectionality, Forced Migration, and the Jus-generation of the Right to Flee: Theorising a Composite Entitlement to Leave to Escape Irreversible Harm. In: Çali, B., Bianku, L., and Motoc, Iulia (eds.). *Migration and the European Convention on Human Rights*. OUP, Oxford, United Kingdom, p. 43.
- 20 Markard, N., 2016. Persecution for reasons of membership of a particular social group: intersectionality *avant la lettre*? *Sociologia del Diritto* 2, pp. 45–63; Danisi, C., Dustin, M., Ferreira, N. and Held, N. (2021), n 10. See also UNHCR, *Intersectionality and the Age, Gender and Diversity Approach*, <<https://www.unhcr.org/what-we-do/how-we-work/safeguarding-individuals/intersectionality-and-age-gender-diversity-approach>> accessed 29 September 2023.

and international organisations that seek to address them.<sup>21</sup> Data collected as part of the project show that four groups are generally considered ‘vulnerable’ and stand out in state practices, because of the particular attention they receive in the existing legislations, regulations, and guidelines that govern the practices of asylum authorities towards vulnerable asylum seekers: unaccompanied minors, victims of torture, LGBTQI+ people, as well as victims of human trafficking.<sup>22</sup>

This calls for further enquiry, while also questioning the limitations of existing state approaches in actually addressing vulnerabilities: can ‘intersectionality’ deepen the analysis of the vulnerabilities encountered by vulnerable migrants seeking protection, and support the establishment of suitable strategies in view of addressing them? Can ‘intersectionality’ support the establishment of vulnerability assessments, which do not focus on these determinants of vulnerability exclusively (i.e., age, sexual orientation and gender identity, being a victim of torture, being a victim of human trafficking), but which also consider how they interact with other determinants of vulnerability in each individual and specific situation? Lastly, how can ‘intersectionality’ shed light on the systemic deficiencies of the legal system, when it comes to guaranteeing migrants’ protection?

These questions are addressed in the special issue, based on the *VULNER* data and additional data that were collected by the authors themselves. The special issue’s authors and editors would thus like to warmly thank the *VULNER* researchers who kindly replied to the two surveys they established (one in view of reaching a better understanding of how the specific protection needs of each of these vulnerable groups are addressed in the countries under study, and another one in view of reaching a better understanding of the experiences of those who are member of these vulnerable groups).

In the first article of this special issue, Hilde Lidén shows how an intersectional analysis of the vulnerabilities faced by unaccompanied minors supports the need for treating them as minors first, so that the finding of comprehensive answers to their specific protection needs is not impaired by the limitations inherent in the legal status of asylum seeker. Letizia Palumbo likewise calls for assessing vulnerabilities to exploitation through an intersectional approach, which moves beyond stereotyped understandings of the experiences of victims of human trafficking, and which also considers how the interplay among

21 For other outputs of the *VULNER* project see <<https://www.vulner.eu/>> accessed 29 September 2023.

22 Some of the *VULNER* data are available in open access. They can be consulted here <<https://www.vulner.eu/133237/data2>> accessed 29 September 2023.

precarious legal statuses contributes to putting migrants in a position where they are more likely to be exploited. Alice Sinon and Julie Lejeune then show how adequate consideration for the medico-legal reports, which are issued in accordance with the Istanbul Protocol,<sup>23</sup> can support an empirically grounded and intersectional analysis of the vulnerabilities faced by asylum seekers who were survivors of torture. They do so based on the data collected as part of their work for NANSEN, the Belgian Refugee Council.<sup>24</sup> By looking at the case study of Italy, Denise Venturi illustrates the difference that adopting an intersectional approach to the assessment of asylum claims of LGBTQI+ persons can make. She does so based on empirical data she collected as part of her own doctoral dissertation as well as relying on the VULNER data. Lastly, Christine Flamand, Francesca Raimondo and Sylvie Saroléa focus on the vulnerabilities encountered when implementing the VULNER Project's research, and which do not fit into the legal categorisations that focus on age, gender and human trafficking. They stress how an intersectional approach to vulnerabilities experienced by the asylum seekers throughout the asylum procedure would ensure a holistic and more appropriate assessment of their personal condition and protection needs.

As each article of this special issue elucidates, adopting an intersectional approach can be fruitful when dealing with the challenges posed by vulnerability in the asylum context, and can bring an added value in better identifying, assessing and addressing such vulnerabilities. Hence, the findings emerging from this special issue pave the way to further research on the deployment of intersectionality in asylum and migration laws and policies.

### Conflict of Interest

The views expressed in the special issue are solely those of the Author and do not necessarily reflect the views of the United Nations.

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23 UN Office of the High Commissioner for Human Rights (OHCHR). (2004). *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol")* HR/P/PT/8/Rev.1.

24 NANSEN is a NGO that provides individual support to asylum seekers in Belgium, where it also engages in strategic litigation to uphold refugees' rights. See <[www.nansen-refugee.be](http://www.nansen-refugee.be)> accessed 1 October, 2023.