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‘VULNERABILITY SHOPPING’ MAKING MIGRANTS INVISIBLE

Intersectional analysis on the impact of EU vulnerability identification policy
on unaccompanied and separated girls in Greece

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ABSTRACT

Unaccompanied and separated girls (UASGs) are one of the most paradigmatic examples of intersectional discrimination, given their placement in minimum the following social locations: migrants, children, people without any family references, and girls.

This thesis started with a specific aim: to study how intersectionality could improve the effectiveness of EU mechanisms that identify migrant vulnerability, so that these mechanisms could better identify the vulnerabilities of the people who are at the complex intersection of different inequalities, such as UASGs in Greece.

However, the obstacles encountered throughout the study have led to a much broader conclusion: the way that human rights rhetoric uses the notion of vulnerability, building on the ‘vulnerable groups’ approach, together with the lack of intersectionality in the international human rights framework, particularly regarding international migration, has impacts on the visibility of UASGs’ specific protection needs and risks at the legal, policy, field-work, and academic level. Therefore, the introduction of an intersectional approach not only improves the policy’s efficiency but is a *conditio sine qua non* to end the invisibility of UASGs.

Finally, intersectionality as a methodology tool led us to discover an existing binding legal figure that is able to fill the intersectionality gap in this case: the ‘best interest of the child’.

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TABLE OF ABBREVIATIONS

AIDA	Asylum Information Database
BIA	Best Interest Assessment
BIC	Best Interest of the Child
CEAS	Common European Asylum System
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CRC	Convention on the Rights of the Child
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
ESC	European Social Charter
ECSR	European Committee of Social Rights
EU	European Union
FRA	European Union Agency for Fundamental Rights
FRONTEX	European Border and Coast Guard Agency
GAS	Greek Asylum Service
GCR	Greek Council for Refugees
HRW	Human Rights Watch
IHRF	International Human Rights Framework
IHRL	International Human Rights Law

IPSN tool	EASO's tool for identification of persons with special needs
IFRC	International Federation of Red Cross and Red Crescent Societies
IOM	International Organization for Migration
LGTB	Lesbian, Gay, Bisexual, and Transgender
MS	Member States of the European Union
MSF	Médecins Sans Frontières
NGO	Non-Governmental Organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
RIC	Greek Reception and Identification Centers
RIS	Greek Reception and Identification Services
SGBV	Sexual and Gender-Based Violence
UAM	Unaccompanied Minors
UASG	Unaccompanied and Separated Girls
UN	United Nations
UN CEDAW	United Nations Committee on the Elimination of Discrimination against Women
UN CMW	United Nations Committee on Migrant Workers
UN CRC	United Nations Committee on the Rights of the Child
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund

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INTRODUCTION

1. BACKGROUND AND JUSTIFICATION OF THE TOPIC

1.1. WHY STUDY EU MIGRANT VULNERABILITY IDENTIFICATION POLICY IN GREECE?

The notion of vulnerability has acquired a growing importance in different fields such as anthropology, sociology, or bioethics,¹ although it has a different content for each field. In the field of human rights, the concept of vulnerability has emerged as a key element in the legal framework,² jurisprudence,³ and doctrine,⁴ as it advances towards substantive equality.⁵ However, there is no clear definition.

Different scholars have studied the connection between human rights and the concept of vulnerability, reaching the conclusion that the ‘vulnerable’ are those ‘whose rights are most at risk of being violated’.⁶ However, there is still no clear answer to the questions of whether there are intrinsically vulnerable people or groups, what makes a person vulnerable, what people are vulnerable

¹ Florencia Luna, ‘Elucidating the concept of vulnerability: Layers not labels’ (2009) 2 *International Journal of Feminist Approaches to Bioethics* 121

² Alexander H.E. Morawa, ‘Vulnerability as a concept of international human rights law’ (2003) 6(2) *Journal on International Relations and Development*, 139-155 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1596101> accessed 13 June 2019, Rosita Forastiero, ‘The Charter of Fundamental Rights and the Protection of Vulnerable Groups: Children, Elderly People and Persons with Disabilities’ en G. Palmisano (Ed.) *Making the Charter of Fundamental Rights a Living Instrument* (Brill 2015) 165-198

³ Laurence Burgogue-Larsen, *La Vulnérabilité Saisie Par Les Juges En Europe* (Editions Pedone 2014), Alexandra Timmer, ‘A quiet Revolution: Vulnerability in the European Court of Human Rights’ in M. Fineman & A. Gear (eds) *Vulnerability. Reflections on a New Ethical Foundation for Law and Politics* (Ashgate 2013) 147-170

⁴ María Ángeles Barrère Unzueta, ‘Martha A. Fineman and legal equality: Vulnerability vs. Subordination?’ (2016) 34 *CEFD* 17, 19 <<https://addi.ehu.es/bitstream/handle/10810/24965/8927-26794-1-PB.pdf?sequence=1&isAllowed=y>> accessed 6 June 2019, Romina Sijniensky, ‘From the Non-discrimination clause to the concept of vulnerability in International Human Rights Law-Advancing on the Need for Special Protection of Certain Groups and Individuals’ in Y. Haack, B. McGonigle Leyh, C. Burbano-Herrera, D. Contreras (eds) *The realisation of Human Rights: When Theory meets practice* (Intersectia 2014) 259-272, Carmen Barranco, Cristina Churrua (eds) *Vulnerabilidad y protección de los derechos humanos* (Tirant lo Blanch 2014)

⁵ Maija Mustaniemi-Laakso and others, ‘The Protection of Vulnerable Individuals in the Context of EU Policies on Border Checks, Asylum and Immigration’ (2016) 11(3) *FRAME* <www.fp7-frame.eu/wp-content/uploads/2016/08/Deliverable-11.3.pdf> accessed 5 June 2019

⁶ *ibid*

to, when vulnerability implies special treatment and what does it imply when it comes to drafting laws and policies?.⁷

In the migration context, the concept of vulnerability is particularly relevant because it is a determining element of whether a person to be protected is a priority under international law.⁸ The tension between the safeguarding of the nation state's ability to control its borders, and its human rights obligations, is 'solved' - or is said to be solvable - through the notion of vulnerability: certain 'vulnerable groups' need to be protected, the rest can wait.

The European Union (EU) has assumed a central role in protecting vulnerable groups of migrants through the adoption of a Common Asylum and Migration Policy, where the identification of 'vulnerable migrants' by their arrival in Europe is fundamental.⁹ Once identified, this 'vulnerability' is translated into special procedural safeguards, reception guarantees, and access to specific protection systems corresponding to their needs.¹⁰

However, international organisations, non-governmental organisations, and activists have pointed out that there is a tremendous misidentification of vulnerabilities,¹¹ especially regarding individuals who are at the intersection of different systems of oppression and inequality, or have non-evident vulnerabilities.¹² As a result, these people 'are not provided with the care and protection that they need'¹³ and are therefore deprived of their access to the effective realisation of their human rights. Without adequate and early identification, many people are invisible to the human rights protection systems at the national, regional, and international level.

⁷ Alyson Cole, 'All of Us Are Vulnerable, But Some Are More Vulnerable than Others: The Political Ambiguity of Vulnerability Studies, an Ambivalent Critique' (2016) 17(2) Critical Horizons 260 <www.tandfonline.com/doi/abs/10.1080/14409917.2016.1153896> accessed 5 June 2019

⁸ See Part II, Chapter I, Section 1 'Vulnerability in the context of international migration: migrant protection under international human rights law' (Pag. 34)

⁹ See Part III, Chapter I, Section 2 'Vulnerability in EU Migration and Asylum policies' (Pag. 65)

¹⁰ Ibid

¹¹ Médecins Sans Frontières (MSF), 'Greece in 2016: Vulnerable People Get Left Behind' (October 2016) <www.msf.org/sites/msf.org/files/report_vulnerable_people_201016_eng.pdf> accessed 8 July 2019

¹² European Council on Refugees and Exiles (ECRE), 'The concept of vulnerability in European asylum procedures' (2017) AIDA <www.asylumineurope.org/sites/default/files/shadow-reports/aida_vulnerability_in_asylum_procedures.pdf> accessed 1 July 2019

¹³ MSF, 'A Dramatic Deterioration for Asylum Seekers on Lesbos' (July 2017) 7 <www.msf.org/sites/msf.org/files/msf_lesbos_vulnerability_report1.pdf> accessed 8 July 2019

In this vein, this thesis studies the policies aimed at the identification of vulnerabilities in countries like Greece or Italy for three main reasons. First, identification is a complex process that becomes even more difficult in countries where there are larger numbers of migrants because of their geographical situation.¹⁴ Second, they are countries where the EU, through its different agencies such as the European Asylum Support Office (EASO) with its operating plans, has become a key actor when implementing vulnerability assessments.¹⁵ Third, in the context of the EU's relocation decisions, these vulnerability assessments only impact Greece and Italy at the moment.¹⁶

Furthermore, this issue is highly relevant at this moment, since the EU is proposing the revision and replacement of its current asylum instruments to better manage migration flows and offer adequate protection, consistent with the approach set out in the new European Agenda for Migration. In this context, 'the treatment of vulnerable groups has been one of the priority areas'¹⁷ of the reforms of the Common European Asylum System (CEAS) that were proposed by the Commission in 2016.¹⁸

Unfortunately, due to the limitations of this thesis in terms of time, space, and resources, it will only be possible to study these policies in one of the above-mentioned countries. In this regard, I choose Greece for two main reasons. First, the specificities of the EU-Turkey Statement made the impact of the vulnerability assessments even more interesting to study.¹⁹ Second, this thesis was drafted during a study semester in Athens, in the framework of the European Master Programme in Human Rights and Democratization's exchange program, which facilitated access to relevant sources.

¹⁴ Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Agenda on Migration' COM(2015) 240 final, 6

¹⁵ European Asylum Support Office (EASO), 'Single Programming Document. Multiannual Programming 2019-2021: Work Programme 2019, Revision 1' (November 2018) 39-45 <www.easo.europa.eu/sites/default/files/1_SPD2019-21%20Revision%201%20-%20adopted%2020181127.pdf> accessed 7 July 2019

¹⁶ Natalia Calcedo and Andrea Romano, 'Vulnerability in the context of EU asylum policies: the challenges of identification and prioritisation' in Alisa Petroff, Georgios Milios and Marta Pérez (eds) *Refugiados en movimiento: retos políticos, legales y sociales en tiempos de inestabilidad* (Focus on Internacional Migration n° 5 2018) 84 <https://ddd.uab.cat/pub/caplli/2017/194915/Focus_Petroff_a2018n5_Cap5.pdf> accessed 5 June 2019

¹⁷ ECRE (n 12) 17

¹⁸ Commission, 'Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)' COM(2016) 465 final

¹⁹ Greek Council for Refugees (GCR), 'Country Report: Greece' (2018 Update) AIDA, 77 <www.asylumineurope.org/reports/country/greece> accessed 7 July 2019

1.2. WHY INTERSECTIONALITY AS A METHODOLOGY FOR POLICY ANALYSIS?

Intersectionality is a key element in this master's thesis for procedural and material reasons. First, it is adopted as a methodology for the policy analysis and, second, it also forms the thesis's content, as it is the chosen theoretical approach and the essence of the hypothesis. Given the limitations of this thesis regarding extension, the decision over how intersectionality should be presented was intricate. Therefore, in this section I briefly introduce the definition and main points of intersectionality as a methodology for policy analysis. The full and comprehensive content of the approach is addressed in the next part of the thesis (Part I). Doing so might result in some repetition, but reading both parts together will give the reader an exhaustive understanding of both.

The notion of intersectionality is possibly 'the most important theoretical contribution that women's studies in conjunction with related fields have made so far'.²⁰ The term was coined by the feminist jurist Kimberle Crenshaw in 1989.²¹ It refers to the power relations and contexts associated with social inequalities. This approach attempts to perform a complex analysis of the reality lived by its subjects, through the approximation of different social positions and historically situated stratification. This reality is based on the constitution of social attributes of individuals within the framework of the interaction of multiple social constructs (gender, race, class, sexual orientation, ability, religion, legal status, etc.), rather than on a single dimension.²²

Intersectionality has increasingly become a primary analytic tool in social sciences; it has been recognised as an important research paradigm and has thus been applied to research practices across a variety of disciplines.²³ It proposes that one should understand the combination of an individual's social attributes as producing substantively different experiences, rather than increasing one person's burden. In other words, the objective is not to show how one group is more victimised or privileged

²⁰ Lesley McCall, 'The Complexity of Intersectionality' (2005) 30(3) Signs 1771

²¹ Kimberle Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) 140 The University of Chicago Legal Forum 139 <<https://philpapers.org/rec/CREDTI>> accessed 11 July 2019

²² Mastoureh Fathi, *Intersectionality, Class and Migration; Narratives of Iranian Women Migrants in the U.K.* (Palgrave Macmillan 2017) 8

²³ Ange-Marie Hancock, 'When Multiplication Doesn't Equal Quick Addition: Examining Intersectionality as a Research Paradigm' (2007) 5 Perspectives on Politics 63

than another, but to discover significant differences and similarities, in order to overcome discrimination and establish the necessary conditions for everyone to enjoy their human rights.²⁴

However, less attention has been paid to the application of intersectionality to public policy,²⁵ although it has been increasingly recognised as an innovative approach for understanding the differential impacts of policy on diverse populations.²⁶

As noted by Hankivsky, ‘intersectionality draws attention to aspects of policy that are largely uninvestigated or ignored altogether: the complex ways in which multiple and interlocking inequities are organized and resisted in the process, content, and outcomes of policy’.²⁷ This approach starts from the point that neither the policies nor their analyses are neutral,²⁸ and it is therefore important to have in-depth knowledge of the social locations of the policy’s targeted groups, and ‘how such locations are shaped and structured by existing and new policies’²⁹.

We cannot explain human lives by considering single categories such as gender, race, or legal status. On the contrary, individuals’ realities are ‘multidimensional and complex, lived realities are shaped by different factors and social dynamics operating together’.³⁰ However, public policies are reductionist and ‘try to reach quick, simple, and inexpensive solutions focused on “treatable issues” among populations perceived by policymakers as most “deserving” by categorizing them into homogeneous groups’.³¹ Consequently, they are unable to address essential elements such as the fact that ‘relationships and power dynamics between social locations and processes’³² are linked, that

²⁴ Olena Hankivsky and Renee Cormier, ‘Intersectionality and Public Policy: Some Lessons from Existing Models’ (2011) 64 *Political Research Quarterly* 217 <www.jstor.org/stable/41058335?seq=1#page_scan_tab_contents> accessed 11 July 2019

²⁵ Olena Hankivsky, *An Intersectionality-Based Policy Analysis Framework* (Institute for Intersectionality Research and Policy 2012) 33 <<https://data2.unhcr.org/en/documents/download/46176>> accessed 8 July 2019

²⁶ Olena Hankivsky and Julia S. Jordan-Zachery, ‘Introduction: Bringing Intersectionality to Public Policy’, in Olena Hankivsky and Julia S. Jordan-Zachery (eds), *The Palgrave Handbook of Intersectionality in Public Policy* (Palgrave Macmillan, 2019)

²⁷ *ibid* 2

²⁸ *ibid* 7

²⁹ *ibid* 4

³⁰ Olena Hankivsky, *Intersectionality 101* (The Institute for Intersectionality Research & Policy 2014) 3 <http://vawforum-cwr.ca/sites/default/files/attachments/intersectionality_101.pdf> accessed 8 July 2019

³¹ Hankivsky and Jordan-Zachery (n 26) 8

³² Hankivsky (n 30) 3

‘people can experience privilege and oppression simultaneously’,³³ or that ‘multi-level analyses that link individual experiences to broader structures and systems are crucial for revealing how power relations are shaped and experienced’.³⁴

Political intersectionality, as will be further explained in Part I, Section 3, precisely refers to the study of ‘how inequalities and their intersections are relevant to political strategies’,³⁵ or ‘the way specific acts and policies address the inequalities experienced by various social groups’.³⁶

This approach is also innovative in the context of EU, where it has only begun to be applied within the scope of EU anti-discrimination law and policies³⁷. Nevertheless, one of the areas where an intersectionality-based policy analysis is most needed is in the area of migration policies, where multiple social locations and systems of inequality interact in complex ways.³⁸ In particular, when we talk about vulnerability identification mechanisms, it is essential that we do not address them as a stereotyped category check box lists such as asylum seeker, victim of trafficking or unaccompanied minor.³⁹

It is important to know how to structure laws and policies in a way that allows them to improve their efficiency and end the invisibility of UASGs by addressing their special protection needs and risks, thereby granting them access to adequate protection.

1.3. WHY STUDY THE CASE OF UNACCOMPANIED OR SEPARATED GIRLS?

The ideal scenario would be to analyse how these vulnerability identification policies affect various groups who are at the intersection of multiple forms of oppression, and therefore avoid falling into the so-called ‘Oppression Olympics’.⁴⁰ However, given the limitations of this thesis regarding timing,

³³ *ibid*

³⁴ *ibid*

³⁵ Mieke Verloo, ‘Multiple inequalities, intersectionality and the European Union’ (2006) 13(3) *European Journal of Women's Studies* 213 <<https://hal.archives-ouvertes.fr/hal-00571275/document>> accessed 6 June 2019

³⁶ R Bishwakarma, V. Hunt, and A. Zajicek, *Intersectionality and informed policy* (Manuscript 2007)

³⁷ María-Caterina La Barbera, ‘Interseccionalidad, un “concepto viajero”: orígenes, desarrollo e implementación en la Unión Europea’ (2016) 4 *Interdisciplina* 105

³⁸ María José Magliano, ‘Interseccionalidad y migraciones: potencialidades y desafíos’ (2015) 23 *Estudios Feministas* 406, 692 <www.scielo.br/pdf/ref/v23n3/0104-026X-ref-23-03-00691.pdf> accessed 8 July 2019

³⁹ See Part III, Chapter II, Section 3.4 ‘Trying to fill the information gap? EASO’s support and IPSN tool’ (Pag. 85)

⁴⁰ Ange-Marie Hancock, *Solidarity Politics for Millennials—A Guide to Ending the Oppression Olympics* (Palgrave Macmillan 2011)

extensions, and resources, it is better to focus on a single group, so that a more in-depth analysis can be performed. I thus chose to focus on unaccompanied or separated girls (UASG) for two main reasons.

First, the number of migrant children has increased quickly, many of whom are girls, due to the feminisation of migration. In this sense, an increasing body of literature has been published that pays attention to unaccompanied minors. However, few studies have addressed the specific experiences of migrant girls, and almost none of them have addressed UASGs. These girls are invisible in both quantitative and qualitative studies, and the few existing studies focus on contexts of trafficking and exploitation.⁴¹

Second, according to the intersectionality theory that is developed in Part I, unaccompanied girls are not more vulnerable than other people. They do not have a triple or quadruple vulnerability compared to other migrants, and therefore do not need to be more protected. On the contrary, the series of risks and violence, situations of vulnerability, or specific forms of discrimination that UASGs face are determined by their social locations, thus people in different social locations face different challenges.

In fact, it is interesting to study UASG because of the multiple social locations in which they are placed (comprising at least minors, migrants, people without any family references, and girls). As explained in Part I, Section 4, they have thus become one of the most paradigmatic examples of intersectional discrimination.

Consequently, if the vulnerabilities produced by the complex intersection of all these inequality systems are not properly identified, their specific protection needs and risks will never be adequately addressed, and thus their human rights will be violated. International organisations, NGOs, and activists have highlighted the systematic invisibility of these girls,⁴² and, it is thus important to analyse

⁴¹ Katarzyna Grabska, Nicoletta Franco, Marina Regt, 'Time to look at girls: adolescent girls' migration in the South' (May 2016) https://www.researchgate.net/publication/304797006_Time_to_look_at_girls_adolescent_girls_migration_in_the_South

⁴² International Federation of Red Cross and Red Crescent Societies (IFRC), 'Alone and Unsafe: Children, Migration and Sexual and Gender-based Violence' (2018) <https://media.ifrc.org/ifrc/wp-content/uploads/sites/5/2018/11/181126-AloneUnsafe-Report-EN-web.pdf> accessed 27 June 2019; Human Rights Watch (HRW), 'Left to Survive: Systematic Failure to Protect Unaccompanied Migrant Children in Greece' (2008) www.hrw.org/sites/default/files/reports/greece1208webwcover_0.pdf accessed 27 June 2019

how the social locations and systems of inequality (age, gender, race, legal status) of UASGs interact in relation to this policy.

2. RESEARCH PROBLEM, HYPOTHESIS, AND RESEARCH QUESTIONS

Considering the background described, the research problem relates to the fact that the current formulation of policies and mechanisms aimed at identifying migrants' vulnerabilities has been proved to be inefficient, especially regarding individuals who are at the complex intersection of different oppressions and inequalities. Moreover, the impact of this policy problem on UASGs could be strongly and disproportionately negative, since they are one of the most paradigmatic examples of intersectional discrimination due to their multiple social locations: they are at least minors, migrants, people without family references, and girls.

Consequently, this thesis's fundamental aim is to study how the introduction of an intersectional approach in these policies and mechanisms would improve their efficiency and end the invisibility of UASGs by addressing their special protection needs and risks, thereby granting them access to adequate protection.

Therefore, the main research question of this study is the following:

(1) How could intersectionality improve the effectiveness of EU migrant vulnerability identification policy in identifying UASGs?

To answer the main research question, two more sub-questions have been defined. Inspired by the intersectionality-based policy analysis approach, they are divided into two categories: descriptive and transformative.

Descriptive questions

[A]re intended to generate critical background information about policy problems in their full context, (...) in order to reveal assumptions that underpin existing government priorities, the populations targeted for policy interventions, and what inequities and privileges are created by current policy responses.⁴³

As a descriptive question, the *sub-question (1.1)* is defined as follows:

⁴³ Olena Hankivsky and Julia S. Jordan-Zachery (n 26) 138

(1.1) What is the international human rights framework that applies to UASGs and their vulnerability identification?

In contrast, transformative questions are aimed at ‘assisting with the identification of alternative policy responses and solutions specifically aimed at reducing inequities and promoting social justice’.⁴⁴ As a transformative question, the *sub-question (1.2)* is defined as follows:

(1.2) Does the EU’s vulnerability identification policy address the UASGs’ specific intersecting social locations?

3. OUTLINE AND METHODS

In order to answer these questions, this thesis is divided into four main chapters:

Part I introduces this thesis’s theoretical framework. It challenges vulnerability theory as a device for approaching inequality and human rights violations, by proposing intersectionality, and more specifically political intersectionality, as a better approach. In this way, the chapter complies with three objectives: to briefly develop both approaches, to justify the adoption of intersectionality as the most appropriate option, and to apply intersectionality to the specific case of UASGs. It will also serve to explain the fundamentals of the research methodology.

In order to do so, an extensive literature review on vulnerability theories and intersectionality is conducted.

Part II, which is aimed at answering sub-question (1.1), is divided into two Chapters:

Chapter I critically analyses how the the visibility of UASGs is impacted, both at the universal and at the Council of Europe (CoE) level, by the following issues: the use of the notion of vulnerability, especially in the context of international migration; the ‘vulnerable groups’ approach; and the lack of intersectionality in the international human rights framework (IHRF).

Chapter II studies how the obligation to identify vulnerabilities in international migration contexts is articulated within the IHRF, and presents the ‘best interest of the child’ as the only legal concept that explicitly identifies and individually addresses the specific protection needs and risks of UASGs from an intersectional approach.

⁴⁴ *ibid*

To this end, an intersectional legal and documentary analysis was conducted. I have analysed the UN treaty-based system (treaties, general comments, and relevant case law from UN treaty bodies), other political and soft law sources (UN documents, resolutions), and all the relevant legal instruments and policy documents at the CoE level that are relevant to UASGs. Significant reports and guidelines from international organizations and scholars were also analysed.

In this analysis, special focus was placed on whether the documents referred to UASGs, whether they addressed intersectionality explicitly, or if they did so in a non-articulated way by addressing the different axes of inequality relevant to UASGs and its consequences.

Part III explains sub-question 1.2. It is also divided into two Chapters:

Chapter I presents the existing approach to vulnerability in EU policies, in particular its asylum and migration policies, and the consideration of unaccompanied children as a priority “vulnerable group”.

Chapter II analyses how the EU’s policy of identifying migrant vulnerability is implemented in Greece through the ‘hotspot approach’ and assesses its impact on UASGs and their specific intersecting social locations.

To this end, a legal, policy, and documentary analysis at the EU level was conducted. Field research was also conducted, in which 13 organisations were contacted. However, given the difficulties encountered and explained in detail in Part III, Chapter II, Section 4.1., only five professionals were finally interviewed through an unstructured interview. This method was chosen given the general lack of existing information about the topic, in order to discover the participants’ perceptions of the topic by asking relatively open-ended questions, and by inviting them to become involved in a joint and deep reflection about the topic⁴⁵.

Position	Type and date of the interview
Coordinator for Unaccompanied Minors hosted in Moria by the Reception and Identification Service	Unstructured interview by phone – May 15, 2019

⁴⁵ Svend Brinkmann, ‘Unstructured and Semi-Structured Interviewing’ in Patricia Levy (ed), *The Oxford Handbook of Qualitative Research* (Oxford Library of Psychology 2014) <www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199811755.001.0001/oxfordhb-9780199811755-e-030> accessed 8 July 2019

(RIS) – Greek Ministry of Migration Policy	
Senior protection assistant at UNHCR Greece.	Unstructured interview by Skype – May 16, 2019
Coordinator of the only International Organization for Migration (IOM) shelter for UASGs in Greece.	Unstructured interview – June 17, 2019
Legal assistant of the only IOM shelter for UASGs in Greece.	Unstructured interview – June 17, 2019
Lawyer from Greek Council for Refugees (GCR)	Unstructured interview – June 18, 2019

Additionally, during my stay in Athens I volunteered in a non-formal shelter for refugee and migrant families. As a result, I was also involved in different grassroots activities regarding activism for refugee and migrants' rights. In this context, I had the opportunity not only to observe the reality for myself, but also to talk to very different people working in Greek NGOs, Greek Asylum Service (GAS), EASO, the Municipality of Athens, and other international organizations such as UNICEF, the Jesuit Refugee Service (JRS), or the Hellenic Red Cross. Although I acknowledge that I cannot quote the valuable information acquired by talking and working with these professionals in the field, this information has inevitably been reflected in this thesis's third chapter, and it is therefore necessary to mention them.

Finally, the **Final Conclusion** focuses on providing a holistic answer to the main research question, based on the analysis of the previous parts and the limitations encountered in each one.

PART I. THEORETICAL FRAMEWORK: VULNERABILITY VS. INTERSECTIONALITY

For the purposes of this thesis, it is necessary to briefly address the theoretical approach adopted in this study: intersectionality. However, as will be seen in the discussion that follows, the prevailing doctrine is based on the theory of vulnerability; hence, this chapter will meet three objectives: to briefly develop both theoretical approaches (intersectionality and vulnerability), to justify the adoption of intersectionality as the most appropriate option, and to link this theory to the specific case of UASGs.

1. VULNERABILITY AND HUMAN RIGHTS

The universality of human rights has been declared countless times and recognised by multiple international instruments, such as the Universal Declaration of Human Rights in 1948. However, it became apparent that this ‘universal’ was based on the liberal legal subject and that it was actually quite particular (male, white, able-bodied, and western).⁴⁶ Therefore, those persons who do not fit these characteristics and, thus, experience difficulty in accessing the protection of their human rights, became known as ‘vulnerable people’.

Since its conception, this notion has expanded dramatically in different areas within human and social sciences, such as anthropology, sociology, and ethics (especially bioethics).⁴⁷ In a stricter legal context, references to vulnerability are also acquiring a growing importance, among the legal framework⁴⁸, jurisprudence⁴⁹ and doctrine⁵⁰ related to human rights, where the concept of vulnerability has emerged as a key element.

⁴⁶ Martha A. Fineman, ‘Vulnerability and Inevitable Inequality’ (2017) 4 Oslo Law Review 133 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3087441> accessed 11 July 2019

⁴⁷ Florencia Luna, ‘Elucidating the concept of vulnerability: Layers not labels’ (2009) 2 International Journal of Feminist Approaches to Bioethics 121

⁴⁸ Alexander H.E. Morawa, ‘Vulnerability as a concept of international human rights law’ (2003) 6(2) Journal on International Relations and Development, 139-155 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1596101>, Rosita Forastiero, ‘The Charter of Fundamental Rights and the Protection of Vulnerable Groups: Children, Elderly People and Persons with Disabilities’ en G. Palmisano (Ed.) *Making the Charter of Fundamental Rights a Living Instrument* (Brill 2015) 165-198

⁴⁹ Laurence Burgogue-Larsen, *La Vulnérabilité Saisie Par Les Juges En Europe* (Editions Pedone 2014), Alexandra Timmer, ‘A quiet Revolution: Vulnerability in the European Court of Human Rights’ in M. Fineman & A. Gear (eds) *Vulnerability. Reflections on a New Ethical Foundation for Law and Politics* (Ashgate 2013) 147-170

⁵⁰ María Ángeles Barrère Unzueta, ‘Martha A. Fineman and legal equality: Vulnerability vs. Subordination?’ (2016) 34 CEFD 17, 19 <<https://addi.ehu.es/bitstream/handle/10810/24965/8927-26794-1-PB.pdf?sequence=1&isAllowed=y>> accessed 6 June 2019, Romina Sijniensky, ‘From the Non-discrimination clause to the concept of vulnerability in International Human Rights Law-Advancing on the Need for Special Protection of Certain Groups and Individuals’ in Y.

In this sense, given certain personal characteristics which differ from the traditional liberal legal subject, vulnerable people ‘require special attention to ensure that they enjoy their human rights, because their perspectives are not automatically included in the actions and thoughts of dominant groups’;⁵¹ that is, vulnerable people are those ‘whose rights are most at risk of being violated’.⁵²

This idea of vulnerability is based on the principle of substantive equality (as opposed to formal equality) – one of the main axes of international human rights law (hereafter, ‘IHRL’). This principle articulates the obligations of states to respect, protect, and, particularly, fulfil human rights through positive steps in order to, according to Sandra Fredman, ‘redress disadvantage; address stigma, stereotyping, prejudice, and violence; enhance voice and participation; and accommodate difference and achieve structural change’.⁵³ In this discourse, vulnerability is used ‘to specify, or to provide content to, the often-open-ended obligations incumbent upon states in order to achieve substantive equality’.⁵⁴

However, despite the term vulnerability is used consistently in human rights rhetoric, it is still much contested as a legal concept.⁵⁵ First, vulnerability is associated with weakness, lack of protection, and lack of power. These associations are confirmed by the dictionary definition of the word ‘vulnerable’: ‘exposed to the possibility of being attacked or harmed, either physically or emotionally’/‘(of a person) in need of special care, support, or protection because of age, disability, or risk of abuse or neglect’.⁵⁶

Consequently, there are important questions surrounding this term, since the classification of a person as vulnerable could be grounds for specific protection. These questions include: What is

Haeck, B. McGonigle Leyh, C. Burbano-Herrera, D. Contreras (eds) *The realisation of Human Rights: When Theory meets practice* (Intersectia 2014) 259-272, Carmen Barranco, Cristina Churrua (eds) *Vulnerabilidad y protección de los derechos humanos* (Tirant lo Blanch 2014)

⁵¹ Lorena Sosa and others, ‘Conceptions of Human Rights, Democracy and The Rule of Law in Selected Third Countries’ (2015) 3(3) FRAME <www.fp7-frame.eu/wp-content/uploads/2017/03/Deliverable-3.3.pdf> accessed 5 June 2019

⁵² *ibid*

⁵³ Sandra Fredman, ‘Substantive equality revisited’ (2016) 14 International Journal of Constitutional Law 712

⁵⁴ Maija Mustaniemi-Laakso and others, ‘The Protection of Vulnerable Individuals in the Context of EU Policies on Border Checks, Asylum and Immigration’ (2016) 11(3) FRAME <www.fp7-frame.eu/wp-content/uploads/2016/08/Deliverable-11.3.pdf> accessed 5 June 2019

⁵⁵ Alyson Cole, ‘All of Us Are Vulnerable, But Some Are More Vulnerable than Others: The Political Ambiguity of Vulnerability Studies, an Ambivalent Critique’ (2016) 17(2) Critical Horizons 260 <www.tandfonline.com/doi/abs/10.1080/14409917.2016.1153896> accessed 5 June 2019

⁵⁶ Definition in Oxford Lexico Dictionary <<https://www.lexico.com/en/definition/vulnerable>> accessed 19 June 2019

vulnerability? Are there intrinsically vulnerable people or groups? What makes a person vulnerable? What are they vulnerable to? When does vulnerability necessitate the adoption of protective measures by institutions?⁵⁷

Over the years, IHRL has adopted a vulnerability approach with a collective nature based on the identification of categories of persons and groups in need of special protection. This understanding of vulnerability depends on a personal condition shared by the members of a group of people whose rights are assumed to have the highest risk of being violated – such as children, women, indigenous peoples, or persons with disabilities, among others. Thus, this constitutes an identity-based approach. This differentiation, in order to address and redress ‘different aspects of inequality in a more substantive manner’⁵⁸, has justified the proliferation of group-differentiated catalogues of rights⁵⁹ which, over time, have consolidated the IHRL approach to inequality: the ‘vulnerable-group’ approach.

Many vulnerability scholars have theorised, criticised, and developed different approaches to this phenomenon of vulnerable groups.⁶⁰ Among these approaches, there is one that stands out, both for its level of development and its influence in the legal field – namely, Marta A. Fineman’s theory of vulnerability. Although this approach is nuanced and has been revisited, it has achieved almost unanimous support for its view on vulnerability.⁶¹

2. VULNERABILITY THEORY

Fineman builds what she considers to be a ‘post-identity’ theory of ontological pretensions, with the hope that it serves to support the state’s responsibility when taking measures related to vulnerable populations. She presents her theory as a reaction to and criticism of three fundamental axes: (i) the

⁵⁷ Natalia Caicedo and Andrea Romano, ‘Vulnerability in the context of EU asylum policies: the challenges of identification and prioritisation’ in Alisa Petroff, Georgios Milios and Marta Pérez (eds) *Refugiados en movimiento: retos políticos, legales y sociales en tiempos de inestabilidad* (Focus on International Migration n° 5 2018) 79 <https://ddd.uab.cat/pub/caplli/2017/194915/Focus_Petroff_a2018n5_Cap5.pdf> accessed 5 June 2019

⁵⁸ Lourdes Peroni and Alexandra Timmer, ‘Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law’ (2013) 11 *International Journal of Constitutional Law* 1057 <<https://doi.org/10.1093/icon/mot042>> accessed 25 June 2019

⁵⁹ Mustaniemi-Laakso and others (n 54) 4

⁶⁰ Cole (n 55) 263–265

⁶¹ Barrère Unzueta (n 50) 19

legal subject of the western liberal political-legal tradition, (ii) the principle of formal equality, and (iii) the conceptualisation of ‘vulnerable groups’.⁶²

In the first place, Fineman insists that the model of the ‘liberal legal subject’ is characterised by individualism; that is to say, by ‘unrealistic constructs of autonomy, self-sufficiency, and independence’⁶³ – characteristics that she proposes to substitute with the constructs of dependency and vulnerability associated with the ‘nature of the human condition’.⁶⁴ In other words, she proposes a new legal subject: the ‘vulnerable subject’. Secondly, according to Fineman, the principle of formal equality ‘ignores most contexts, as well as differences in circumstances and abilities on the part of those whose treatment is compared’.⁶⁵

In the third place, Fineman presents her theory as an alternative to the ‘vulnerable groups’ approach, which she considers stigmatising and disempowering for various reasons. Firstly, because that approach groups individuals based on two or more characteristics and masks other important differences in identity or status; secondly, because it categorises them as imperfect and deviant and places them outside the protection of the social contract; and, thirdly, because it suggests that if someone does not belong to any of those groups, he or she is not vulnerable.⁶⁶

Fineman identifies four components of vulnerability: universality, constancy, complexity, and particularity.⁶⁷ On the one hand, vulnerability is an inherent element of the human condition, ‘detached from specific subgroups (...) the very meaning of what it means to be human’⁶⁸; the legal subject is intrinsically and inevitably vulnerable. Furthermore, the human being lives in constant dependency: all of us are vulnerable which is translated to mean ‘dependency on others for care, cooperation, or

⁶² Martha A Fineman, ‘The Vulnerable Subject: Anchoring Equality in the Human Condition’ (2008) 20(1) Yale Journal of Law and Feminism <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1131407> accessed 6 June 2019

⁶³ Martha A Fineman and Michael Thomson, *Exploring Masculinities: Feminist Legal Theory Reflections* (Routledge 2016) 18

⁶⁴ Fineman (n 62) 19

⁶⁵ Martha A Fineman, ‘Equality, Autonomy, and the Vulnerable Subject in Law and Politics’, in Martha A Fineman and Anna Grear (eds) *Vulnerability. Reflections on a New Ethical Foundation for Law and Politics* (Ashgate Publishing 2013) 14

⁶⁶ Fineman (n 62) 4

⁶⁷ Frank R Cooper, ‘Always Already Suspect: Revising Vulnerability Theory’ (2015) 93(5) NCL Rev 1339, 1357 <<http://scholarship.law.unc.edu/nclr/vol93/iss5/8>> accessed 6 June 2019

⁶⁸ Martha A Fineman, ‘The Vulnerable Subject and the Responsive State’ (2010) 60 Emory Law Journal 251, 267–70

assistance or on social arrangements, such as the family or the market or economy'.⁶⁹ In this way, vulnerability should be 'understood as a state of constant possibility of harm' that 'cannot be hidden'.⁷⁰

On the other hand, although vulnerability is universal, it is revealed in very complex ways because we are 'embodied creatures who are inexorably embedded in social relationships and institutions'. Our embodied vulnerability (we all have a body that can be damaged in infinite ways by biological processes or outside forces and material conditions) and our embedded vulnerability (we are all embedded in families and social and political structures that affect us in multiple ways, positioning ourselves in different social locations)⁷¹ are what makes our vulnerability particular; 'everyone experiences their vulnerability individually and uniquely, due to their particular embodiment and position in a web of social and institutional relationships'.⁷²

All these elements revolve around the need for a strong and interventionist state that helps mitigate vulnerability. However, precisely because people are universally and constantly vulnerable due to being embodied and embedded in social relationships⁷³, the non-vulnerable subject does not exist, and the state cannot eliminate the vulnerability. What does exist, as a counterpart to vulnerability, is resilience, and what the state can do is to 'provide resources that render people more resilient in the face of vulnerability'.⁷⁴ In this context, Fineman defines resilience as

[W]hat provides an individual with the means and ability to recover from harm, setbacks, and the misfortunes that affect her or his life. The degree of resilience an individual has is largely dependent on the quality and quantity of resources or assets that he or she has at their disposal or command.⁷⁵

⁶⁹ Martha A Fineman, 'Fineman on Vulnerability and Law, New Legal Realism Conversations' (*New Legal Realism*, 2015) <<https://newlegalrealism.wordpress.com/2015/11/30/fineman-on-vulnerability-and-law/>> accessed 6 June 2019

⁷⁰ Fineman (n 62) 11

⁷¹ Joana Abrisketa and others, 'Human Rights Priorities in the European Union's External and Internal Policies: An Assessment of Consistency with a Special Focus on Vulnerable Groups European Union's External and Internal Policies' (2015) 12(2) FRAME 18 <www.fp7-frame.eu/wp-content/uploads/2016/08/24-Deliverable-12.2.pdf> accessed 6 June 2019

⁷² *ibid*

⁷³ *ibid* 22

⁷⁴ *ibid*

⁷⁵ Martha A Fineman, 'Equality and Difference - The Restrained State' (2015) Emory Legal Studies Research Paper No 15-348, 113 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2591689> accessed 6 June 2019

Therefore, what Fineman claims when she talks about ‘the need for a more responsive state’ is that the role of institutions ‘in providing the assets or resources that give us resilience is central to both the operation of society and the well-being of individuals’.⁷⁶

Nonetheless, while it must be acknowledged that Fineman's theory of vulnerability has tremendous influence and importance, it also has limits and inconsistencies noted by various scholars.⁷⁷

In the first place, even though one of Fineman's objectives with this theory is to put an end to the concept of vulnerable groups, it seems that what she achieves is the opposite – namely, to establish the grounds for such a conceptualisation. She demonstrates this inherent contradiction when trying to put her theory into practice with the elderly⁷⁸, identifying them as a vulnerable group and requesting age-sensitive policies.

In addition, Fineman's theory itself takes a ‘essentializing, paternalizing and/or victimizing’⁷⁹ stance towards people since it starts from the basis that vulnerability resides in people's intrinsic characteristics; thus, people are not in a vulnerable situation, but they are permanently vulnerable per se (although some are permanently more vulnerable than others).

Furthermore, the universality Fineman espouses does not really exist – its construction only hides the particular. Starting from the basis that identities are social constructions and then to adopt a beyond-identity approach does not mean that the material consequences of identities' social constructions do not have to be considered. Actually, ‘identities are co-constituted with, and thus inextricable from, systems of power’⁸⁰; their separation is simply not possible, and their interrelations are essential sources of inequality that need to be examined.

⁷⁶ Ibid 115

⁷⁷ See: Cooper (n 67); Cole (n 55); Nina Kohn, ‘Vulnerability Theory and the Role of Government’ (2014) 26(1) Yale Journal of Law & Feminism <<https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1345&context=yjlf>> accessed 11 July 2019

⁷⁸ Kohn (n 77) 11ff

⁷⁹ Veronika Flegar, 'Theoretical Approaches to the Human Rights of Marginalized and Excluded Individuals or Groups – Part IV: A Short Critique of Vulnerability' (*Rethinking Disability*) <<http://rethinkingdisability.net/theoretical-approaches-to-the-human-rights-of-marginalized-and-excluded-individuals-or-groups-part-iv-a-short-critique-of-vulnerability/>> accessed 24 May 2019

⁸⁰ Cooper (n 67) 1368

3. INTERSECTIONALITY: A COMPLEX TOOL TO ADDRESS COMPLEX REALITIES

Intersectionality is, in the context of this study, presented as a much more appropriate approach not only to understand the complexity of inequality and protection needs – including the analysis of privilege – but also to clarify the obligations of states.

Intersectionality is possibly ‘the most important theoretical contribution that women's studies in conjunction with related fields have made so far’.⁸¹ The term was coined by the feminist jurist Kimberle Crenshaw in 1989⁸², but its content was conceived and developed throughout the second half of the twentieth century (with references to simultaneity, matrix of domination, inequality axes, assemblages, location positions, power vectors, articulation categories, etc.) by antiracist feminists such as Bell hooks, Angela Davis, Moraga and Anzaldúa, and Lugones and Spelman⁸³.

The concept of intersectionality refers to the power relations and contexts associated with social inequalities. This approach attempts to perform a complex analysis of the reality lived by the subjects through the approximation of different social positions and historically situated stratification. In this sense, the intersectional approach suggests, for instance, that there is no gender perception that is racially or ethnically blind, and there is no racial or ethnic perception that is gender blind. On the contrary, perceptions are based on the constitution of social attributes of individuals within the framework of the interaction of multiple social constructs (gender, race, class, sexual orientation, ability, religion, legal status, etc.) rather than on a single dimension.⁸⁴

Intersectional analysis proposes that one should understand the combination of an individual's social attributes as producing substantively different experiences, rather than increasing one person's burden. In other words, the objective is not to show how one group is more victimised or privileged

⁸¹ Lesley McCall, ‘The Complexity of Intersectionality’ (2005) 30(3) Signs 1771

⁸² Kimberle Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics’ (1989) 140 The University of Chicago Legal Forum 139 <<https://philpapers.org/rec/CREDTI>> accessed 11 July 2019

⁸³ Sumi Cho, Kimberle Crenshaw and Leslie McCall, ‘Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis’ (2013) 38 Intersectionality: Theorizing Power, Empowering Theory 785 <www.jstor.org/stable/10.1086/669608?seq=1#page_scan_tab_contents> accessed 11 July 2019

⁸⁴ Mastoureh Fathi, *Intersectionality, Class and Migration; Narratives of Iranian Women Migrants in the U.K.* (Palgrave Macmillan 2017) 8

than another, but to discover significant differences and similarities in order to overcome discrimination and establish the necessary conditions for everyone to enjoy their human rights.⁸⁵

The development of the theory of intersectionality has been intense, extensive, and very self-critical. There are many relevant contributions, but this thesis will share and utilise the Yuval-Davis approach of ‘situated intersectionality’.⁸⁶ Yuval-Davis proposes that dimensions of inequality are not additive, cross-cutting, or interlocking; they are mutually constituted,

[F]orming the particular nuanced and contested meanings of particular social locations in particular historical moments, within particular social, economic and political contexts in which some social divisions have more saliency and effect’⁸⁷

And, moreover, they are ‘ontologically irreducible to each other’.⁸⁸ For this approach, it is very important to take into account the geographic, social, and temporal factors of individuals – that is, translocality. In this theoretical context, translocality relates to ‘the ways particular categories of social divisions have different meanings – and often different relative power – in the different spaces in which the analyzed social relations take place’.⁸⁹

In addition, Yuval-Davis takes into account the approach of McCall in her proposal of intersectionality as a methodological paradigm to analyse social inequality. McCall proposes three different approaches to such analysis: the anti-categorical, which seeks to destroy analytical categories (such as, for example, the queer theory); the intra-categorical that focuses on capturing the complexity of social inequality but within a given social group, recognising the stability of these categories (the idea of intersectionality proposed by Crenshaw and Collins); and, finally, the inter-categorical approach that assumes the analytical categories temporarily in order to perform the analysis, but bears

⁸⁵ Olena Hankivsky and Renee Cormier, ‘Intersectionality and Public Policy: Some Lessons from Existing Models’ (2011) 64 *Political Research Quarterly* 217 <www.jstor.org/stable/41058335?seq=1#page_scan_tab_contents> accessed 11 July 2019

⁸⁶ Floya Anthias and Nira Yuval-Davis, ‘Contextualizing Feminism: Gender, Ethnic and Class Divisions’ (1983); Floya Anthias and Nira Yuval-Davis, ‘Racialized Boundaries: Race, Nation, Gender, Colour and Class and the Anti-Racist Struggle’ (1992); Nira Yuval-Davis, ‘Intersectionality and Feminist Politics’ (2006); Nira Yuval-Davis, ‘The Politics of Belonging: Intersectional Contestations’ (2011); Nira Yuval-Davis, ‘Situated Intersectionality and Social Inequality’ (2015) (as cited in Nira Yuval-Davis, ‘Situated intersectionality: a reflection on Ange-Marie Hancock’s forthcoming book: intersectionality—an intellectual history’ (2015) 37(4) *New Political Science* 637 <<http://dx.doi.org/10.1080/07393148.2015.1089045>> accessed 6 June 2019)

⁸⁷ Nira Yuval-Davis, ‘Situated intersectionality and social inequality’ (2015) 2 *Raisons politiques* 91, 94 <www.cairn.info/revue-raisons-politiques-2015-2-page-91.html> accessed 6 June 2019

⁸⁸ Ibid 94

⁸⁹ Ibid 95

in mind that these are fluid, imperfect, and changing.⁹⁰ It is this last approach that supports Yuval-Davis' use of intersectionality as methodological paradigm and which allows her to continue talking about social groups without permanently fixing identities and to focus on the production processes of inequality in each particular context and moment.⁹¹

The intersectional approach, unlike the vulnerability one, highlights the need to deconstruct certain categories, unmask false universalisms, and identify the prevailing power dynamics in order to move towards substantive equality and social justice.

The intersectional approach that has been discussed thus far relates to 'structural intersectionality' and focuses on analysing how intersections affect the experiences of individuals. However, the present study is more concerned with the application of structural intersectionality in what Kimberle Crenshaw called 'political intersectionality' – the study of 'how inequalities and their intersections are relevant to political strategies'⁹² or 'the way specific acts and policies address the inequalities experienced by various social groups'⁹³.

In this vein, Angie Marie Hancock proposes intersectionality as a normative paradigm and differentiates three models of policy-making and analysis: (i) the unitary model, in which a single axis of inequality is dominant and is conceived as stable or uniform (for example, gender analysis or an anti-discriminatory law only focused on gender); (ii) the multiple model, which takes into account different axes of inequalities that are given the same importance and are treated in parallel (for example, policies that acknowledge that a black woman suffers twice as much discrimination when considering discrimination on the grounds of both gender and race); and, finally, (iii) the intersectional model, in which the different inequalities are considered while bearing in mind that these are fluid categories that constitute each other, and that the priority given to one or the other is an open empirical

⁹⁰ McCall (n 81)

⁹¹ Marta Cruells López, 'La interseccionalidad política: tipos y factores de entrada en la agenda política, jurídica y de los movimientos sociales' (DPhil Thesis, Universitat Autònoma de Barcelona 2015) 40 <www.tdx.cat/bitstream/handle/10803/288224/mcl1de1.pdf?sequence=1&isAllowed=y> accessed 6 June 2019

⁹² Mieke Verloo, 'Multiple inequalities, intersectionality and the European Union' (2006) 13(3) European Journal of Women's Studies 213 <<https://hal.archives-ouvertes.fr/hal-00571275/document>> accessed 6 June 2019

⁹³ R Bishwakarma, V. Hunt, and A. Zajicek, Intersectionality and informed policy (Manuscript 2007)

question that must be evaluated in each case and that depends on the dynamic relationship between the individual and the institutional level.⁹⁴

Hancock's proposal is crucial to understanding the impact of law and policies on diverse populations.⁹⁵ As noted by Hankivsky,

[I]ntersectionality draws attention to aspects of policy that are largely uninvestigated or ignored altogether: the complex ways in which multiple and interlocking inequities are organised and resisted in the process, content, and outcomes of policy.⁹⁶

This approach starts from the vantage point that neither the policies nor their analyses are neutral⁹⁷; therefore, it is important to have a deep knowledge of the social locations of the targeted groups of the policy and 'how such locations are shaped and structured by existing and new policies'.⁹⁸

This study adopts the political intersectionality approach as devised by Crenshaw and developed by Hancock and other authors such as Verloo and Lombardo⁹⁹. Furthermore, the applied dimension of Yuval-Davis' situated intersectionality is used as research tool. Consequently, each axis of inequality has its own ontological base while being constructed in an interrelated manner and conditioned to a specific geographical, social, and historical context. Consequently, a specific situation of inequality or power does not only occur in the individual but is also formed at the institutional or organisational level (laws, policies, communities). Therefore, following the abovementioned approach, the priority

⁹⁴ Ange-Marie Hancock, 'When Multiplication Doesn't Equal Quick Addition: Examining Intersectionality as a Research Paradigm' (2007) 5(1) *Perspectives on politics* 63 <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.597.4676&rep=rep1&type=pdf>> accessed 7 June 2019

⁹⁵ R Bishwakarma, V. Hunt, and A. Zajicek, *Intersectionality and informed policy* (Manuscript 2007) 9

⁹⁶ Olena Hankivsky and Julia S. Jordan-Zachery, 'Introduction: Bringing Intersectionality to Public Policy', in Olena Hankivsky and Julia S. Jordan-Zachery (eds), *The Palgrave Handbook of Intersectionality in Public Policy* (Palgrave Macmillan, 2019) 2

⁹⁷ *ibid* 7

⁹⁸ *ibid* 4

⁹⁹ See: Verloo (n 92); Mieke Verloo, 'Intersectional and Cross-Movement Politics and Policies: Reflections on Current Practices and Debates' (2013) 38(4) *Signs Journal of Women in Culture and Society* <www.journals.uchicago.edu/doi/abs/10.1086/669572> accessed 11 July 2019; Emanuela Lombardo and Mieke Verloo, 'Institutionalizing Intersectionality in the European Union? Policy Developments and Contestations' (2009) 11 *International Feminist Journal of Politics* 478 <<https://doi.org/10.1080/14616740903237442>> accessed 11 July 2019; Emanuela Lombardo and Mieke Verloo, 'Stretching gender equality to other inequalities: Political intersectionality in European gender equality policies' in Emanuela Lombardo, Petra Meier and Mieke Verloo (eds), *The Discursive Politics of Gender Equality. Stretching, Bending and Policy-Making* (Routledge 2009); Emanuela Lombardo and Lise Agustin, 'Intersectionality in European Union policymaking: the case of gender-based violence' (2016) 36 *Politics* 364 <<https://doi.org/10.1177/0263395716635184>> accessed 11 July 2019

given to one category or to another forms part of the decision-making policy and depends on what is most relevant at that particular moment and or in that context.

This section has demonstrated that intersectionality, in contrast to vulnerability theory, is the most suitable approach to analyse inequality and human rights violations due to its ability to evaluate power relations and privilege, deconstruct categories, expose false universalisms, and avoid paternalism and victimisation by not focusing on people's characteristics but on the material consequences of the interaction between social locations that place individuals in specific positions. Furthermore, intersectionality attempts to address the complexity of reality and focuses attention on law and policy related to it.

4. UNACCOMPANIED AND SEPARATED GIRLS: A PARADIGMATIC EXAMPLE OF INTERSECTING SYSTEMS OF INEQUALITIES

As was mentioned in the introduction to this chapter, it is important to develop, even briefly, the theoretical framework of the study, but it is also necessary to apply it to a concrete example. Consequently, the discussion now turns to the application of intersectionality to the case of UASGs – the central concern of this study.

According to the Committee on the Rights of the Child, one must differentiate between unaccompanied minors (UAMs) and separated minors – although they enjoy the same protection. UAMs 'are children, as defined in Article 1 of the Convention, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so'.¹⁰⁰ Separated minors are children 'who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.'¹⁰¹ A 'child as defined in Article 1 of the Convention', means 'every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier'.¹⁰²

¹⁰⁰ UN Committee on the Rights of the Child, 'General Comment 6: treatment of unaccompanied and separated children outside their country of origin' (1 September 2005) CRC/GC/2005/6 para 7 <www.refworld.org/docid/42dd174b4.html> accessed 7 June 2019

¹⁰¹ *ibid* para 8

¹⁰² *ibid* para 9

The focus of this study is on UASGs (female children) migrating without their parents or primary caregivers. Consequently, every unaccompanied girl in this context is situated at the intersection of, at least, the following social locations: migrant (legal status), child (age), female (gender), and travelling alone (way of migration). It is essential to highlight the aforementioned ‘at least’ because there could be numerous other relevant social locations such as race, economic situation, disabilities, physical/mental health issues, and so forth.

Following Yuval-Davis’ approach, one is able to see how each of these categories is related to a system of power with different hierarchical structures and a different ontological bases. Within the category of ‘legal status’, people who migrate, unlike natives, experience situations of vulnerability related to: the reasons for leaving their country of origin; the circumstances they face during transit, at borders, and in the context of reception¹⁰³; and the social and institutional xenophobia they suffer in the host society¹⁰⁴.

However, these experiences and risks in the different phases of the migration process differ depending on the position in which the person is located within the spectrum made up by other categories such as ‘age’ or ‘gender’. That is, the exposure to risks and violence (and the risks and violence themselves), the situation of vulnerability, or the experiences of discrimination that migrants will encounter during their migration will be different if the individual is a child, a teenager, an adult, or an elderly person, or if they are a woman, a man, or a transgender person. These different experiences are based on the fact that other systems of inequality and other forms of domination, with their own structures, come into play.

In this sense, these migratory experiences, which are translated into specific protection needs, are not going to be the same for a migrant boy-child and a migrant girl-child, or for a migrant girl-child and a migrant woman, because the interaction between the social constructions related to gender and age positions individuals in a way that gives rise to unique experiences.

Likewise, the introduction of the dual category ‘accompanied/unaccompanied’ will also greatly determine individuals’ exposure to risks or violence during various phases of displacement since one cannot compare those who travel alone and those who do not. Furthermore, one cannot find similarities

¹⁰³ OHCHR, Thirty-third session 13 October 2016 ‘Promotion and protection of the human rights of migrants in the context of large movements. Report of the United Nations High Commissioner for Human Rights’ (13 October 2016) UN Doc A/HRC/33/67 para 12 <<https://undocs.org/es/A/HRC/33/67>> accessed 16 June 2019

¹⁰⁴ *ibid* para 13ff

among being a migrant boy, girl, man, or woman travelling alone, because the meaning, implications, and impact on the individual of these characteristics will be totally different.

Accordingly, although each of the axes of discrimination has its own system of hierarchy and exclusion, it is impossible to reduce or separate the risks and vulnerabilities arising from each of these axes. All the axes are interrelated and produce unique experiences that will be modulated by the contextual and environmental specificities of each one.

In addition, as many intersectional scholars point out, the abovementioned view on systems of hierarchy and exclusion does not mean that some persons are more vulnerable than others and, therefore, these more vulnerable persons are to be given the greatest attention or protection. An unaccompanied girl does not have a triple or quadruple measure of vulnerability compared to a boy who migrates with his family, nor should she be protected more or less than a woman who travels alone. What this does mean, however, is that UASGs are exposed to a series of risks, violence, situations of vulnerability, or specific forms of discrimination different from those faced by individuals whose social locations are different.

Finally, in line with Yuval-Davis, one must always bear in mind that these categories must be analysed in a specific geographic, social, and historical context, since they are based on fluid and changing social constructs. In this sense, the exposure to risks, violence, and discrimination will not be the same for an unaccompanied girl from Afghanistan at the time of her arrival in Greece before 2015 as it would be if she were to arrive today, after the introduction of the hotspot approach and the announcement of the EU-Turkey Statement of 18 March 2016¹⁰⁵. Neither will her exposure be the same if she comes from Nigeria or if her destination is Spain. Furthermore, the findings would differ if one were to analyse her situation at the moment of her arrival in Europe versus analysing it when she is already installed and arrives in another country after a secondary movement.

Therefore, from a political intersectionality perspective on this specific case, the laws and policies aimed at ensuring that migrants, and specifically migrant children, enjoy their human rights in a comprehensive way must try to address the specific protection needs and risks of these girls (or other individuals) that are the result of the interaction between the different social locations in which they have been positioned. Furthermore, these laws and policies must take into account the geographical,

¹⁰⁵ Council of the European Union, Press Release 144/16 18/03/2016, EU-Turkey statement (18 March 2016) <<http://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>> accessed 7 June 2019

social, and historical context in which they are implemented. Otherwise, policymakers would not be fulfilling their international human rights obligation to ensure substantive equality and freedom from discrimination in access to rights.

5. CONCLUSION OF PART I

In this chapter, the theoretical framework of this study has been discussed. This framework challenges vulnerability theory as a device for approaching inequality and human rights violations and protection, and proposes the theory of intersectionality – specifically, political intersectionality – as a better approach due to its ability to analyse power relations and privilege, to deconstruct categories, expose false universalisms, avoid paternalism and victimisation, and approach the complexity of reality in such a way that law and policy are focused on this reality.

Furthermore, this chapter has connected the theory of intersectionality to the concrete case of UASGs as the central focus of this study. More precisely, in order to align with the adopted approach, it is necessary to establish the following understandings: first, any reference to any category hereafter assumes the category is a social location – a social construct in which a certain system of oppression or inequality places the individual in different circumstances depending on the context (global, European, or Greek). Second, any reference to UASGs, girls that migrate alone, girls that travel without family references, or ‘UAG’ hereafter refers to the individuals who are, only for the purpose of this study, situated in the social locations mentioned in Section 4 of this chapter, but who are not considered a homogeneous group and towards whom there is no prejudice regarding any other social locations they could be placed.

PART II. INTERNATIONAL HUMAN RIGHTS FRAMEWORK

The objective of this Part is to answer to Sub-question (1.1) *Which is the international human rights framework regarding UAGs and their vulnerability identification?* To this extent, the first chapter will critically analyze how the use of the notion of vulnerability, especially in the context of international migration, through the ‘vulnerable groups’ approach together with the lack of intersectionality in the IHRF impacts on the visibility of UASG both at universal and at CoE level.

The second chapter will study how the obligation to identify vulnerabilities in international migration contexts is articulated within the IHRF and will present the Best Interest of the Child as the only legal figure that explicitly approaches the identification and individual addressing of the specific protection needs and risks from an intersectional approach.

CHAPTER I. INTERNATIONAL HUMAN RIGHTS FRAMEWORK FOR UNACCOMPANIED GIRLS: ‘VULNERABILITY SHOPPING’

1. VULNERABILITY IN THE CONTEXT OF INTERNATIONAL MIGRATION: MIGRANT PROTECTION UNDER INTERNATIONAL HUMAN RIGHTS LAW

The concept of vulnerability acquires special relevance in the context of international migration, where it is configured as a determining element for a person to be protected as a priority by international law. In fact, it is the element that resolves the eternal tension between the protection of the nation state’s ability to control its borders and its human rights obligations: certain ‘vulnerable groups’ need to be protected, the rest can wait.

Traditionally, both international law and doctrine have differentiated between two categories of migrants, depending on their ‘vulnerability’: migrants and refugees. Around this dual category, perceptions of vulnerability have been constructed that resolve the problem mentioned above. On the one hand, refugees are persons who are fleeing armed conflict or persecution and are defined and protected by the international refugee law; therefore, the state’s sovereignty to regulate its own

migration policies is subject to such instruments.¹⁰⁶ The most outstanding element of international refugee law's special protection is the right of non-refoulement¹⁰⁷.

Although there is no universally accepted definition for migrants, the United Nations High Commissioner for Human Rights (OHCHR) states that the concept 'refers to any person who is outside a state of which he or she is a citizen or national, or, in the case of a stateless person, his or her state of birth or habitual residence'.¹⁰⁸ That is, migrants choose to move not because of a direct threat of persecution or death and, therefore, do not face prohibition or impediment to return to their countries.¹⁰⁹

Due to this conception of migrancy, the vulnerability of refugees and asylum seekers compared to the invulnerability of migrants – a distinction, based on the motivation to leave the country of origin, that differentiates between 'forced migration' and 'voluntary migration' – has been internationally uncontested.

However, in the past few decades, more attention has been paid to migrants as subjects of rights also protected by international law and whose situations of vulnerability do not have to depend solely on the reason they left their countries of origin. Notwithstanding, in accordance with the OHCHR, this displacement is rarely totally "voluntary" in the true sense of the term'¹¹⁰.

Nevertheless, it was not until the 2016 New York Declaration – amidst the large-scale displacement of refugees and migrants – that member states (MSs) committed, according to their obligations under

¹⁰⁶ Hannah Leach and Alexandra Knezevic, 'Examining the protection of migrants in vulnerable situations in the contexts of Jordan and Lebanon' (Mixed Migration Centre 2018) 21 <<https://reliefweb.int/sites/reliefweb.int/files/resources/Examining-the-protection-of-migrants-06.pdf>> accessed 15 June 2019

¹⁰⁷ 'No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.' Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Convention) art 33

¹⁰⁸ OHCHR, 'Recommended Principles and Guidelines on Human Rights at International Borders' (2014) 4 <www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf> accessed 15 June 2019

¹⁰⁹ UNHCR, 'UNHCR viewpoint: 'Refugee' or 'migrant' – Which is right?' (UN High Commissioner for Refugees, 11 July 2016) <www.unhcr.org/news/latest/2016/7/55df0e556/unhcr-viewpoint-refugee-migrant-right.html> accessed 15 June 2019

¹¹⁰ OHCHR, Thirty-third session 13 October 2016 'Promotion and protection of the human rights of migrants in the context of large movements. Report of the United Nations High Commissioner for Human Rights' (13 October 2016) UN Doc A/HRC/33/67 para 3 <<https://undocs.org/es/A/HRC/33/67>> accessed 16 June 2019

international law, to meet the special needs of all persons travelling in a vulnerable situation.¹¹¹ This declaration was the origin of the concept of ‘migrant in vulnerable situations’ around which the Global Compact for Safe, Orderly and Regular Migration¹¹² was built. This compact is a very controversial intergovernmental agreement due to its challenge of the traditional dual categorisation of vulnerability. Indeed, it affirms that ‘migrants and refugees may face many common challenges and similar vulnerabilities’¹¹³, and, therefore, they could require international human rights protection ‘at various points during their journey: in transit, upon arrival at their destination, or as they make a life for themselves in a new country’¹¹⁴.

This view of governmental responsibility towards migrants is something that may seem commonsensical, but states have always found excuses to ‘misunderstand’ these obligations. Consequently, the Human Rights Council (HRC) requested a report from the OHCHR on the promotion and protection of the human rights of migrants in the context of large movements¹¹⁵, where it is clearly established that ‘every person in the context of large displacements, whether defined as migrant, refugee or any other category, has the right to enjoy their human rights’¹¹⁶.

Accordingly, inspired by the New York Declaration and as a basis for the development of the Global Compact for migration and refugees, the OHCHR and the UN Global Migration Group Working Group on Migration, Human Rights and Gender have developed a whole doctrine around the concept of ‘migrants in vulnerable situations’. This doctrine suggests that these situations of vulnerability arise from ‘a range of factors that may intersect or coexist simultaneously, influencing and exacerbating each other and also evolving or changing over time as circumstances change’.¹¹⁷ Hence, ‘migrants in vulnerable situations’ are ‘persons who are unable effectively to enjoy their human

¹¹¹ UN General Assembly (UNGA), ‘New York Declaration for Refugees and Migrants’ (3 October 2016) UN Doc A/RES/71/1, Para 52 and Annex II para 8

¹¹² UNGA, ‘Global Compact for Safe, Orderly and Regular Migration’ (11 January 2019) UN Doc A/RES/73/195

¹¹⁴ UNHCR, ‘Migrants in vulnerable situations. UNHCR’s perspective’ (2017) 1 <www.refworld.org/pdfid/596787174.pdf> accessed 18 June 2019; OHCHR Thirty-fifth session

6–23 June 2017 ‘Protection of the human rights of migrants: the global compact for safe, orderly and regular migration’ (6 July 2017) UN Doc A/HRC/35/17

¹¹⁵ OHCHR (n 110)

¹¹⁶ *ibid* para 6

¹¹⁷ OHCHR, Thirty-seventh session 26 February–23 March 2018 ‘Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations: Report of the UN High Commissioner for Human Rights’ (3 January 2018) UN Doc A/HRC/37/34 para 12

rights, are at increased risk of violations and abuse and who, accordingly, are entitled to call on a duty bearer's heightened duty of care'.¹¹⁸

In terms of the above definition, migrants can face vulnerable situations associated with (i) the reasons for leaving their country of origin, (ii) situations that they encounter during their journey and at their destination, and (iii) their identity, condition, or circumstances.¹¹⁹ As a matter of fact, although this perspective denies vulnerability as inherent and holds that it is the 'result of multiple and intersecting forms of discrimination, inequality and structural and societal dynamics that lead to diminished and unequal levels of power and enjoyment of rights'¹²⁰, in the end, it is very similar to Fineman's proposal, as it introduces two vulnerability sources: situational and individual (embodied/embedded). Further development of this approach shows how it ultimately only takes into account vulnerability in terms of the identity of the individual, and it only promotes and reinforces categorisation based on belonging to certain vulnerable groups, as will be discussed later in this chapter.

To conclude, once it is clear that migrants are also entitled to protection under IHRL, one must move on to analyse the international human rights framework applicable in the case of UASGs. In this context, it is necessary to highlight that, precisely because of the lack of intersectionality, together with the very strong vulnerable-group-oriented approach at the universal and the CoE level, what could have been a simple analytical description has become a challenge. In the next section follows a critical analysis of the tremendous fragmentation of IHRL in the case of the protection of UASGs.

2. 'VULNERABILITY SHOPPING' AT THE UNIVERSAL LEVEL

2.1. VULNERABLE GROUPS AND LACK OF INTERSECTIONALITY AT THE UNIVERSAL LEVEL

At the universal level, as it was anticipated in Part I, Section 1, we find that after the entry into force of the International Bill of Human Rights, IHRL's development revolved around the protection of specific groups, 'whose rights are most at risk of being violated'¹²¹. In this sense, the notion of

¹¹⁸ *ibid*

¹¹⁹ OHCHR (n 117) paras 14-16

¹²⁰ *ibid* para 13

¹²¹ Lorena Sosa and others, 'Conceptions of Human Rights, Democracy and The Rule of Law in Selected Third Countries' (2015) 3(3) FRAME <www.fp7-frame.eu/wp-content/uploads/2017/03/Deliverable-3.3.pdf> accessed 5 June 2019

vulnerability has been systematically used as a justification for this specific protection¹²². This understanding of vulnerability has been based on a personal condition shared by the members of a group of people, which has led to the emergence of the concept ‘vulnerable group’. Following this developmental trend, there was a proliferation of group-differentiated catalogues of rights such as the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) or the Convention on the Rights of the Child (CRC).

This trend in IHRL had very positive consequences since it managed to draw attention to certain groups that had been historically forgotten and misplaced, it supported the definition of state obligations towards these groups, and also highlighted the difficulty of those individuals that do not fit in the category of liberal legal subject in accessing the protection of their human rights. However, the focus only on unitary categories makes those individuals who do not fit into the archetype of these categories invisible. In the words of De Beco:

International human rights law, therefore, is both a consequence and a cause of the varied level of human rights protection for people who are sharing a number of characteristics which are associated with distinct marginalised groups of people.¹²³

Nevertheless, it is true that there has been a slight tendency towards the introduction of intersectionality, or at least towards the multiple discrimination approach, especially in the field of soft law. This trend is thanks to the work of UN treaty bodies, especially through the CEDAW Committee, along with the UN Charter-based bodies such as the HRC, the Special Procedures of the HRC, and even some UN General Assembly resolutions¹²⁴ and documents resulting from conferences¹²⁵.

¹²² See: Lourdes Peroni and Alexandra Timmer, ‘Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law’ (2013) 11 International Journal of Constitutional Law 1056 <<https://doi.org/10.1093/icon/mot042>> accessed 25 June 2019 and Audrey Chapman, Benjamin Carbonetti, ‘Human Rights Protections for Vulnerable and Disadvantaged Groups: The Contributions of the UN Committee on Economic, Social and Cultural Rights’ (2011) 33(3) Human Rights Quarterly, 682-732 <https://www.researchgate.net/publication/236794350_Human_Rights_Protections_for_Vulnerable_and_Disadvantaged_Groups_The_Contributions_of_the_UN_Committee_on_Economic_Social_and_Cultural_Rights>

¹²³ Gauthier de Beco, ‘Protecting the Invisible: An Intersectional Approach to International Human Rights Law’ (2017), 17 Human Rights Law Review 633, 641 <<https://doi.org/10.1093/hrlr/ngx029>> accessed 18 June 2019

¹²⁴ Such as refugee women, women living in rural areas, elderly women, the girl child and migrant women workers. See: Lorena Sosa, ‘Intersectionality in the United Nations’ in Sosa L (ed), *Intersectionality in the Human Rights Legal Framework on Violence against Women: At the Centre or the Margins?* (Cambridge University Press 2017) 105

¹²⁵ Fourth World Conference on Women, Declaration on the Beijing Conference (15 September 1995) <www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf> accessed 17 June 2019

In this way, one finds a modest introduction of the intersectional approach through substantive interpretation in general recommendations that consider the experiences of non-dominant groups.¹²⁶ Furthermore, the intersectional approach has been introduced through institutional developments such as the elaboration of joint general recommendations among UN treaty bodies.¹²⁷ In fact, the CEDAW Committee has established itself as the pioneer in the implementation of the intersectional approach in the reasoning behind its decisions regarding the individual communications examined under its Optional Protocol.¹²⁸

It is thus evident that there is at least an increase in awareness of 'the need to counter the "single-axis" thinking'¹²⁹ prevailing in the IHRL. However, we cannot lose sight of the fact that this process is developing not only extremely slowly, but also inconsistently, as there are no clear guidelines for incorporating the intersectional perspective into IHRL. Indeed, this increased openness to the intersectional approach is occurring through references to (i) new, 'more' vulnerable groups that take into account other systems of inequality; (ii) connections between specific categories or structural factors; and (iii) 'multiple' or 'intersectional' discrimination.¹³⁰ In the vast majority of cases, these references exist only when talking about the rights of women and girls – that is, always from a gender perspective – which makes sense given that intersectionality emerged from feminist studies; however, the intersectional approach needs to be incorporated into other perspectives as well.

It can, therefore, be concluded that, in the absence of an intersectional approach, it is up to each international actor to choose whether to introduce it and in what way. Thus, there is firstly a danger

¹²⁶ CERD, 'General recommendation XXV on gender-related dimensions of racial discrimination' (20 March 2000) U.N. Doc. A/55/18, annex V <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7497&Lang=en> accessed 18 June 2019; UN CRC, Fiftieth session 12-30 January 2009 'General Comment No. 11: Indigenous children and their rights under the Convention' (2009) UN Doc CRC/C/GC/11 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f11&Lang=en> accessed 18 June 2019

¹²⁷ Such as UN CEDAW and UN CRC, '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 on harmful practices' (14 November 2014) UN Doc CEDAW/C/GC/31-CRC/C/GC/18

¹²⁸ See: Meghan Campbell, 'CEDAW and Women's Intersecting Identities: A Pioneering Approach to Intersectional Discrimination' (2015) 11(2) Revista Direito GV 33ff <<https://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2015/07/Working-Paper-Series-Vol-2-No-3.pdf>> accessed 01/07/19

¹²⁹ Ivona Truscan and Joanna Bourke-Martignoni, 'International Human Rights Law and Intersectional Discrimination' (2016) 16 The Equal Rights Review 103, 110 <www.equalrightstrust.org/ertdocumentbank/International%20Human%20Rights%20Law%20and%20Intersectional%20Discrimination.pdf> accessed 18 June 2019

¹³⁰ Sosa (n 124) 118

that the primary focus of UN-treaty bodies will be the starting point and, secondly, a risk of creating infinite vulnerable subgroups while excluded groups continue to be invisible. The latter scenario is what tends to happen with UASGs, as will be discussed in the next section.

2.2. THE FRAGMENTATION OF UNACCOMPANIED GIRLS' PROTECTION UNDER THE UNITED NATIONS

In this section it will be demonstrated how the lack of intersectionality, together with dominance of the vulnerable groups approach, leads to fragmentation of the international human rights framework that would apply to UASGs, but which ends up making them invisible to law and policy makers. These girls' specific protection needs, and experiences are dissolved in two identified vulnerable groups: 'migrant/refugee UAM' and 'migrant/refugee women and girls'.

2.2.1. UNACCOMPANIED GIRLS AS CHILDREN: THE CRC

The CRC is the main compendium of binding international standards regarding the protection of the child's human rights. The problem is that many state parties to the CRC have not appreciated the fact that the convention is applicable to children on the move. However, in this regard, the CRC Committee has been categorically clear on state obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination, and return¹³¹ in the three main documents from which the international standards of protection for unaccompanied children emanate. These documents are: General Recommendation No. 6, which comprehensively addresses states' obligations towards unaccompanied and separated children¹³²; the Joint General Comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of their families and No. 22 of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration¹³³; and the Joint

¹³¹ UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) and UN CRC, 'Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return' (16 November 2017) UN Doc CMW/C/GC/4-CRC/C/GC/23 <www.refworld.org/docid/5a12942a2b.html> accessed 23 June 2019

¹³² UN CRC, Thirty-ninth session 17 May-3 June 2005 'General comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin' (1 September 2005) UN Doc CRC/GC/2005/6 <www.refworld.org/docid/42dd174b4.html> accessed 23 June 2019

¹³³ UN CMW and UN CRC, 'Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the

General Comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 of the Committee on the Rights of the Child.

A joint reading of the three general recommendations makes it possible to establish beyond doubt that in their conceptualisation, formulation, and implementation, all the provisions of the CRC are applicable not just only to citizens, but also to all children within the state parties' jurisdiction 'whether they are considered, inter alia, migrants in regular or irregular situations, asylum seekers, refugees, stateless and/or victims of trafficking, including in situations of return or deportation to the country of origin, irrespective of the child's or the parents' or legal guardians' nationality, migration status or statelessness'.¹³⁴

In the case of this group of standards, there is a certain evolution in the willingness to include an intersectional perspective. On the one hand, the CRC has been highly criticised by the academia for pretending to be gender neutral but being "biased and predominantly in favour of boys, while disregarding girls' rights".¹³⁵ On the other hand, the General Comment No. 6 barely references UASGs, just mentioning that they are: at particular risk of human trafficking¹³⁶, gender-based violence (including domestic violence)¹³⁷, marginalisation, and poverty; and particularly susceptible to marginalisation, poverty, and suffering during armed conflict, with many experiencing gender-based violence in the context of armed conflict¹³⁸. Mention also made of gender-related issues, such as including gender-sensitivity in interviewing techniques¹³⁹, age assessment¹⁴⁰, and asylum claims¹⁴¹.

However, it is true that, 12 years after the General Comment No 6, the Joint General Comments, although not mentioning UASGs, do make a greater effort to incorporate the intersectional perspective towards children on the move in general. This effort towards intersectionality has been made, first,

general principles regarding the human rights of children in the context of international migration' (16 November 2017) UN Doc CMW/C/GC/3-CRC/C/GC/22 <www.refworld.org/docid/5a1293a24.html> accessed 23 June 2019

¹³⁴ UN CMW, UN CRC (n 133) para 9

¹³⁵ Plan International, 'Girls' rights are human rights' (2017) 13 <<https://plan-international.org/publications/girls-rights-are-human-rights>> accessed 18 June 2019

¹³⁶ UN CRC (n 132) para 50

¹³⁷ *ibid* para 3

¹³⁸ *ibid* para 47

¹³⁹ *ibid* para 20

¹⁴⁰ *ibid* para 31

¹⁴¹ *ibid* para 3

from an institutional point of view due to the involvement of two treaty bodies and, second, due to the inclusion of the following obligations: to disaggregate the data by ‘nationality, migration status, gender, age, ethnicity, disability and all other relevant statuses to monitor intersectional discrimination’¹⁴²; to ‘adopt adequate measures to combat discrimination on any grounds and to protect children from multiple and intersecting forms of discrimination’¹⁴³; to pay attention to ‘gender-specific and any other challenges and vulnerabilities that may intersect’¹⁴⁴; and to train the professionals on the specific needs of the children¹⁴⁵. Furthermore, the Joint General Comments established that state parties ‘should conduct a robust gender analysis of the specific impacts of migration policies and programmes on children of all genders’¹⁴⁶ and must identify and address gender-specific risks and vulnerabilities faced by children¹⁴⁷.

2.2.2. UNACCOMPANIED GIRLS AS FEMALE: THE CEDAW

The CEDAW as instrument establishes the main international standards against discrimination on the grounds of gender. In theory, it should apply to all women and girls, but ‘girls seldom feature within it as rights-bearing individuals’¹⁴⁸. In fact, girls are only mentioned in the field of education¹⁴⁹ and in the prohibition of child marriage¹⁵⁰, which makes sense, given that CEDAW is mainly ‘aimed at correcting inequality between adult men and women’¹⁵¹.

The CEDAW Committee addresses directly the intersection between gender and migration in three general recommendations. Firstly, General Recommendation No. 32 on gender-related dimensions of

¹⁴² UN CMW, UN CRC (n 133)

¹⁴³ *ibid* para 23

¹⁴⁴ *Ibid*

¹⁴⁵ *ibid* para 36

¹⁴⁶ *ibid* para 24

¹⁴⁷ UN CMW, UN CRC (n 131) para 41

¹⁴⁸ Plan International (n 135) 14

¹⁴⁹ Art 10 (f) of UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 <www.refworld.org/docid/3ae6b3970.html> accessed 23 June 2019

¹⁵⁰ *Ibid* Art 16(2)

¹⁵¹ Cynthia Price Cohen, ‘The United Nations Convention on the Rights of the Child: A Feminist Landmark’ (1997) 29 William and Mary Journal of Women and the Law 29, 39

<<https://scholarship.law.wm.edu/cgi/viewcontent.cgi?referer=https://www.ecosia.org/&httpsredir=1&article=1269&context=wmjowl>> accessed 19 June 2019

refugee status, asylum, nationality, and statelessness of women, in which the Committee just quotes the CRC General Comment No. 6 on treatment of unaccompanied and separated children where it states that there is a need for ‘early identification of women asylum seekers with specific protection and assistance needs, including (...) unaccompanied girls’¹⁵² and that ‘unaccompanied and separated girls must in all cases be assigned a qualified legal representative and a guardian to assist them through the asylum procedure’¹⁵³. Secondly, General Recommendation No. 30 on women in conflict prevention, conflict, and post-conflict situations does not address the specific situation of any girl, although it calls for their protection.¹⁵⁴ Thirdly, General Recommendation No. 26 on women migrant workers¹⁵⁵, which focuses on women migrant workers who travel independently but does not even mention girls.

It should, however, be acknowledged that the CEDAW Committee is currently working on a General Recommendation on trafficking in women and girls in the context of global migration.¹⁵⁶

2.2.3. UNACCOMPANIED GIRLS AS ‘MIGRANTS IN VULNERABLE SITUATIONS’

All the IHRL instruments discussed above develop universal protection standards for UASGs. Nonetheless, it is a very fragmented framework, especially in terms of children's rights and women's rights discourses. UASGs’ experiences and protection needs specificities are relegated to or eclipsed by those of other dominant discourses – in this case, the ‘UAMs’ and ‘migrant women and girls’ discourses.

Moreover, this fragmentation of protection frameworks is will be strongly reinforced by the new doctrine on ‘migrants in vulnerable situations’, mentioned earlier in this chapter. This new concept, despite holding a highly progressive approach to vulnerability in theory, ends up fixing and reinforcing the same discourse of ‘vulnerable groups’ in practice. Certainly, in this case, we will see the very clear

¹⁵² UN CEDAW, ‘General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women’ (5 November 2014) UN Doc CEDAW/C/GC/32 para 46 <www.refworld.org/docid/54620fb54.html> accessed 23 June 2019

¹⁵³ *ibid* para 50(c)

¹⁵⁴ UN CEDAW, ‘General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations’ (1 November 2013) UN Doc CEDAW/C/GC/30 <www.refworld.org/docid/5268d2064.html> accessed 25 June 2019

¹⁵⁵ UN CEDAW, ‘General recommendation No. 26 on women migrant workers’ (5 December 2008) UN Doc CEDAW/C/2009/WP.1/R <www.refworld.org/docid/4a54bc33d.html> accessed 24 June 2019

¹⁵⁶ UN CEDAW, ‘Half-day general discussion on trafficking in women and girls in the context of global migration’ (22 February 2019) <www.ohchr.org/EN/HRBodies/CEDAW/Pages/DiscussionOnTrafficking.aspx> accessed 15 June 2019

distinction between ‘refugee/migrant UAM’ and ‘refugee/migrant women and girls’ as the two groups in which the reality of UASGs could be included (or excluded).

The 2016 New York Declaration established a clear differentiation between these two groups when it dedicated its Paragraph 31 to the obligations of states towards mainstreaming a gender perspective to ‘fully respect and protect the human rights of women and girls’¹⁵⁷ and its paragraph 32 to ‘protect the human rights and fundamental freedoms of all refugee and migrant children, (...) particularly (...) unaccompanied children and those separated from their families’¹⁵⁸. Later, the signatory states reaffirm their ‘commitment to protect the human rights of migrant children, given their vulnerability, particularly unaccompanied migrant children’¹⁵⁹ and ‘recognize the need to address the special situation and vulnerability of migrant women and girls’¹⁶⁰.

This differentiation between ‘refugee/migrant UAM’ and ‘refugee/migrant women and girls’ will be constantly repeated and quoted in subsequent documents and reports of the OHCHR and the Working Group on Migration, Human Rights, and Gender of the inter-agency global migration group in its process of elaborating one of the most relevant documents in this regard: the ‘Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations’.

For instance, in its report on the promotion and protection of the human rights of migrants in the context of large movements, the OHCHR not only quotes Paragraphs 31 and 32 of the New York Declaration, but it also reinforces the fragmentation by establishing that the obligation of protecting the human rights of women and girls is based on Article 2 of CEDAW¹⁶¹ and the obligation of protecting children, particularly unaccompanied, is based on Article 3 of the CRC¹⁶². Another example is the OHCHR’s report on the situation of migrants in transit, which it specifies to include ‘unaccompanied children and adolescents, as well as women and girls’¹⁶³.

¹⁵⁷ UNGA (n 111) para 31

¹⁵⁸ *ibid* para 32

¹⁵⁹ *ibid* para 59

¹⁶⁰ *ibid* para 60

¹⁶¹ OHCHR (n 110) para 46

¹⁶² *ibid* para 41

¹⁶³ OHCHR, Thirty-first session ‘Situation of migrants in transit. Report of the Office of the United Nations High Commissioner for Human Rights’ (27 January 2016) UN Doc A/HRC/31/35 <<https://undocs.org/A/HRC/31/35>> accessed 16 June 2019

This strong fragmentation will definitely be reflected in the OHCHR report on ‘Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations’ – both the 2017 progress report and the 2018 final report – when explaining how international law informs the principles. On the one hand, *Principle 10 – Guarantee the human rights of all children in the context of migration and ensure that they are treated as children first and foremost* is based on nine international human rights instruments and three regional, and the CEDAW or other gender-specific instruments are not included.¹⁶⁴ On the other hand, *Principle 11 – Protect the human rights of migrant women and girls* is informed by six international human rights instruments and four regionals, and the CRC or other children-specific instruments are not included among them.

From the previous documents – which represent a milestone for the defence of the rights of migrants, regardless of their legal status, and on which the Global Compact for Migration is going to be based – more documents, guidelines, and compilations of international standards emerge that will maintain this clear fragmentation of the IHRL. One such document is the ‘Report on the compendium of principles, good practices and policies on safe, orderly and regular migration in line with IHRL’.¹⁶⁵ Of course, none of these documents mentions UASGs or contains articulated or unarticulated intersectionality.

A second relevant document is the Global Compact for Safe, Orderly and Regular Migration, which reduces the high level of stratification in IHRL observed thus far by speaking of ‘women, men, girls, and boys’, intersectional discrimination, the need to identify and address the specific vulnerability situations of each individual, and by not having clearly identified subsections. However, an in-depth reading of the document brings one to the same point: there are no references to UASGs in general or to gender-related issues when talking about UAMs; again, girls are only mentioned in

¹⁶⁴ OHCHR, Thirty-fourth session 27 February-24 March 2017 ‘Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations. Report of the United Nations High Commissioner for Human Rights’ (26 January 2017) UN Doc A/HRC/34/31 para 18 <<https://undocs.org/A/HRC/34/31>> accessed 16 June 2019; OHCHR, Thirty-seventh session 26 February-23 March 2018 ‘Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations. Report of the United Nations High Commissioner for Human Rights. Addendum’ (7 February 2018) UN Doc A/HRC/37/34/Add.1, 38-40 <<https://undocs.org/A/HRC/37/34/Add.1>> accessed 16 June 2019

¹⁶⁵ OHCHR, Thirty-sixth session 11-29 September 2017 ‘Report on the compendium of principles, good practices and policies on safe, orderly and regular migration in line with international human rights law’ (5 October 2017) UN Doc A/HRC/36/42 <<https://undocs.org/en/A/HRC/36/42>> accessed 16 June 2019

general as ‘women and girls’, maintaining the division among these groups of migrants in vulnerable situations.¹⁶⁶

Thirdly, in the case of the Global Compact for refugees, we see again a clear compartmentalisation between ‘women and girls’¹⁶⁷ and ‘children, adolescents and youth’ when specifically addressing issues related to UAMs¹⁶⁸. The compact makes no mention of intersectionality, even in an indirect way, reinforcing again the distinction between these groups.

In the case of asylum seekers or refugees, one finds the following historical conclusions of the United Nations High Commissioner for Refugees (UNHCR) Executive Committee: conclusion on Women and Girls at Risk No. 105 (LVII), which only mentions UASGs in relation to the obligation to ensure individual documentation¹⁶⁹ and Conclusion on Children at Risk No. 107 (LVIII) whose only mention of gender regarding UAMs is in relation to the need for ‘systematic collection and analysis of age- and sex-disaggregated data, and of data on children with specific needs, such as unaccompanied and separated children’¹⁷⁰. None of the conclusions actually addresses the risks that UASGs can face – not even when describing environmental or individual risks factors.

In addition, two recent reports are very interesting, as they address in detail the human rights situation of both groups (UAMs and migrant women and girls) without taking into account the UASGs at all. First, the 2017 Final Report of the HRC Advisory Committee on the global issue of unaccompanied migrant children and human rights sets out in detail the main reasons that force or encourage children and adolescents into situations of unaccompanied migration in certain identified areas, their experiences in these areas, and the main human rights violations they face.¹⁷¹ Surprisingly, there is a section entirely dedicated to ‘gender considerations’ related to UAMs.¹⁷² However, no data

¹⁶⁶ UNGA (n 112)

¹⁶⁷ UNGA, ‘Global Compact on Refugees’ (13 September 2018) UN Doc A/RES/73/12 (Part II) paras 75-75 <https://www.unhcr.org/gcr/GCR_English.pdf> accessed 17 June 2019

¹⁶⁸ *ibid* paras 76-77

¹⁶⁹ UNHCR, ‘Conclusion on Women and Girls at Risk No. 105 (LVII)’ (6 October 2006) UN Doc A/AC.96/1035 para (i) <www.unhcr.org/excom/exconc/45339d922/conclusion-women-girls-risk.html> accessed 17 June 2019

¹⁷⁰ UNHCR, ‘Conclusion on Children at Risk No. 107 (LVIII)’ (5 October 2007) UN Doc A/AC.96/1048 para (f) <www.unhcr.org/excom/exconc/4717625c2/conclusion-children-risk.html> accessed 17 June 2019

¹⁷¹ OHCHR, Thirty-sixth session 11-29 September 2017 ‘Global issue of unaccompanied migrant children and human rights. Final report of the Human Rights Council Advisory Committee’ (24 July 2017) UN Doc A/HRC/36/51 paras 1-64 <<https://undocs.org/A/HRC/36/51>> accessed 17 June 2019

¹⁷² *ibid* paras 65-73

or general information is offered – only brief cases of human rights violations in specific countries, which mostly refer to female migrants in general or trafficking victims, not to UASGs.

Finally, the 2019 Report of the Special Rapporteur on the human rights of migrants concerning the impact of migration on migrant women and girls covers in detail the gendered drivers of migration for women and girls, the migration channels and specific challenges they face while migrating, and the gendered impact of migration on women and girls, among other topics.¹⁷³ This report does address intersectionality by stating the following regarding the intersection between gender and other social issues: ‘taken together, a complex map of stratification emerges with its own dynamics of discrimination, exclusion or inclusion and power relations’¹⁷⁴. It also addresses specific challenging situations faced by migrant women belonging to the lesbian, bisexual, transgender, and intersex community and indigenous migrant women.¹⁷⁵ However, while the report does draw attention to the recent tendency of migrant women to travel on their own by focusing on the experiences of women domestic workers¹⁷⁶, there is no mention of UASGs or travelling alone as a risk.

3. ‘VULNERABILITY SHOPPING’ AT THE COUNCIL OF EUROPE

3.1. VULNERABLE GROUPS AND LACK OF INTERSECTIONALITY IN THE COUNCIL OF EUROPE

At the CoE level, there are differences among the standard-setting level, the policy-making level, and the European Court of Human Rights (ECtHR) jurisprudence. In this context, the vulnerable-group approach is not so evident at the level of standard setting since, without prejudice to the European Convention on Human Rights (ECHR)¹⁷⁷ and the European Social Charter (ESC)¹⁷⁸, the legal instruments do not focus on certain vulnerable groups but rather on specific human rights violations –

¹⁷³ OHCHR, Forty-first session 24 June – 12 July 2019 ‘The impact of migration on migrant women and girls: a gender perspective. Report of the Special Rapporteur on the human rights of migrants’ (15 April 2019) UN Doc A/HRC/41/38 <<https://undocs.org/en/A/HRC/41/38>> accessed 18 June 2019

¹⁷⁴ *ibid* para 14

¹⁷⁵ *ibid* paras 67-71

¹⁷⁶ *ibid* para 39ff

¹⁷⁷ Council of Europe (CoE), Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR)

¹⁷⁸ CoE, European Social Charter (October 1961) CoETS 35 <<https://rm.coe.int/168006b642>> accessed 19 June 2019

for example, the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse¹⁷⁹ or the Convention on Action against Trafficking in Human Beings¹⁸⁰.

However, the vulnerable groups approach will be very present at the policy-making level in strategies, action plans, and awareness raising aimed at promoting human rights, as will be discussed in more detail in the next section. Notably, the following groups feature prominently: women, women victims of domestic violence, trafficking victims, persons with disabilities, Roma people, migrants, national minorities, LGTB people, and children.

Unfortunately, the intersectional approach is much more underdeveloped than in the universal field. In the CoE there is strong institutionalisation of the gender perspective as a unitary model of policy, although recently the intersectional approach has been included in the new CoE Gender Equality Strategy 2018–2023 as a cross-cutting issue across the strategy's priority objectives.¹⁸¹ However, as is generally the case, this inclusion is framed in relation to gender.

Furthermore, it is evident that 'vulnerable groups', as an emerging concept, has been institutionalised in ECHR law through ECtHR jurisprudence.¹⁸² This concept appears for the first time in 2001, in the case of *Chapman v. the United Kingdom*¹⁸³, where the court found that 'the vulnerable position of Gypsies as a minority means that some special consideration should be given to their needs'¹⁸⁴. After *Chapman*, the court continued developing the vulnerable groups concept in many of its decisions. According to Peroni and Timmer, the court's characterisation of group vulnerability is relational, particular, and harm based¹⁸⁵ – relational, 'because it views the vulnerability of certain groups as shaped by social, historical, and institutional force'¹⁸⁶; particular because the mere fact of

¹⁷⁹ CoE, Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007) CoETS 201 <www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680084822> accessed 20 June 2019

¹⁸⁰ CoE, Convention on Action against Trafficking in Human Beings (2005) CoETS 197 <www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008371d> accessed 20 June 2019

¹⁸¹ CoE, Gender Equality Strategy 2018-2023 (2018) para 21 <<https://rm.coe.int/strategy-en-2018-2023/16807b58eb>> accessed 25 June 2019

¹⁸² Peroni and Timmer (n 122) 1056

¹⁸³ *Chapman v United Kingdom* App no 27238/95 (ECtHR, 18 January 2001)

¹⁸⁴ *ibid*

¹⁸⁵ Peroni and Timmer (n 122) 1063

¹⁸⁶ *ibid* 1064

belonging to these groups makes a subject vulnerable; and harm based because it focuses on harm either due to prejudice and stigmatisation or due to social disadvantage and material deprivation¹⁸⁷.

Following these criteria, the court has recognised as vulnerable groups the Roma people, people with mental disabilities, people with HIV, and asylum seekers. Regarding the latter, the Court found Asylum seekers 'a particularly underprivileged and vulnerable population group in need of special protection' in *M.S.S. v. Belgium and Greece*.¹⁸⁸ Peroni and Timmer argue that the incorporation of this legal concept has allowed a broader approach to substantive equality. However, they have also analysed the risks associated with the use of this doctrine – namely, essentialising, stigmatising, victimising, and paternalising treatment¹⁸⁹ and the inconsistencies found in cases that would meet the criteria to be considered vulnerable groups but that were not recognised, such as national minorities, religious minorities, and LGTB people¹⁹⁰.

The contribution of Lorena Sosa is interesting to consider at this point of the discussion. Sosa's intersectional legal analysis of the treatment of victims of gender violence in the CoE posits that the use by the ECtHR and other legal instruments of the term 'vulnerability' could be considered a potential intersectional approach, if only because it puts the 'emphasis on biological rather than social constructions'.¹⁹¹

3.2. THE FRAGMENTATION OF UNACCOMPANIED GIRLS' PROTECTION UNDER THE COUNCIL OF EUROPE

The international human rights framework applicable to UASGs on the CoE level consists of several legal and policy instruments under the frame of the ECHR and the ESC. The ECHR is the main regional compilation of civil and political rights and applies equally to all individuals. Regarding children, Article 8 on the right to respect for private and family life is particularly relevant. However, regarding UAMs, the ECtHR has issued several decisions concerning detention conditions and

¹⁸⁷ *ibid* 1065-1067

¹⁸⁸ *M.S.S. v. Belgium and Greece* App no 30696/09 (ECtHR, 21 January 2011)

¹⁸⁹ Peroni and Timmer (n 122) 1070

¹⁹⁰ *ibid*

¹⁹¹ Lorena Sosa L, 'Intersectionality in the Council of Europe and Inter-American System' in Sosa L (ed), *Intersectionality in the Human Rights Legal Framework on Violence against Women: At the Centre or the Margins?* (Cambridge University Press 2017) 127

violation of Article 3.¹⁹² One of these decisions deals with the deportation of an unaccompanied girl to the Democratic Republic of Congo. It is interesting how the court finds that the ‘applicant’s position was characterised by her very young age, the fact that she was an illegal immigrant in a foreign land and the fact that she was unaccompanied by her family’¹⁹³ and, thus, she was in an ‘extremely vulnerable situation’¹⁹⁴. Indeed, the court did not find any differentiation in the sources of this ‘vulnerability’ between this case and others related to unaccompanied boys.

The ESC is ‘the major European treaty which secures children’s rights. It guarantees the rights’¹⁹⁵ because many rights are specifically relevant to children and because it contains the following rights relating exclusively to children: Article 7 (right of children and young persons to protection) and Article 17 (right of children and young persons to social, legal, and economic protection).

Other relevant treaties in this context would be the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment¹⁹⁶ and the Convention on Action against Trafficking in Human Beings¹⁹⁷.

As discussed, the fragmentation is not so evident at the legal level. However, as one moves into the scope of the CoE’s policies, where the legal standards are interpreted and the areas of action and support of the MSs are established, there is again evidence of strong stratification among vulnerable groups that coincides with the categorisation established on the universal level – namely, ‘migrant/refugee UAMs’ and ‘migrant/refugee women and girls’.

3.2.1. UNACCOMPANIED GIRLS AS ‘MIGRANT/REFUGEE UNACCOMPANIED MINORS’

The first CoE policy to be focused on, and the only convention exclusively applicable to children, is the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

¹⁹² European Court of Human Rights (ECtHR), ‘Factsheet: Unaccompanied migrant minors in detention’ (June 2019) <www.echr.coe.int/Documents/FS_Unaccompanied_migrant_minors_detention_ENG.pdf> accessed 27 June 2019

¹⁹³ *Mubilanzila Mayeka and Kaniki Mitunga v Belgium* App no 13178/03 (ECtHR, 12 January 2007) para 55

¹⁹⁴ *ibid*

¹⁹⁵ CoE, Children’s Rights Under the European Social Charter’ 1 <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680474a4b>> accessed 27 June 2019

¹⁹⁶ CoE, Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987) CoETS 126 <www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007a67f> accessed 27 June 2019

¹⁹⁷ CoE (n 180)

(Lanzarote Convention)¹⁹⁸, which criminalises various sexual offences against children. The policy does not make any reference to girls or gender-related violence – not even in terms of migration-related violence – and, as is to be expected, makes no reference to intersectionality. However, the Committee of the Parties to the Lanzarote Convention recently issued a declaration on protecting migrant and refugee children against sexual exploitation and sexual abuse¹⁹⁹, where it acknowledges that UAMs are ‘extremely vulnerable’²⁰⁰, but it does not mention either the gender dimension of this kind of crime or UASGs.

The second relevant CoE policy, the Strategy for the Rights of the Child (2016-2021)²⁰¹, as well as the Secretary General’s proposals for priority actions²⁰², establishes the protection of children on the move as they ‘remain one of the most vulnerable groups in Europe today’²⁰³. Furthermore, the strategy and proposals prioritise attention towards unaccompanied children, who ‘face a particularly precarious situation’.²⁰⁴ Neither of these documents mentions UASGs, although the Secretary General’s proposals do show concern about migrant girls’ general ‘risk of abuse, exploitation and other harmful practices (such as forced marriage), as well as the inadequacy and shortage of not just child-sensitive, but also gender-sensitive reception centres and accommodation’.²⁰⁵

It is disconcerting that the 2017 Thematic Report on migrant and refugee children – prepared by the CoE Special Representative of the Secretary General on migration and refugees²⁰⁶ after fact-finding missions to Greece, Macedonia, Turkey, northern France, and Italy and his visits to Paris and London

¹⁹⁸ CoE (n 179)

¹⁹⁹ Committee of the Parties to the CoE Convention on the protection of children against sexual exploitation and sexual abuse, on protecting migrant and refugee children against sexual exploitation and sexual abuse (2018) T-ES(2018)17_en <<https://rm.coe.int/declaration-on-protecting-migrant-and-refugee-children-against-sexual-/16808b78d9>> accessed 27 June 2019

²⁰⁰ *ibid* para 4

²⁰¹ CoE, ‘Council of Europe Strategy for the Rights of the Child (2016-2021)’ (March 2016) <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168066cff8>> accessed 27 June 2019

²⁰² CoE, ‘Protecting children affected by the refugee crisis: A shared responsibility. Secretary General’s proposals for priority actions’ (2016) SG/Inf (2016) 9 final <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c5ee7> accessed 27 June 2019

²⁰³ CoE (n 201) para 22

²⁰⁴ *ibid*

²⁰⁵ CoE (n 202) para 9

²⁰⁶ CoE, ‘Thematic Report on migrant and refugee children. Prepared by the Special Representative of the Secretary General on migration and refugees’ (2017) SG/Inf(2017)13 <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016806fdd08> accessed 27 June 2019

– makes no mention of girls, gender-related issues (just gender-separate sanitary facilities in reception conditions), or intersectionality. In order to address the primary concerns identified in this thematic report, the 47 MSs adopted the CoE Action Plan on Protecting Refugee and Migrant Children in Europe with a special focus on unaccompanied children²⁰⁷, without taking into consideration intersectionality (or the challenges for unaccompanied migrant girls’ protection).

The aforementioned CoE Action Plan has three main pillars: (i) ensuring access to rights and child-friendly procedures; (ii) providing effective protection; and (iii) enhancing the integration of children who would remain in Europe. The unique mention of girls is exactly the same as the one in the Secretary General’s proposal; furthermore, the 2018 Report on the Progress in implementation of the Action Plan just refers to girls when explaining other ‘additional relevant activities’ in the policies towards ‘migrant/refugee women and girls’²⁰⁸ that will be explained in the following section, strongly reinforcing the dual rights discourse.

However, it is important to recognise that some activities and documents that the CoE Children’s Rights Division has developed within the framework of the Action Plan are interesting. Two noteworthy documents are the Age Assessment report, based on consultations with unaccompanied children, and the Report on child-friendly information for children in migration. Neither of these addresses the experience of UASGs or the gender or intersectional issues related to their topics. However, the former acknowledges that the gendered dimension of age assessment ‘cannot be adequately interpreted in this report’, given the difficulties in accessing UASGs.²⁰⁹ The latter recognises that ‘reaching out to girls and having girls participate in the workshops that took place was difficult to achieve’²¹⁰ due to reasons such as them not wanting to participate in mixed workshops.

²⁰⁷ CoE, 127th Session of the Committee of Ministers ‘Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe’ (19 May 2017) CM(2017)54-final <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168071484e> accessed 27 June 2019

²⁰⁸ CoE, ‘Refugee and migrant children in Europe. Progress in implementation of the Action Plan (2017-2019)’ (2018) SG/Inf(2018)28 <https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808dd5b9> accessed 27 June 2019

²⁰⁹ CoE, ‘We are children, hear us out! Children speak out about age assessment. Report on consultations with unaccompanied children on the topic of age assessment’ (May 2019) 6 <<https://rm.coe.int/we-are-children-hear-us-out-children-speak-out-about-age-assessment-re/16809486f3>> accessed 27 June 2019

²¹⁰ CoE, ‘Child-friendly information for children in migration’ (May 2018) 6 <<https://rm.coe.int/child-friendly-information-for-children-in-migration-what-do-children-/16808af7e2>> accessed 27 June 2019

These reports at least reflect an awareness that it is always beneficial to try to understand why certain content could be biased.

Furthermore, the publication of the handbook *How to convey child-friendly information to children in migration: A handbook for frontline professionals*²¹¹ should be highlighted, as it is one of the few documents that displays a sensitivity to intersectionality by treating children as individuals and focusing on the best way to address their specific situations of vulnerability and risks without categorising or stratifying.

3.2.2. UNACCOMPANIED GIRLS AS ‘MIGRANT/REFUGEE WOMEN AND GIRLS’

The most relevant legal instrument dedicated to the rights of women and girls is the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)²¹², where it is specified that under the term ‘women’, girls under the age of 18 are included, and that dedicates its chapter VII to migration and asylum contexts. In these contexts, the CoE Group of Experts on Action against Violence against Women and Domestic Violence is developing competence in the field of migrant and refugee women with regards to the implementation of the Istanbul Convention. To this end, a factsheet of the application of the Istanbul Convention on Protecting migrant women, refugee women, and women asylum seekers from gender-based violence²¹³ was prepared.

Also noteworthy is that fact that 2018 was the first time that the protection of migrant, refugee, and asylum-seeking women and girls was included among the priority areas in the CoE Gender Equality Strategy 2018–2023, which highlights its concern about their ‘personal, physical and sexual safety and security – especially when they travel on their own’.²¹⁴

Other relevant standards are the different resolutions and recommendations of the Parliamentary Assembly of the CoE (PACE) – including Resolution 2159(2017) on Protecting refugee women and

²¹¹ CoE, ‘How to convey child-friendly information to children in migration. A handbook for frontline professionals’ (December 2018) <<https://rm.coe.int/how-to-convey-child-friendly-information-to-children-in-migration-a-ha/1680902f91>> accessed 27 June 2019

²¹² CoE, Convention on preventing and combating violence against women and domestic violence (May 2011) CoETS 2010 <www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e> accessed 27 June 2019

²¹³ CoE, ‘Convention on Preventing and Combating Violence Against Women and Domestic Violence: Protecting migrant women, refugee women and women asylum seekers from gender-based violence’ (2011) <<https://rm.coe.int/migrant-women-and-istanbul-convention/1680925865>> accessed 27 June 2019

²¹⁴ CoE (n 181) paras 62-67

girls from gender-based violence²¹⁵, Resolution 1765(2010)²¹⁶ and Recommendation 1940(2010) on Gender-related claims for asylum²¹⁷, and Recommendation No. R(79)10 of the committee of ministers to MSs concerning women migrants²¹⁸.

A final important public statement to take note of is that of the CoE Commissioner for Human Rights, who has endeavoured to demonstrate special concern for migrant women and girls in the human rights comment *Human rights of refugee and migrant women and girls need to be better protected*.²¹⁹ Herein, she stresses that 'women and girls, especially those traveling alone, face particularly high risks of certain forms of violence'.²²⁰

4. INTERSECTIONALITY MATTERS

As has been emphasised in the first part of this work, the vulnerable groups approach prevailing in IHRL, both at the universal and the CoE level, leads to a severe fragmentation of the international human rights framework applicable to any individual or group of individuals that does not fit into any category or that fits into several overlapping categories.

During the process of intersectional legal analysis it has been proved that, in the case of UASGs, the international human rights framework, both at a universal and regional European level, is clearly fragmented around the protection of two well-defined vulnerable groups: 'migrant/refugee UAMs' and 'migrant/refugee women and girls'. All the IHRL instruments and international standards, in principle, are applicable to UASGs and protect them. However, the tensions between these discourses are accompanied by the failing to address the specific needs of these girls. In the discourse on the rights of women and girls, girls are displaced by reason of age and still more displaced by the experience of

²¹⁵ Parliamentary Assembly CoE, Resolution 2159 (2017) Protecting refugee women and girls from gender-based violence <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=23700&lang=en>> accessed 27 June 2019

²¹⁶ Parliamentary Assembly CoE, Resolution 1765 (2010) Final version Gender-related claims for asylum <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17915&lang=en>> accessed 27 June 2019

²¹⁷ *ibid*

²¹⁸ CoE Committee of Ministers, Recommendation No. R (79) 10 of the Committee of Ministers to Member States Concerning Women Migrants (adopted on 29 May 1979) <<https://rm.coe.int/native/0900001680506f32>> accessed 27 June 2019

²¹⁹ CoE Commissioner for Human Rights, 'Human Rights of Refugee and Migrant Women and Girls Need to Be Better Protected' (2016) <www.coe.int/en/web/commissioner/-/human-rights-of-refugee-and-migrant-women-and-girls-need-to-be-better-protected?desktop=false> accessed 27 June 2019

²²⁰ *ibid*

travelling alone. In the discourse on the rights of unaccompanied children, girls are displaced because of their gender.²²¹

Consequently, these categories are going to structure all political actions since, in the words of Tom Campbell, ‘whether we like it or not, the language of rights is the language in which political priorities are settled’.²²² In addition, these groupings will also structure the generation of knowledge by those in academia, who will inevitably adhere to these categories. This is clearly evidenced by the fact that main international organisations, agencies, and NGOs usually specialise in specific groups²²³ and also by the content of the reports and advocacy actions they develop.

Due to the aforementioned structuring of political actions and knowledge generation, we have multiple reports from important agencies – such as the United Nations Children’s Fund (UNICEF), UNHCR, and International Organization for Migration (IOM) – and relevant international organisations – such as Save the Children or Human Rights Watch – that describe how the migration phenomenon of these groups evolves separately, why they travel, what risks are encountered during the different phases of displacement, what are their main obstacles in accessing protection of their rights, and, therefore, how policies should be considered. These descriptions are not only globally relevant, but also consider the specificities in each region, such as Europe or America, and even in specific countries.

Consequently, most of the reports focused on unaccompanied children fail to address the specificities of UASGs.²²⁴ However, only a few of them actually acknowledge the lack of adequate data and information and, thus, the bias of the report.²²⁵ Furthermore, the analysis shows how the few references to UASGs are always regarding their higher risk of exposure to sexual and gender-based

²²¹ Nura Taefi, ‘The Synthesis of Age and Gender: Intersectionality, International Human Rights Law and the Marginalisation of the Girl-Child’ (2009) 17 *The International Journal of Children’s Rights* 345 <www.researchgate.net/publication/233599393_The_Synthesis_of_Age_and_Gender_Intersectionality_International_Human_Rights_Law_and_the_Marginalisation_of_the_Girl-Child> accessed 27 June 2019

²²² Tom Campbell, ‘The Rights of the Minor: As Persons, as Child, as Juvenile, as Future Adult’ in Philip Alston, Stephen Parker and John Seymour (eds), *Children, Rights and the Law* (Clarendon Press 1992)

²²³ Cohen (n 151) 29

²²⁴ UNHCR, ‘Safe & Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe’ (October 2014) <www.refworld.org/docid/5423da264.html> accessed 27 June 2019; UNHCR, ‘The Way Forward to Strengthened Policies and Practices for Unaccompanied and Separated Children in Europe’ (July 2017) <www.refworld.org/docid/59633afc4.html> accessed 27 June 2019

²²⁵ See for example: IFRC, ‘Protection and Assistance for Children on the Move’ (2017) <https://refugeesmigrants.un.org/sites/default/files/ifrc_position_childrenonthemove.pdf> accessed 27 June 2019

violence (SGBV) and to trafficking, especially for the purposes of sexual exploitation and forced marriage.²²⁶ Nonetheless, there are very recent reports that, at least, are trying to highlight this large gap in information and, consequently, the invisibility of UASGs.²²⁷ However, in those reports focused on women and girls, UASGs are even more underrepresented. They are reduced to a mere tag after ‘women and girls’ when mentioning their higher vulnerability to SGBV, exploitation, and abuse.²²⁸

²²⁶ See for example: IOM and UNICEF, ‘Harrowing Journeys: Children and Youth on the Move Across the Mediterranean Sea, at Risk of Trafficking and Exploitation’ (2017) <www.unicef.org/publications/files/Harrowing_Journeys_Children_and_youth_on_the_move_across_the_Mediterranean.pdf> accessed 27 June 2019

²²⁷ See for example: IFRC, ‘Alone and Unsafe: Children, Migration and Sexual and Gender-based Violence’ (2018) <<https://media.ifrc.org/ifrc/wp-content/uploads/sites/5/2018/11/181126-AloneUnsafe-Report-EN-web.pdf>> accessed 27 June 2019; HRW, ‘Left to Survive: Systematic Failure to Protect Unaccompanied Migrant Children in Greece’ (2008) <www.hrw.org/sites/default/files/reports/greece1208webwcover_0.pdf> accessed 27 June 2019

²²⁸ See for example: UNHCR, ‘Initial Assessment Report: Protection Risks for Women and Girls in the European Refugee and Migrant Crisis. Greece and the former Yugoslav Republic of Macedonia’ <www.unhcr.org/protection/operations/569f8f419/initial-assessment-report-protection-risks-women-girls-european-refugee.html> accessed 27 June 2019; UNHCR, Handbook for the Protection of Women and Girls (2008) <www.unhcr.org/protection/women/47cfa9fe2/unhcr-handbook-protection-women-girls-first-edition-complete-publication.html> accessed 27 June 2019; Women’s Commission for Refugee Women and Children, ‘Displaced Women and Girls at Risk: Risk Factors, Protection Solutions and Resource Tools’ (2006) <www.womensrefugeecommission.org/images/stories/WomRisk.pdf> accessed 27 June 2019

CHAPTER II. IDENTIFICATION OF VULNERABILITIES: THE BEST INTERESTS OF THE CHILD TO FILL THE INTERSECTIONALITY GAP

1. THE INTERNATIONAL HUMAN RIGHTS OBLIGATION TO IDENTIFY: VULNERABILITIES OR VULNERABLE MIGRANTS?

In the first part of this chapter it has been shown how the concept of vulnerability plays a crucial role in the configuration of the IHRL and, particularly, in the context of international migration. Those migrants who are considered vulnerable receive special treatment under IHRL with the objectives of both non-refoulement and of ensuring access to the protection they need.

In this sense, identification plays a fundamental role, being configured as the first step in the protection and empowerment of people, not only in order to cover the specific protection needs generated at their countries of origin or during transit, but also to avoid or reduce possible risks they may face in host societies. The question is: should we identify vulnerable people or vulnerabilities/protection needs? It may, on the surface, seem a senseless question, but the answer will determine and define the obligations of states in terms of identification and, accordingly, the outcome thereof.

From an intersectional perspective, we should try to identify, on an individual basis, the root causes of vulnerability, which

[A]re influenced by social relationships, determined by a number of intersecting factors, such as gender, ethnicity, class, age and disability, coupled with situational variables, such as where people live, their health, household composition and size and the resources available to them to cope.²²⁹

Therefore, if law and policies fail to address these causes, they will leave people without protection and will risk further reinforcing inequalities.

If, however, the optimal approach is to identify vulnerable migrants, the result will be totally different. The analysis thus far has demonstrate that, if we approach vulnerability in the way that human rights and refugee protection laws do – that is, in a group-based fashion that categorises people around single-axis individual characteristics – identification policies will focus only on the social

²²⁹ Daniel Chaplin, John Twigg and Emma Lovell, 'Intersectional Approaches to Vulnerability Reduction and Resilience-building' (2019) 12 Relience Intel 4 <www.odi.org/sites/odi.org.uk/files/resource-documents/12651.pdf> accessed 27 June 2019

construction or stereotype of each group. Therefore, these policies will misidentify not only protection needs and risks but also the people at the intersection of many systems of inequality, thereby failing in the main purpose of identification.

There has been recent acknowledgement that

[V]ulnerability to human rights violations is the result of multiple and intersecting forms of discrimination, inequality and structural and societal dynamics (...) As a matter of principle, and in order to ensure that every migrant is able to access appropriate protection of their rights, the situation of each person must be assessed individually.²³⁰

Unfortunately, as we have seen throughout this chapter, in spite of this acknowledgement, the reality is that the strong presence of the vulnerable-group approach inevitably leads to the conception of identification as merely belonging to one of these groups; hence, the protection needs of the dominant groups will eclipse those of other individuals.

Proof of the abovementioned overshadowing of individual needs is the fact that there is not even literature on the specific protection needs of UASGs, the knowledge of which would be the first step for their identification, ahead of the numerous articles and reports on unaccompanied children or gender and migration.

2. THE BEST INTERESTS OF THE CHILD AS AN INTERSECTIONAL TOOL FOR IDENTIFICATION OF VULNERABILITIES

In IHRL, there is actually a legal figure that explicitly involves the identification and addressing of the specific individual protection needs and risks from an intersectional perspective. This legal principle is the basis for comprehensive access to human rights – namely, the best interests of the child (BIC).

2.1. THE BEST INTERESTS OF THE CHILD AS AN INTERSECTIONAL TOOL

Under General Comment No. 5, the BIC is presented as one of the four Guiding Principles of the CRC.²³¹ The holistic nature of the BIC's normative scope means that it must be considered on every level – from public policies and legislation to the judicial or administrative level. In this way, all the

²³⁰ OHCHR (n 164) second note, para 13

²³¹ UN CRC, 'General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child' (27 November 2003) UN Doc CRC/GC/2003/5 para 12

rights contained in the Convention are guaranteed and made effective, because the BIC means the satisfaction of the human rights of the child and, therefore, it cannot be used in a way that limits or violates those rights.²³²

BIC is a flexible but not discretionary concept, developed by the General Comment No. 14 of the CRC. In this sense, although the best interests is an indeterminate concept, its evaluation and determination must be established on objective criteria²³³ so that ‘the child’s best interests are not what I consider best for a child but what, objectively, secures for the child both the full and effective realization of all the rights secured in the convention, and his or her overall development’.²³⁴ This perspective is the backbone on which the General Observation itself is constructed and by which the threefold legal nature of the minor’s best interests is presented as a right, a principle, and a procedural rule.²³⁵

The first aspect of the legal nature of BIC is that it is a fundamental interpretative legal principle insofar as, if there are different possible interpretations of a legal provision, the one that best suits its best interests will be chosen.²³⁶ Second, BIC is a substantive right insofar as it must be considered in a fundamental way whenever making decisions that affect a child, a group of children, or children in general, and insofar as it establishes intrinsic obligations for states, which allows its direct applicability and, therefore, the possibility to invoke it before the courts.²³⁷ Third, BIC is a procedural rule; thus, in order to comply with it, there is the requirement to establish ‘formal processes with stringent procedural safeguards, intended to assess and determine it’.²³⁸ States are obliged ‘to develop

²³² Miguel Cillero Bruñol, ‘El interés superior del niño en el marco de la Convención Internacional sobre los Derechos del Niño’ (2015) 42(3) *Revista chilena de Derecho* 8 <www.iin.oea.org/IIN/cad/Participacion/pdf/el_interes_superior.pdf> accessed 27 June 2019

²³³ CoE, ‘The best interests of the child – A dialogue between theory and practice’ (March 2016) 11 <<https://rm.coe.int/1680657e56>> accessed 27 June 2019

²³⁴ *ibid* 12-13

²³⁵ UN CRC, ‘General Comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)’ (May 2013) UN Doc CRC/C/GC/14 para 1 <www.refworld.org/docid/51a84b5e4.html> accessed 28 June 2019

²³⁶ *ibid* para 6.b)

²³⁷ Jorge Cardona, ‘El derecho del niño a que su interés superior sea una consideración primordial en toda medida que le concierna a los XXV años de la Convención’ <www.ararteko.net/RecursosWeb/DOCUMENTOS/1/0_3553_3.pdf> accessed 28 June 2019

²³⁸ CoE (n 233) 17

transparent and objective processes for all decisions taken by legislators, judges, or administrative authorities’²³⁹ and must explain how that right has been respected in the corresponding decision.

This threefold nature is translated into concrete obligations of states, which implies that, in order to comply with BIC in any decision concerning a child or group of children, all the necessary elements for each specific case must be assessed and weighed. The General Comment No. 14 introduces a ‘non-exhaustive and non-hierarchical list of elements’ that could be used in any assessment: the children’s views; their identity – including sex, sexual orientation, national origin, religion and beliefs, cultural identity, and personality; the family environment; the care; their protection and safety; the situations of vulnerability they face, including the risks that they are facing; and the existing sources of protection, resiliency, and empowerment.²⁴⁰ This means that, depending on the particular circumstances of each case, the decision maker should go ‘beyond those and consider other factors’.²⁴¹ Later, each factor has to be weighed in relation to the others, and ‘the content of each element will necessarily vary from child to child and from case to case, depending on the type of decision and the concrete circumstances, as will the importance of each element in the overall assessment’.²⁴²

What is most important is that this assessment must always be performed – ‘be they broad issues of policy or individual cases’.²⁴³ In other words, the assessment is relevant to actions affecting all children or groups of children, which means during the making of laws and policies, when planning every procedure, and when allocating resources. Furthermore, it is relevant to actions affecting individual children, when more formal BIC assessment and determination procedures are needed.

What becomes clear is that the configuration of the BIC – which involves taking into account the unique experiences of each child or group of children, resulting from multiple social locations and a specific context and moment in time, when making any individual decision or when legislating and developing policies that may directly or indirectly affect them – is very similar to the configuration of political intersectionality in the terms explained in the first chapter. Categorisations are avoided, and all actors are obliged to consider the material consequences of the intersection of different social

²³⁹ Ibid

²⁴⁰ UN CRC (n 235) para 50

²⁴¹ ibid para 50

²⁴² ibid para 80

²⁴³ ibid para 6(c)

locations in which the targeted group has been positioned, in a specific context, with the objective that children have access to adequate protection.

In this way, the BIC is presented as a revolutionary tool of an intrinsically intersectional nature that imposes explicit obligations on the signatory states of the CRC. Furthermore, it has been universally adopted by most regional and national legislative bodies, including the CoE and EU. Therefore, this tool will serve us in examining the case of the politics of vulnerability identification, specifically in relation to UASGs.

2.2. BEST INTERESTS OF THE CHILD IN MIGRANTS' VULNERABILITY IDENTIFICATION

The CRC Committee has already addressed the application of the BIC in the international migration context in the three General Comments analysed above²⁴⁴. A joint reading of the three comments leads to the conclusion that, with regards to actions affecting all children on the move, states must take the children's best interests into consideration 'in immigration law, planning, implementation and assessment of migration policies'.²⁴⁵ This consideration must thus also be applied in vulnerability identification mechanisms in order to ensure that children and their specific risks and vulnerabilities are identified promptly at border controls and other migration-control procedures and specifically addressed.²⁴⁶

Application of the BIC thus requires having enough segregated data, information about the children on the move arriving at a specific territory where the policy applies, their profiles, migration motivation, routes, ways of migration, and specific protection needs and risks. This data serves the purpose of being able to not only identify the children properly and address their particular experiences from their country of origin and during transit, but also to anticipate and avoid new risks when arriving in the host country – such as abuse, violence, neglect, exploitation, separation, or discrimination.²⁴⁷

Based on all these data, states must elaborate policies, mechanisms, and tools so that they are ready for pursuit and early identification of every child at risk, including UASGs, 'as soon as possible after

²⁴⁴ See section 2.2.1 'Unaccompanied girls as children: the CRC' of this Chapter

²⁴⁵ UN CMW, UN CRC (n 133) para 29

²⁴⁶ *ibid* para 32-41

²⁴⁷ UNHCR, 'Guidelines on Assessing and Determining the Best Interests of the Child' (November 2018) 46-47 <www.refworld.org/docid/5c18d7254.html> accessed 28 June 2019

displacement'²⁴⁸, but also flexible enough to be able to change over time depending on new potential profiles and needs. To do so, it is necessary for states to allocate enough resources to train actors involved in registration and identification phases as well as other stakeholders in contact with the children in identification of risks from an intersectional perspective.

In terms of actions affecting individual children on the move, the BIC assessment implies, as a first step, that any child is denied entering the territory and that is not returned in the entry point.²⁴⁹ Second, a prompt registration by means of an initial interview conducted in an age-appropriate and gender-sensitive manner and an assessment of the vulnerable situations the child is exposed to, in the terms described previously.²⁵⁰ Here is where the procedural guarantees are of special importance: it is necessary that the rights of the child to be informed, heard, and listened to, and their right to participate in the process, as established in the CRC General Comment No. 12, are fulfilled. In addition, the intervention in the process of qualified professionals; the motivation of the decision, including the elements used; the assessment made; the respected procedural guarantees; as well as the possibility of appealing the adopted decision are all crucial factors.²⁵¹

Ultimately, 'the result of the Best Interest Assessment (BIA) is a detailed appraisal of the child's protection situation (as well as her/his and the family's strengths and capacities) and a set of recommendations on the appropriate protection and care interventions'.²⁵²

CONCLUSION OF PART II

The way human rights rhetoric has used this notion implies that vulnerability resides in people's intrinsic characteristics, so if an individual has any of those characteristics, he or she is vulnerable per se. This results in essentialism, paternalism and victimhood and prevents from analyzing the power relations and privilege structures that lie behind any inequality axis.

²⁴⁸ *ibid*

²⁴⁹ UN CRC, 'General comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin' (September 2005) UN Doc, CRC/GC/2005/6 para 20 <www.refworld.org/docid/42dd174b4.html> accessed 28 June 2019

²⁵⁰ *ibid* para 31

²⁵¹ Clara Martínez and Carmela del Moral, *Guía para la evaluación y determinación del interés superior del niño* (UP Comillas 2017) 25-26 <www.comillas.edu/es/catedra-santander-de-los-derechos-del-nino-publicaciones/guia-para-la-evaluacion-y-determinacion-del-interes-superior-del-nino> accessed 28 June 2019

²⁵² UNHCR (n 247) 48

This rhetoric inevitably leads the IHRF to develop a collective approach to vulnerability based on the identification of categories of persons and groups in need of special protection, the so called ‘vulnerable group’ approach. This approach based on unitary categories will lead to the severe fragmentation of the IHRF applicable to any individual or group of individuals that do not fit into any category such as UASGs.

Due to their multiple social locations, UASGs are proclaimed as one of the most paradigmatic examples of individuals at the intersection of different systems of oppression. Throughout this Chapter, we have seen how the IHR legal and policy framework applicable to these girls, both at the universal and CoE level, is clearly disintegrated around the protection of two vulnerable groups’ discourses: ‘migrant/refugee unaccompanied minors’ and ‘migrant/refugee women and girls. However, the tension between the discourses fails to address the specific needs of these girls, which are going to be displaced by those of the dominant groups.

The real problem is that on this approach is the entire international human rights protection system (its normative instruments, its protection mechanisms, its doctrine and the organization of scholars, international organizations, NGOs and of the human rights defenders) based. Therefore, these categories are going to structure not only all the political actions but also the existing or potential knowledge and information about human rights violations.

However, we do have an international obligation that can function as a temporary bridge solution to fill the intersectionality gap in the case of children: the best interest of the child explicitly approaches the identification and individual addressing of the specific protection needs and risks from an intersectional approach, as a basis for the comprehensive access to human rights and it imposes explicit obligations on the signatory states of the CRC, but also it has been universally adopted by most of regional and national legislations, including the CoE and EU.

PART III.

INTERSECTIONAL ANALYSIS ON THE IMPACT OF EU VULNERABILITY IDENTIFICATION POLICY ON UNACCOMPANIED AND SEPARATED GIRLS

The objective of this chapter is to answer to the Sub-question (1.2) *Does the EU vulnerability identification policy address UAGs' specific intersecting social locations?* To this end, the first part will present the existing approach to vulnerability in EU policies, in particular asylum and migration policies, and the consideration of unaccompanied children as a priority 'vulnerable group'. The second part will analyse how the EU migrant vulnerability identification policy is implemented in Greece through the 'hotspot approach' and will assess its impact on the case of UASGs.

CHAPTER I. VULNERABILITY IN EU ASYLUM AND MIGRATION POLICIES: UNACCOMPANIED MINORS AS A PRIORITY VULNERABLE GROUP

1. VULNERABILITY IN EU POLICIES

The concepts of 'vulnerability' and 'vulnerable groups' have been continuously used within the EU framework, both in its external and internal actions.²⁵³ Indeed, the protection of vulnerable groups is established as one of the priorities in EU human rights policies, as can be seen in the 2010 Stockholm Program²⁵⁴ and the 2012–2014 Strategic Framework on Human Rights and Democracy²⁵⁵.

Nonetheless, although it is true that there has been a slight turn towards an 'implicit conceptualization of vulnerability addressing specific protection needs of individuals or groups of individuals, rather than operating with the concepts of "vulnerability" and "vulnerable groups"'²⁵⁶, whether implicit or not, several reports reached the conclusion that the application of these concepts is quite inconsistent and, due to the lack of definition, their meaning will only be able to be identified

²⁵³ Cristina Churrua and others, 'Mapping legal and policy instruments of the EU for human rights and democracy support' (2014) 12(1) FRAME 131 <www.fp7-frame.eu/wp-content/uploads/2017/03/Deliverable-12.1.pdf> accessed 1 July 2019

²⁵⁴ Council of the European Union (Council of the EU), 'The Stockholm Programme – An open and secure Europe serving and protecting citizens' (2009) 17024/09 9 <https://ec.europa.eu/anti-trafficking/eu-policy/stockholm-programme-open-and-secure-europe-serving-and-protecting-citizens-0_en> accessed 01 July 2019

²⁵⁵ Council of the EU, 'Human Rights and Democracy: EU Strategic Framework and EU Action Plan' (2012) 11855/12 Annex II, 3

²⁵⁶ See: Council of the EU, 'Council Conclusions on the Action Plan on Human Rights and Democracy 2015 – 2019' (2015) 10897/15 <https://ec.europa.eu/anti-trafficking/eu-policy/council-conclusions-action-plan-human-rights-and-democracy-2015-2019_en> accessed 1 July 2019; European Council, 'Council Conclusions 26–27 June 2014' (2014) <www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/143478.pdf> accessed 1 July 2019

in the specific context of each policy²⁵⁷. In this sense, two approaches to vulnerability can be distinguished: the vulnerable-group approach and the factors approach.

First, the vulnerable-group approach is the most widespread and consolidated of the two. This approach does not describe what the vulnerability consists of but offers lists, usually exhaustive, of people who are considered vulnerable such as LGTB people, children, Roma people, Asylum seekers and refugees, people with disabilities, and women.²⁵⁸ This follows a very similar line to the approach defined by the UN and CoE in the second chapter of this thesis.

Second, the factors approach introduces the aspects that can make a person vulnerable. They usually consist of elements such as age, gender, and mental abilities.²⁵⁹ This relatively new approach is significant because it reduces the risk of categorisation and stigmatisation of people by focusing on the elements that expose them to situations of risk. However, these elements almost always refer to biological factors.

In any case, we cannot talk about intersectionality-based approach, given that this approach is extremely innovative in the context of EU, where it has only begun to be applied within the scope of EU Anti-discrimination law and policies²⁶⁰.

2. VULNERABILITY IN EU MIGRATION AND ASYLUM POLICIES

In the case of asylum and migration policies, there is a two-level perspective on vulnerability: asylum seekers as a vulnerable group and, particularly, vulnerable asylum seekers and migrants²⁶¹, exactly such as the Global Compact addresses it.

With regards to asylum seekers as a vulnerable group, the different EU secondary law instruments that are part of the Common European Asylum System (CEAS) are focused on harmonising the legislation of the MS in order to respect and enforce the rights of asylum seekers and refugees. This

²⁵⁷ Joana Abrisketa and others, 'Human Rights Priorities in the European Union's External and Internal Policies: An Assessment of Consistency with a Special Focus on Vulnerable Groups European Union's External and Internal Policies' (2015) 12(2) FRAME 148 <www.fp7-frame.eu/wp-content/uploads/2016/08/24-Deliverable-12.2.pdf> accessed 6 June 2019

²⁵⁸ Churrua (n 253) 133-172

²⁵⁹ Abrisketa (n 257) 20

²⁶⁰ María-Caterina La Barbera, 'Interseccionalidad, un "concepto viajero": orígenes, desarrollo e implementación en la Unión Europea' (2016) 4 Interdisciplina 105

²⁶¹ Francesca Ippolito and Sara Iglesias Sanchez, *Protecting Vulnerable Groups: The European Human Rights Framework* (Bloomsbury Publishing 2015) 262

legislation was elaborated in accordance with the international standards established by the 1951 Geneva Convention, as amended by its 1967 Protocol²⁶². Moreover, the Court of Justice of the EU (CJEU) has also acknowledged the vulnerability of asylum seekers, for instance in the cases of *N. S. v Secretary of State for the Home Department and M. E. and Others v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform*.²⁶³

With regards to the second-level perspective, EU secondary law also acknowledges certain groups of migrants and asylum seekers who need specific protection due to ‘their particular vulnerability’. This conceptualisation will be present in various instruments, which will lead to a variety of concepts with different contents: the asylum seeker as ‘vulnerable’, as ‘in need of special procedural guarantees’, or ‘with special protection needs’.²⁶⁴

The first directive of interest in this context is the recast Asylum Procedure Directive, which establishes that an ‘applicant in need of special procedural guarantees’ means an applicant ‘whose ability to benefit from the rights and comply with the obligations provided for in this Directive is limited due to individual circumstances’²⁶⁵ such as ‘age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence’²⁶⁶. In this case, we can see a clear example of the factor approach to implicit vulnerability. Nonetheless, Article 25 of the Directive also establishes concrete special guarantees towards UAMs as a vulnerable group.

The second significant directive is the recast Reception Conditions Directive, which sets out the obligation of states to take into account an applicant with special reception needs, which means ‘a vulnerable person, in accordance with Article 21, who is in need of special guarantees in order to

²⁶² Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Convention); Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267 (Protocol)

²⁶³ Joined Cases C-411/10 and C-493/10 *N. S. v Secretary of State for the Home Department and M. E. and Others v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform* [2011] ECR II-865

²⁶⁴ ECRE, ‘The concept of vulnerability in European asylum procedures’ (2017) AIDA 14 <www.asylumineurope.org/sites/default/files/shadow-reports/aida_vulnerability_in_asylum_procedures.pdf> accessed 1 July 2019

²⁶⁵ Parliament and Council Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) [2013] OJ L180/60, art 2(D)

²⁶⁶ Ibid preamble 29

benefit from the rights and comply with the obligations provided for in this Directive’.²⁶⁷ In this sense, Article 21 recognises these special reception needs to belong to:

[M]inors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.²⁶⁸

However, problems arise due to the inconsistencies between non-exhaustive lists, together with the margin of discretion that MSs have, which is leading to ‘ambiguity in domestic legal orders’²⁶⁹ in the Directives transposition. Precisely because of this complication, the notion of vulnerable groups is one of the priorities in the ongoing reform of the CEAS. According to the 2016 Commission proposal, any reference to ‘vulnerability’ would be substituted by ‘special reception needs’²⁷⁰ – an approach supported by the Council²⁷¹. The European Parliament goes further in suggesting the term ‘specific protection needs’ and proposes a broader list of categories.²⁷²

3. UNACCOMPANIED MINORS AS A PRIORITY VULNERABLE GROUP UNDER EU LAW

As was pointed out in the previous section, UAMs have always had special consideration as a vulnerable group within EU asylum and migration policies. As evidence of this, we have the European Commission 2010–2014 Action Plan on UAMs²⁷³, the 2017 European Commission Communication on the protection of children in migration [COM(2017)]²⁷⁴, and the 2017 Council Conclusions on the

²⁶⁷ Parliament and Council Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) [2013] OJ L180/96, art 2(K)

²⁶⁸ *ibid* art 21

²⁶⁹ ECRE (n 264) 16

²⁷⁰ Commission, ‘Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)’ COM(2016) 465 final

²⁷¹ ECRE (n 264) 18

²⁷² European Parliament, ‘Report on the proposal for a directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)’ (10 May 2017) A8-0186/2017 <http://www.europarl.europa.eu/doceo/document/A-8-2017-0186_EN.pdf?redirect> accessed 6 July 2019

²⁷³ Commission, ‘Communication from the Commission to the European Parliament and the Council: Action Plan on Unaccompanied Minors (2010 – 2014)’ COM(2010)213 final

²⁷⁴ Commission, ‘Communication from the Commission to the European Parliament and the Council: The protection of children in migration’ COM(2017) 211 final

protection of children in migration²⁷⁵. It is also important to highlight that the 10th European Forum on the rights of the child was focused on children in migration, with special incidence in UAMs.²⁷⁶

All these documents and political actions make it clear that ‘any child needing protection receives it and that, regardless of their immigration status, citizenship or background, all children are treated as children first and foremost’.²⁷⁷ In addition, under Article 24 of the Charter of Fundamental Rights of the EU (EU Charter), there is an obligation to ensure the BIC in ‘all actions relating to children, whether taken by public authorities or private institutions’²⁷⁸, based on the CRC.

Nevertheless, it again becomes apparent that references to UASG or to gender-related considerations in connection with UAMs are almost non-existent. Only the COM(2017) mentions that migrant girls (in general) are more exposed to forced marriages due to economic reasons and that, in order to avoid further sexual violence, states need to consider ‘boys’ and girls’ specific needs and vulnerabilities’.²⁷⁹ This is relevant since the COM(2017) establishes a series of obligations that have to be implemented by the EU, its MSs, and its relevant EU agencies – namely, the European Border and Coast Guard Agency (FRONTEX), EASO, and the EU Agency for Fundamental Rights (FRA). Some of them will be important in the following analysis.

²⁷⁵ Council of the EU, ‘Conclusions of the Council of the European Union and the representatives of the governments of the Member States on the protection of children in migration’ (8 June 2017) <<https://data.consilium.europa.eu/doc/document/ST-10085-2017-INIT/en/pdf>> accessed 6 July 2019

²⁷⁶ European Commission, ‘10th European Forum on the rights of the child: the protection of children in migration’ (2016) <https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=34456> accessed 6 July 2019

²⁷⁷ European Commission, ‘Children in migration: EU actions to protect children in migration’ <https://ec.europa.eu/info/policies/justice-and-fundamental-rights/rights-child/children-migration_en> accessed 6 July

²⁷⁸ Charter of Fundamental Rights of the European Union [2000] OJ C364/01, art 24

²⁷⁹ Commission (n 274) 2-4

CHAPTER II. EU MIGRANTS' VULNERABILITY IDENTIFICATION POLICY IN GREECE

1. THE HOTSPOT APPROACH IN GREECE: THE RECEPTION AND IDENTIFICATION CENTRES

The vulnerability identification mechanisms established by the EU emerge from the introduction of the 'hotspot approach' by the European Commission in the 2015 European Agenda for Migration²⁸⁰. This approach was taken within the framework of immediate action to help the MSs located at the external EU border and which were thus being subjected to greater migratory pressure.

The main objective of this policy framework was to help countries such as Italy and Greece to address migration flows more effectively, uniformly, and flexibly by strengthening their reception, identification and referral systems.²⁸¹ In order to achieve this goal,

[T]he European Asylum Support Office (EASO), EU Border Agency (Frontex), EU Police Cooperation Agency (Europol) and EU Judicial Cooperation Agency (Eurojust) will work on the ground with the authorities of the frontline MS to help to fulfil their obligations under EU law and swiftly identify, register and fingerprint incoming migrants.²⁸²

The policy also serves as a channel for asylum seekers into asylum procedures, to implement the relocation scheme, and to conduct return operations.²⁸³

In the case of Greece, 5 hotspots were settled on the islands of Lesbos, Chios, Samos, Leros, and Kos, under the legal form of Reception and Identification Centres (RICs). Nevertheless, the publication of the EU-Turkey Statement in 2016 strongly affected the hotspot approach in Greece, where the 'hotspot

²⁸⁰ Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Agenda on Migration' COM(2015) 240 final, 6

²⁸¹ David Fernández- Rojo, 'Hotspot Approach: Cooperación y Control de Frontex, Easo y Europol' 112 in Illamola Dausa, Blasi Casagran (eds), *El control de las agencias del Espacio de Libertad, Seguridad y Justicia: Contrapeso necesario a su autonomía* (Marcial Pons 2016)

²⁸² European Commission, 'The Hotspot Approach to Managing Exceptional Migratory Flows' <https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/2_hotspots_en.pdf> accessed 6 July 2019

²⁸³ GCR, 'Country Report: Greece' (2018 Update) AIDA, 30 <www.asylumineurope.org/reports/country/greece> accessed 7 July 2019

facilities were transformed into closed centres'.²⁸⁴ Consequently, every migrant who arrived after 20 March 2016 would be automatically detained in the RICs 'in order to be readmitted to Turkey in case they did not seek international protection or their applications were rejected'.²⁸⁵ Eventually, they became open after some weeks because surveillance of closed centres accommodating many thousands of people was impossible for the Greek authorities.

These RICs are regulated by L 4375/2016²⁸⁶, issued after the publication of the EU-Turkey Statement, although they were previously operating under the 2010 Greek Action Plan on Asylum with similar functions. The law establishes that every newcomer will be subject to a 'restriction of freedom within the premises of the centre'²⁸⁷ for three days, expandable to 25 days in the event that the identification and reception processes have not been completed²⁸⁸. However, after harsh criticism from civil society and the international community, this de facto detention has become a geographical restriction that prevents newcomers from leaving the island and residing in the hotspot facilities.

Another important element linked to the hotspot approach and the EU-Turkey Statement is the fast-track border procedure, introduced by L 4375/2016. It is described as 'an extremely truncated asylum procedure with fewer guarantees'²⁸⁹, where the asylum procedure should not last more than two weeks and where EASO plays an essential role by conducting asylum interviews²⁹⁰.

²⁸⁴ Maria Margarita Mentzelopoulou and Katrien Luyten, 'Hotspots at EU external borders: State of play' (June 2018) PE 623.563, 4 <[www.europarl.europa.eu/RegData/etudes/BRIE/2018/623563/EPRS_BRI\(2018\)623563_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/623563/EPRS_BRI(2018)623563_EN.pdf)> accessed 6 July 2019

²⁸⁵ GCR (n 283) 30

²⁸⁶ Greece: Law No. 4375/2016 on the organization and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EC, 3 April 2016 <www.refworld.org/docid/573ad4cb4.html> accessed 7 July 2019

²⁸⁷ *ibid* art 14

²⁸⁸ GCR (n 283) 33

²⁸⁹ *ibid* 74

²⁹⁰ Greece: Law No. 4375/2016 on the Organization and Operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the Establishment of the General Secretariat for Reception, the Transposition into Greek Legislation of the Provisions of Directive 2013/32/EC, 3 April 2016, art 60(4) <www.refworld.org/docid/573ad4cb4.html> accessed 7 July 2019

Nonetheless, there have been substantial reforms in 2017 and 2018. For instance, L 4540/2018 transposes the recast Reception Conditions Directive and continues implementing the hotspot approach and the EU-Turkey Statement by giving the EU agencies more involvement and more relevant roles.²⁹¹

The last element to consider regarding the hotspot approach is the relocation mechanism, proposed by the Commission and adopted by the Council in September 2015 through two different decisions. The Council Decision (EU) 2015/1523 provided for the relocation of 16,000 asylum seekers from Greece to EU countries on a volunteer basis²⁹²; and the Council Decision (EU) 2015/1601 established mandatory quotas for each country and incremented the number of asylum seekers for relocation²⁹³. The relocation mechanism ended in September 2017, but it is still interesting to take this mechanism into account as it relates to vulnerability identification, which will be discussed below.

2. WHY IS IT IMPORTANT TO IDENTIFY VULNERABILITIES?

The need to identify the concrete protection needs and risks of the individuals in order to allow them to access their human rights in a comprehensive way has already been analysed in the discussion thus far. However, vulnerability identification in Greece is particularly relevant in this context for several reasons.

Firstly, as mentioned above, the person will be entitled to special reception conditions and/or special procedural guarantees during the asylum procedure under the Reception Conditions Directive and the Asylum Procedure Directive respectively.

Secondly, being identified as vulnerable implies not being subject to the EU-Turkey Statement and, therefore, not only is the geographical restriction imposed by default on all newcomers ineffective and transfer to the mainland ordered, but the asylum application will also be processed using the normal procedure instead of using the fast-track border procedure.²⁹⁴

²⁹¹ Greece: Law No. 4540/2018 on the Transposition of Directive 2013/33/EU of the European Parliament and of the council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast, L 180/96/29.6.2013) and other provisions, 22 May 2018 <<https://bit.ly/2KCbDx6>> accessed 7 July 2019

²⁹² Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece [2015] OJ L239/146

²⁹³ Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece [2015] OJ L248/80

²⁹⁴ GCR (n 283) 77

Thirdly, being identified as vulnerable according to Articles 21 and 22 of the Reception Conditions Directive implies having priority when it comes to relocation.²⁹⁵

3. EU MIGRANTS' VULNERABILITY IDENTIFICATION POLICY IN GREECE

3.1. THE ROLE OF EASO IN VULNERABILITY IDENTIFICATION

Of the various EU agencies, EASO will have an exceptionally important role in vulnerability identification, given that one of its main priority areas of action is to improve the identification of vulnerable applicants and to ensure that 'aspects related to vulnerable applicants are mainstreamed'²⁹⁶, especially in the context of hotspots.

Accordingly, EASO has developed practical tools to support MSs to achieve common standards and capacity building. Some of these tools are relevant to vulnerable groups, such as the EASO Practical guide on the best interests of the child in asylum procedures²⁹⁷; the EASO Practical Guide on age assessment²⁹⁸; the EASO Guidance on reception conditions for unaccompanied children: operational standards and indicators²⁹⁹; the EASO Practical Guide: Researching the situation of lesbian, gay, and bisexual persons (LGB) in countries of origin³⁰⁰; and the EASO Practical Guide:

²⁹⁵ Natalia Calcedo and Andrea Romano, 'Vulnerability in the context of EU asylum policies: the challenges of identification and prioritisation' in Alisa Petroff, Georgios Milios and Marta Pérez (eds) *Refugiados en movimiento: retos políticos, legales y sociales en tiempos de inestabilidad* (Focus on Internacional Migration n° 5 2018) 84 <https://ddd.uab.cat/pub/caplli/2017/194915/Focus_Petroff_a2018n5_Cap5.pdf> accessed 5 June 2019

²⁹⁶ EASO, 'Single Programming Document. Multiannual Programming 2019-2021: Work Programme 2019, Revision 1' (November 2018) 21 <www.easo.europa.eu/sites/default/files/1_SPD2019-21%20Revision%201%20-%20adopted%2020181127.pdf> accessed 7 July 2019

²⁹⁷ EASO, 'Practical guide on the best interests of the child in asylum procedures' (2019) EASO Practical Guides Series <www.easo.europa.eu/sites/default/files/Practical-Guide-Best-Interests-Child-EN.pdf> accessed 7 July 2019

²⁹⁸ EASO, 'Practical guide on age assessment' (2nd edn 2018) EASO Practical Guides Series <www.easo.europa.eu/sites/default/files/easo-practical-guide-on-age-assesment-v3-2018.pdf> accessed 7 July 2019

²⁹⁹ EASO. 'Guidance on reception conditions for unaccompanied children: operational standards and indications' (2018) EASO Practical Guides Series <www.easo.europa.eu/sites/default/files/Guidance-on%20reception-%20conditions-%20for-unaccompanied-children.pdf> accessed 7 July 2019

³⁰⁰ EASO, 'Researching the situation of lesbian, gay, and bisexual persons (LGB) in countries of origin' (2015) EASO Practical Series <https://coi.easo.europa.eu/administration/easo/PLib/EASO_LGB_COI_Guide_Apr_2015_EN.pdf> accessed 7 July 2019

Personal interview³⁰¹. Furthermore, one of the most interesting tools which will be analysed later is the EASO Tool for Identification of Persons with Special Needs (IPSN).³⁰²

In addition to these general priorities and tools, since 2014, Greece and EASO have had annual Special Operating Plans with a special emphasis on measures related to vulnerability identification. In December 2018, the 2019 Operating Plan was signed, which continues on the same path as the previous ones and establishes clear objectives to: support the national authorities in ‘vulnerability assessments and best interest assessment of separated children’³⁰³; ‘identify and refer vulnerable applicants to the appropriate procedure’³⁰⁴; support ‘the first line reception centres, including the development of relevant SOPs, including for the identification and referral of vulnerable applicants’³⁰⁵; ‘provide support for enhanced processing of cases of vulnerable persons’³⁰⁶; deploy ‘focal points and vulnerability teams to each RIC to strengthen the capacity of RIS [Reception and Identification Service] to conduct first-line vulnerability assessment’³⁰⁷; and also to advise the Greek Dublin Unit on vulnerable applicants³⁰⁸.

Furthermore, as will be explored in more detail later, EASO will have also a key role within the EU-Turkey Statement when identifying vulnerable applicants during fast-track border procedure asylum interviews on the islands.

3.2. VULNERABILITY IDENTIFICATION PROCEDURE

Within the aforementioned policy framework, and according to Article 22 of the Reception Conditions Directive, one of the main purposes of the hotspot approach is to identify vulnerable

³⁰¹ EASO, ‘Practical Guide: Personal Interview’ (2014) EASO Practical Guides Series <www.easo.europa.eu/sites/default/files/public/EASO-Practical-Guide-Personal-Interview-EN.pdf> accessed 7 July 2019

³⁰² ‘Tool for Identification of Persons with Special Needs’ (EASO, 2016) <<https://ipsn.easo.europa.eu/>> accessed 7 July 2019

³⁰³ 2019 Operating Plan (EASO-Greece) (adopted 19 December 2018) 14 <www.easo.europa.eu/sites/default/files/OP-Greece-2019_0.pdf> accessed 8 July 2019

³⁰⁴ *ibid*

³⁰⁵ *ibid* 18

³⁰⁶ *ibid* 19

³⁰⁷ *ibid*

³⁰⁸ GCR (n 283) 29

persons in order to design a protection-sensitive response during the reception and identification procedures.³⁰⁹

In the context of RICs, Article 14(8) of L 4375/2016 considers the following vulnerable groups: UAMs; persons who have a disability or suffering from an incurable or serious illness; the elderly; women in pregnancy or having recently given birth; single parents with minor children; victims of torture, rape, or other serious forms of psychological, physical, or sexual violence or exploitation; and persons with a post-traumatic disorder, in particular survivors and relatives of victims of shipwrecks and victims of human trafficking³¹⁰. It should be pointed out that the classification of migrants with post-traumatic stress disorder, particularly survivors of shipwrecks, has been strongly criticised in the political arena for adopting such a broad scope.³¹¹ Furthermore, in the context of reception conditions, Article 20 of L 4540/2018 also includes persons with mental disorders and victims of female genital mutilation.

As can be observed, UAMs are still an absolute priority – both in terms of the EASO’s role and domestic legislation. In this regard, it is important to revisit the COM(2017) and take into account two priority areas that are relevant regarding identification of vulnerabilities. The first priority area is ‘swift and comprehensive identification and protection’, which requires that the relevant persons involved: ‘apply child-friendly and gender-sensitive approaches when collecting fingerprints and biometric data’³¹²; and ‘ensure that a person responsible for child protection is present at an early stage of the identification and registration phase and that child protection officers are appointed in each hotspot’³¹³.

The second priority area is ‘providing adequate reception in the European Union’, which requires as a key action that relevant persons ‘ensure that individual gender- and age-sensitive vulnerability

³⁰⁹ European Union Agency for Fundamental Rights (FRA), ‘Update of the 2016 Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the “hotspots” set up in Greece and Italy’ (4 March 2019) FRA Opinion – 3/2019, 46 <https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-opinion-hotspots-update-03-2019_en.pdf> accessed 8 July 2019

³¹⁰ Greece: Law No. 4375/2016 on the Organization and Operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the Establishment of the General Secretariat for Reception, the Transposition into Greek Legislation of the Provisions of Directive 2013/32/EC, 3 April 2016, art 14(8) <www.refworld.org/docid/573ad4cb4.html> accessed 7 July 2019

³¹¹ HRW, ‘EU/Greece: Pressure to Minimize Numbers of Migrants Identified As “Vulnerable”’ (2017) <www.hrw.org/news/2017/06/01/eu/greece-pressure-minimize-numbers-migrants-identified-vulnerable> accessed 8 July 2019

³¹² Commission (n 274) 8

³¹³ *ibid*

and needs assessments of children are carried out upon arrival and taken into account in all subsequent procedures³¹⁴.

Finally, although the procedure for identification will be the same for both contexts (RIC and reception conditions), there is a difference in approach depending on whether the arrival to Greek territory is through the islands or through the mainland. For the former arrival route, the hotspot approach and the EU-Turkey Statement apply; for the latter, there is no specific EU involvement in vulnerability identification.

3.2.1. VULNERABILITY IDENTIFICATION ON THE ISLANDS

The vulnerability identification on the islands could take place during two time periods: at the moment of arrival (performed by the RIS) or during the asylum procedure.

In the first place, the identification of vulnerabilities by the RIS at the moment of arrival consists of a medical screening and psychosocial assessment by the Centre of Disease Control and Prevention, a public entity under the Ministry of Health.³¹⁵ Before mid-2017, this phase was mainly run by NGOs – Médecins du Monde in Lesvos and PRAKSIS in Kos, Chios, and Leros. During the summer of 2017, the Hellenic Red Cross temporarily took over the identification of vulnerabilities phase.³¹⁶ The role of EASO is mainly to support the identification of and response to the special needs of vulnerable groups by training the staff in the field and offering them the tools developed in the terms mentioned in the last section.

In the second place, if the identification has not been done at the moment of arrival, it is possible to do it during the asylum application registration and admissibility interview, but this will depend on the discretion of the caseworker. Certainly, given that people identified as vulnerable would be exempt from the fast-track border procedure, neither Asylum Service caseworkers nor EASO caseworkers should deal with the applications of people who have not gone through the medical and psychosocial screening. Nevertheless, this is a reality, covered by the law, in which EASO plays a key role³¹⁷.

³¹⁴ *ibid* 9

³¹⁵ GCR (n 283) 87

³¹⁶ ECRE (n 264) 30

³¹⁷ Art 53 Law No. 4375/2016, as amended by art 28(10) Law No. 4540/2018 (n 291)

With regards to the asylum interview, the Aida Country Report of Greece by the GCR indicates the following:

- When the asylum interview is conducted by Asylum Service caseworkers, they have three options: to send the case back to the RIS again, to assess the vulnerabilities themselves, or to refer the case to an EASO vulnerability expert to draft an opinion as a recommendation.
- When the asylum interview is conducted by EASO caseworkers, they have the obligation to refer the case to an EASO vulnerability expert in order to draft an opinion as a recommendation.

As we can see, EASO does ‘de facto play a crucial role in identifying and determining vulnerability’³¹⁸, which has increased the concern among human rights defenders and also has brought problems by increasingly interfering with national actors in the field, as will be examined in detail below.

3.2.2. VULNERABILITY IDENTIFICATION ON THE MAINLAND

Migrants accessing Greek territory throughout the Greek-Turkish land border in Evros are referred to the RIC of Fylakio. Nonetheless, they are neither subject to the hotspot approach, nor to the EU-Turkey Statement and, thus, also not to the fast-track border procedure. The reception and identification procedures are informally conducted by NGOs such as Médecins Sans Frontières (MSF) and no real policy is being implemented.³¹⁹ In Athens, those identified as vulnerable are referred to the Municipality of Athens Centre for Reception and Solidarity in Frouarchion in order to register their asylum application.³²⁰

Precisely because of the absence of EU policy involvement, this thesis will not study this case.

³¹⁸ ECRE (n 264) 30

³¹⁹ GCR (n 283) 36-37

³²⁰ *ibid* 90-91

4. INTERSECTIONAL ANALYSIS: HOW EU VULNERABILITY IDENTIFICATION POLICY IMPACTS ON UNACCOMPANIED AND SEPARATED GIRLS?

4.1. LACK OF INFORMATION AND KNOWLEDGE

The main problem and determining factor influencing the results and conclusions of this research is the complete lack of information and knowledge about UASG. It has been a challenge to conduct this analysis with little to no data about the situation of these girls.

As explained in the first chapter, an intersectional analysis of a particular policy seeks to examine how the different social locations that position a particular individual interact with the analysed policy in order to determine to what extent the policy is being effectively implemented with regards to those individuals. However, how can one perform this analysis if there is no information available about the material consequences of these social locations?

After the so-called 'refugee crisis', the main international human rights organisations, scholars, and activists turned their attention to Greece and the EU hotspot approach. In-depth reports and studies have been produced in which the impact of these policies on the human rights of migrants and refugees is meticulously analysed – always placing great emphasis on the 'most vulnerable groups'.

Nonetheless, as a continuation of the same dynamic explained in the second chapter, the stratification caused by the strong presence of the vulnerable groups approach in human rights and the lack of intersectionality leads to the invisibility of UASGs. There are reports on the impact of these policies on children, especially unaccompanied children, and analyses of the hotspot approach from a gender perspective. The former mostly mention the number of UASG who request asylum, while the latter focus on the experience of women and, to a lesser extent, accompanied girls.

It was highly problematic to obtain information for the purposes of this study from sources other than the aforementioned reports. Of the 13 organisations contacted³²¹, all except one indicated that they could not assist due to their specialisation in 'UAMs but not girls' or in 'migrant women and girls, but not unaccompanied'. The only organisation which did not respond in this way was the IOM, whose UASGs shelter's coordinator and legal adviser were willing to be interviewed. This response suggests that the fragmentation explored in this study has extended to the point of conditioning the specialisation

³²¹ See Introduction, Section 3 'Outline and methods'

and knowledge of the people who work in the field, face to face with this problem, which has a dramatic impact on the approach to the work done.

The lack of relevant information prevents an adequate analysis of the impact of EU vulnerability identification mechanisms on the misidentification of UASG. All the information utilised in this analysis has been recovered from (i) the almost non-existent details that the reports offer us about these girls, (ii) the knowledge of two professionals who work with UASG every day³²², and (iii) the intuition of four field professionals who, despite 'being specialised in another group', found it interesting to reflect on the topic³²³. Consequently, all the conclusions drawn in this section will be based on presumptions of people in the field and very specific professional experiences, which means that, although not being able to draw concrete policy conclusions and make recommendations, the study will try to reflect on the existing gaps in the body of knowledge and show paths for future research.

When talking with the UASGs shelter workers, they clearly conveyed their view that there is no longer any excuse for this lack of knowledge. Apparently, conversations about UASGs started in 2017, when it was identified that the number of girls was constantly in flux and that they needed specialised attention. Thus, the first specialised shelters for UASGs were opened.

Nevertheless, since the opening of these shelters, the level of knowledge about these girls has not changed much. The only data we have about UASG are from those centres gathering information on girls who have formalised their asylum application and have been referred to accommodation by the National Center for Social Solidarity (EKKA) and data which demonstrate a progressive increase (or identification) of these girls: 12 in 2013, 35 in 2014, 51 in 2015, 314 in 2016, 142 in 2017, 194 in 2018, and 56 up to 30 April 2019³²⁴. We do not know if these data include separated girls, nor do we know if they overlap with other categories of vulnerability recognised by the Reception Conditions Directive or the Greek law; any other type of data on UAMs is not disaggregated by sex or any other variable.

The two professionals interviewed who work with UASG emphasised that they do not feel that the experiences of these girls are represented in any report on UAMs or on gender and migration. They

³²² Coordinator and Legal Assistant of the only International Organization for Migration (IOM) shelter for UASG in Greece.

³²³ For the rest of the participants, see: Introduction, Section 3 'Outline and methods' (Pag. 18)

³²⁴ Hellenic Republic Asylum Service, 'Statistical Data of the Greek Asylum Service (from 07.06.2013 to 30.04.2019)' <http://asylo.gov.gr/en/wp-content/uploads/2019/05/Greek_Asylum_Stats_Apr2019_EN.pdf> accessed 8 July 2019

acknowledge that there are many things in common between both groups, but they insist that the way in which age, gender, and the fact of travelling alone interact make these girls' experiences of discrimination something unique that cannot be easily compared.

The unique nature of UASGs experiences is evident in the descriptions of the profiles of girls that are received in the IOM shelter. These descriptions coincide with what the Senior protection assistant at UNHCR has been able to observe. Apparently, there are two fairly well-defined profiles:

- Girls from sub-Saharan African countries like Democratic Republic of the Congo, Cameroon, Ethiopia, Eritrea, Somalia, Yemen, and Guinea, who come alone, usually fleeing from SGBV, with smugglers and, in many cases, with traffickers connected with trafficking networks.
- Girls from Middle Eastern countries such as Afghanistan, Iran, Iraq, or Pakistan, who do not come alone but belong to a group that is usually a family, possibly extended family but not necessarily, controlled by smugglers. On many occasions these girls are accompanied by supposed 'husbands' or 'fiancée'. This group constitutes a clear profile of separated girls, at least at the time of arrival, who are controlled by male figures from outside the family, given the high stigma placed on travelling alone.

The aforementioned definitions of UASG profiles are absolutely new – they are not reflected in any report or study. Nonetheless, it would be highly impactful to be able to analyse how the identification mechanisms can be improved to reach the maximum number of individuals and identify not only their social locations, but also 'where they come from, where they are going and why they move, how they fare along the way, what their vulnerabilities are, what they need, and how migration and asylum policies affect them'.³²⁵

4.2. VULNERABILITY SCREENING BY THE RECEPTION AND IDENTIFICATION SERVICE: A SYSTEM BASED ON SELF-IDENTIFICATION AND COLLECTIVE ASSESSMENTS

The first problem related to the vulnerability identification system is that the entire system, and especially the first vulnerability screening in the RIS, is programmed to detect the most obvious vulnerabilities and, above all, the self-identified ones. This may be a problem in general, but what is significant in the context of UASG is that the reasons why an unaccompanied boy will avoid self-

³²⁵ UNICEF and others, *A Call to Action: Protecting children on the move starts with better data* (2018) 3

identification (such as not wanting to be registered as a minor to try to follow his migratory project to other countries in Europe) are going to be very different from the reasons of girls (such as stigma, fear that the migrant community knows that they are travelling alone, extra control by smugglers, and lack of autonomy, among other things). In this sense, self-identification of vulnerability could negatively affect girls disproportionately.

The second problem has to do with the fact that, while almost all the attention regarding UAMs' identification mechanisms is focused on demonstrating whether the child is a minor through the highly controversial age assessment, it does not seem that this is a problem for the girls. If they identify themselves as UASGs, they are usually afforded full credibility. However, it is not possible to know how many age assessments have been conducted with girls, since the data is not disaggregated by sex. On the other hand, a major problem with regards to the girls seems to relate to the 'unaccompanied' aspect, due to the characteristics of the profiles that have been described before (i.e., where accompaniment is often by controlling, extra-familial figures). In short, if we add this aspect to the need for self-identification, these girls 'can be "invisible" when taken in by the extended family or a foster family'³²⁶ or when controlled by male adult figures such as smugglers or traffickers.

The third problem is one of the most serious, since it supposes the impossibility of reducing the impact of the previous two. The first vulnerability screening is not carried out individually unless the girl identifies herself as unaccompanied. In this sense, the EU FRA is very clear in its Opinion 7 on fundamental rights in the hotspots:

Separated children – meaning children who are not travelling together with their parents or legal guardians but are accompanied by other adults – may be exposed to heightened risk of abuse or neglect. They must be identified and registered to ensure that they are provided the protection and care necessary for a child's well-being, as required by Article 24 of the Charter. As a matter of priority, an individual risk assessment should be carried out with each separated child to determine whether or not there are risks related to placing the child with the accompanying adult and, if so, to determine the necessary protection measures, monitoring and follow-up measures (...) The risk assessment requires sufficient time and constant monitoring of the family situation.³²⁷

³²⁶ UNHCR, 'Guidelines on Assessing and Determining the Best Interests of the Child' (November 2018) 48 <www.refworld.org/docid/5c18d7254.html> accessed 8 July 2019

³²⁷ FRA (n 309) 6

Doing an individual assessment would not only allow the girl to have a space of privacy and security where she can report any type of situation that exposes her to risks, but the professionals could analyse indicators of vulnerability without the need for self-identification. Of course, it would not only be necessary to do the individual assessment, but also to provide the appropriate age–gender conditions to generate that safe space and properly trained personnel for the vulnerability identification. This approach does not exist in any of the RICs. In fact, the FRA's Opinion 13 insists in that:

Sufficient presence of female staff and interpreters contributes to safeguarding the dignity of women undergoing procedures (...) and plays an important role in facilitating the reporting of sexual and gender-based violence. (...) The availability of female staff and interpreters should be ensured in the day-to-day operation of the hotspot (such as when establishing work shifts).³²⁸

A fourth problem is that the identification of other categories of vulnerability is tremendously difficult. In the case of a separated girl, identification will depend on whether the male in control makes the girl's vulnerabilities manifest or not. Even if it is a girl identified as unaccompanied, professionals in the field emphasise that, by the time they detect one type of vulnerability (in this case, 'UAM'), they do not look at more types. This is because they are focused on the elimination of the geographic restriction and the referral to the regular asylum procedure, not on paying attention to the specific needs of the individuals. In this sense, it is clear that gender-related vulnerability categories which carry a stigma, such as SGBV³²⁹, or less-evident ones, such as mental illness or post-traumatic disorders, are going to be extremely difficult to identify³³⁰.

Another problem is that professionals in the field do not expect to find UASGs who are not a victim of trafficking for sexual purposes. Therefore, if no trafficking indicators are found, it is assumed that the girl is safe with the foster or extended family or that she is truly married or engaged to a male adult. However, according to the experts, this widespread connection between UASGs and trafficking is not so common. Whether the girls are victims or potential victims will depend on their personal profile, family status, country of origin, how they arrive, and the reasons they fled. In fact, this

³²⁸ *ibid* 8-9

³²⁹ IFRC, 'Alone and Unsafe: Children, Migration and Sexual and Gender-based Violence' (2018) <<https://media.ifrc.org/ifrc/wp-content/uploads/sites/5/2018/11/181126-AloneUnsafe-Report-EN-web.pdf>> accessed 27 June 2019

³³⁰ Hungarian Helsinki Committee, 'Unidentified and Unattended: The Response of Eastern EU Member States to the Special Needs of Torture Survivor and Traumatized Asylum Seekers' (May 2017) 25 <www.refworld.org/docid/59b155744.html> accessed 8 July 2019

misunderstanding makes sense due to something that has been noticed during the research but given the limitations of this thesis regarding space, has been impossible to address. Actually, the IHRF which talks the most about UASGs is the one focused on trafficking victims, creating a new construction revolving around this category.

What also emerges as relevant is the general belief that it is better to be ‘badly accompanied than alone’, which has arisen because the process of referral to shelters for UAMs is underdeveloped and overcrowded. An example is the case of two UASGs who were identified in January 2019 but remained homeless for three months subject to their referral to a UASG shelter. In March 2019, they were supposed to be temporarily hosted in a children’s hospital; however, due to circumstances preventing this hospital placement, they were placed under protective custody and transferred to a detention facility for adult women. On 20 March 2019, the GCR required the intervention of the ECtHR, which admitted the application and granted interim measures by ordering the Greek authorities to immediately transfer the girls to a shelter for UAMs.³³¹ This is just one example illustrating that unaccompanied children face structural difficulties in accessing adequate accommodation.

Finally, as multiple reports and NGOs have indicated, vulnerabilities are often completely unnoticed due to the serious deficiencies in the hotspots.³³² On some islands, due to the lack of health workers and intercultural mediators, vulnerability assessments have not been carried out for months. On others, delays of up to five months have been observed since the moment of arrival.

A new template has been adopted by the Centre of Disease Control and Prevention, introducing three levels of vulnerability: ‘high vulnerability’, ‘medium vulnerability’, and ‘no vulnerability’ and only those recognised as belonging to the ‘high’ category would be exempted from the fast-track border procedure.³³³ This could be very dangerous, given that there is no legal definition for this differentiation, especially for unidentified UASG who could still be protected under other, less-evident vulnerability categories.

³³¹ GCR, ‘The European Court of Human Rights grants interim measures in favor of two detained unaccompanied girls’ <www.gcr.gr/en/news/press-releases-announcements/item/1069-the-european-court-of-human-rights-grants-interim-measures-in-favour-of-two-detained-unaccompanied-girls> accessed 8 July 2019

³³² MSF, ‘Greece in 2016: Vulnerable People Get Left Behind’ (October 2016) <www.msf.org/sites/msf.org/files/report_vulnerable_people_201016_eng.pdf> accessed 8 July 2019

³³³ GCR (n 283) 88

4.3. VULNERABILITY SCREENING DURING THE ASYLUM INTERVIEW: THE ARBITRARINESS AND CONFUSING ROLE OF EASO

As described above, if girls have not been identified as vulnerable, they will not be exempt from the fast-track border procedure and will remain in the hotspot until their procedure is resolved. Nevertheless, during the asylum interview, there is another opportunity for identification which could be very positive, given that the interview is done individually.

The first problem in relation to asylum interviews is that only those girls older than 14 years will have the option of having an individual interview; hence, the smaller girls, who are usually the ones who are more controlled by male authority figures, remain invisible.

A second problem is that so much depends on the caseworker who conducts the interview. If it is a Greek Asylum Service (GAS) caseworker, he or she can decide to return the case back to the RIS, refer it to an EASO vulnerability expert, or assess the vulnerabilities him- or herself – which is the most common choice. Apparently, according to the interviewed, GAS caseworkers have been given guidelines to restrict the identification of vulnerabilities as much as possible; hence, they are not willing to look for indicators.

If the case is handled by an EASO caseworker, he or she has an obligation to refer the case to an EASO vulnerability expert so that an opinion on the case can be drafted. In this regard, The European Centre for Constitutional and Human Rights (ECCHR) submitted a complaint before the European Ombudsman in July 2017, raising its concerns about two interview-related issues. First, EASO's involvement in the admissibility interviews of applicants for international protection. The ECCHR claimed that 'EASO's *Concluding Remarks*, drafted after admissibility interviews, look like decisions, rather than recommendations to the authority responsible'.³³⁴ The second issue highlighted in the complaint was stated as follows: 'the way in which interviews are conducted does not allow for a fair assessment of individual cases (the asylum claims are not examined on an individual basis) and prevents a thorough investigation of "vulnerability"'.³³⁵

³³⁴ European Ombudsman Decision in Case 735/2017/MDC on the European Asylum Support Office's (EASO) involvement in the decision-making process concerning admissibility of applications for international protection submitted in the Greek Hotspots, in particular shortcomings in admissibility interviews (5 July 2018) para 10 <www.ombudsman.europa.eu/en/decision/en/98711> accessed 8 July 2019

³³⁵ *ibid* para 36

One year after the 2017 complaint was submitted by the ECCHR, the European Ombudsman acknowledged ‘the serious and genuine concerns as to both the fairness of interviews and the extent of EASO’s involvement’³³⁶; however, she closed the inquiry without taking further steps and explained that the ultimate responsibility for decisions on asylum applications rests with the Greek authorities.³³⁷

Of great concern is the fact that, according to the sources consulted, EASO vulnerability experts neither screen the individuals nor conduct an interview. They draft their ‘opinion’ based on the asylum-interview records written by a person without expertise on vulnerability who is, therefore, unable to look for indicators of vulnerability in a holistic way.

EASO’s role in vulnerability assessment also raises other concerns. This role is oftentimes confusing and creates problems by increasingly interfering with national actors in the field. For instance, someone who has been identified as vulnerable by the RIS may be assessed again by EASO³³⁸; however, there is no clear legal guideline on whether this is allowed to happen, or which assessment should prevail³³⁹.

The third major problem related to asylum interviews concerns the fact that identifying the vulnerability categories at the time of the interview necessarily requires changing the data registered during the full registration of the asylum application. In general, but especially in relation to UASG, it may be necessary to change their age, marital status, or the reasons why they fled. This will be tremendously difficult, particularly in cases where the change is initiated by the girls themselves when deciding to reveal their protection needs later in the process.

Apparently, the legal instruments applicable to correction of data are not applicable in the hotspot but substituted by EASO’s internal guidelines. These guidelines state that no change should be made until an EASO caseworker addresses the issue during the interview, and this should only be done in

³³⁶ European Center for Constitutional and Human Rights (ECCHR), ‘European Ombudsperson Refuses to Hold EASO to Account Unfair Asylum Procedures in Greek Hotspots’ <www.ecchr.eu/nc/en/press-release/european-ombudsperson-refuses-to-hold-easo-to-account/> accessed 8 July 2019

³³⁷ European Ombudsman Decision in Case 735/2017/MDC (n 334) paras 32 and 46

³³⁸ Dutch Council for Refugees and others, ‘The Implementation of the Hotspots in Italy and Greece: A study’ (December 2016) 44 <www.ecre.org/wp-content/uploads/2016/12/HOTSPOTS-Report-5.12.2016..pdf> accessed 8 July 2019

³³⁹ ECRE (n 264) 31

exceptional, strictly prescribed cases, so the possibilities of changes occurring are greatly reduced.³⁴⁰ Therefore, correcting data involves many bureaucratic obstacles, extensive paperwork, and much effort, and it is a very time-consuming endeavour. Normally, the attempt will only be successful if there is external legal support following up the process.

Of course, until the data is officially recognised on paper, the minor cannot be transferred to the mainland to appropriate accommodation and will remain in the hotspot. This process can take months to finalise. In addition, changing the documented account of the facts can lead to a rejection of the application due to credibility issues.

The fourth problem with asylum interviews relates to the way in which these interviews are carried out. There is no privacy, and bystanders can listen to what is said. In addition, there are often no interpreters of the relevant languages available, and there are far fewer female interpreters and caseworkers. These factors will, again, disproportionately affect those individuals, such as UASG, whose vulnerabilities have their origin in issues that carry a certain stigma.

In summary, the second occasion on which to conduct an individual vulnerability assessment – during the asylum interview – could be a great opportunity for UASG who have not been assessed in the RIC or who decide, after a time, to reveal certain facts that may lead to their identification as vulnerable. Nevertheless, based on the problems discussed above, this remains an untapped opportunity. In the context of this study, it would have been useful to have disaggregated data for those girls who are identified as vulnerable during the asylum interview, including how many of them were identified by GAS or EASO personnel. Nonetheless, unsurprisingly, there are no disaggregated data available, only the total computation of the number of migrants identified as vulnerable.

4.4. TRYING TO FILL THE INFORMATION GAP? EASO'S SUPPORT AND THE IPSN TOOL

As was pointed out in the previous sections, one of the main problems is the lack of effective training of the actors involved in the reception and identification of migrants and also of the asylum caseworkers. This lack of a trained workforce makes it impossible to approach the identification of vulnerabilities in a holistic and intersectional manner.

³⁴⁰ Yiota Masouridou and Evi Kyprioti, 'The EU-Turkey Statement and the Greek Hotspots: A Failed European Pilot Project in Refugee Policy' (June 2018) 14 <<http://extranet.greens-efa-service.eu/public/media/file/1/5625>> accessed 8 July 2019

EASO plays an essential role in capacity building for vulnerability identification. In this regard, it developed the IPSN tool for the identification of persons with special needs, which attempts to provide practical support for vulnerability assessments to MSs. Actually, several countries are already using the IPSN or developing tools based on it, which is evidence of its increasing influence.³⁴¹

The IPSN is an online platform that offers the following check-box list of indicators of special needs: age; sex; gender identity and sexual orientation; family status; and physical, psychosocial, and environmental indicators³⁴². Each one has a closed-ended list of indicators. As you click on each indicator, the platform automatically suggests 'special needs' to take into account in the identification. These special needs consist of the following exhaustive list of categories: accompanied minors; UAMs; disabled people; elderly people; pregnant women; single parents with minor children; victims of human trafficking; persons with serious illnesses; persons with mental disorders; persons who have been subject to torture, rape, or other serious forms of psychological, physical, or sexual violence; LGTB people; and those with gender-related special needs³⁴³.

Following the selection of indicators, you have to select in which phase of the reception or the asylum procedure you are: 'first contact – making an application', 'reception support', 'lodging the application', 'personal interview', and 'end of the first instance asylum procedure'. Thereafter, the platform suggests the steps forward.

To illustrate: if we click on 'Age: under 18' and 'Sex: female', the IPSN tool suggests the categories 'Accompanied minor', 'Unaccompanied minor', and 'People with gender-related special needs'. Then, if we select 'First contact – making an application' and 'reception support', the platform will open a new window with a separate box for each category, explaining 'About this category', 'Indicators of special needs', and 'Potential pieces of evidence regarding special needs'. The special procedural guarantees regarding each category are also stipulated. This screen can be printed as a vulnerability assessment form.

The tool that is beginning to be used and that is intended to be the model for MSs to follow is actually a platform that treats people as closed categories, with closed explanations about their

³⁴¹ FRA, 'Thematic focus: Migrants with disabilities' (2016) <<https://fra.europa.eu/en/theme/asylum-migration-borders/overviews/focus-disability#identification>> accessed 8 July 2019

³⁴² 'Tool for Identification of Persons with Special Needs' (EASO, 2016) <<https://ipsn.easo.europa.eu/>> accessed 7 July 2019

³⁴³ *ibid*

vulnerabilities, and without any kind of intersectional perspective. Furthermore, the IPSN mechanises and automatises processes that should be studied on a case-by-case basis with care and with great caution, using a holistic, personalised approach, and taking into account the specific circumstances of each case. It literally says ‘mark the relevant indicators based on your opinion. This tool is designed to support you without requiring any medical or other expert knowledge’³⁴⁴ These limitations, as explained above, will disproportionately affect those individuals with overlapping categories, such as UASGs, and will contribute to the construction of fixed identities.

4.5. POSSIBLE FURTHER OPPORTUNITIES FOR A ‘DE FACTO’ IDENTIFICATION

The current identification mechanisms do not foresee any further opportunities for vulnerability identification. However, given the time people spend in the reception facilities of the hotspot, this may be a good period for the observation and identification of UASG and of specific protection needs and risks with the aim of addressing them effectively.

In the field, the UNHCR develops rapid BIAs, but only for those children who have already been identified as UAMs. This approach can help to identify different protection needs but continues contributing to the invisibility of those separated girls under the control of male authority figures. However, even in that case, according to the professionals interviewed, these rapid BIAs do not really help.

Therefore, it seems that the only further possibility for identifying these girls and their protection needs, given that field workers are more focused on the constant influx of newcomers, would be, again, for the girls to reveal that they are not accompanied by their own initiative. Professionals in the field argue that the hotspots are not appropriate spaces for a girl to be recognised as a UASG or a victim of SGBV, given the stigma that these characteristics cause in some societies and given the insecure environment in the refugee camps.

Another problem concerns, again, the fact that, after the asylum interview, the only opportunities to change previously registered data or to reveal grounds for vulnerability will be in an appeal and/or in the subsequent request. In no case will the girl be heard; the decision will be based on paper.

However, the subsequent request is proving to be a good moment to introduce new indicators such as being a victim of human trafficking or an LGTB person. Furthermore, the request is an opportunity

³⁴⁴ *ibid*

for those who have generated some 'vulnerability' during their stay in the hotspot to be referred to the regular procedure. An interesting case to illustrate these points related to changing registered data is that of a girl who arrived with her supposed husband, was not identified as vulnerable, and went through the fast-track border procedure. At the last moment, when the decision of her return to Turkey had already been issued, she revealed that the man accompanying her was not her husband and thus she was an UASG. After a lengthy and complex process that kept the girl alone in the hotspot for six months, it was possible to refer her to the IOM shelter. However, she could not apply for asylum again until a year and a half later.

Unsurprisingly, there is no disaggregated data for individuals identified as vulnerable in these instances. If there had been such data available, it would have been interesting to determine if there is any kind of relationship between length of time and the disclosure of less-evident/overlapping grounds for vulnerabilities.

4.6. NOT ONLY MISIDENTIFYING BUT CREATING NEW VULNERABILITIES

As reported by many international organisations, such as Human Rights Watch³⁴⁵, Amnesty International³⁴⁶, Oxfam Intermon³⁴⁷, Doctors without Borders³⁴⁸, and other NGOs³⁴⁹, the implementation of the hotspot approach, together with the EU-Turkey Statement, is not only leading to the misidentification of vulnerabilities, but is contributing to the generation of new ones.

First of all, migrants are forced to live in inhumane conditions at the reception facilities and refugee camps in the hotspots. There is inadequate accommodation, very limited access to basic services, lack of professional staff, almost no access to proper healthcare, and a serious lack of safety. These types of structures are intended to be temporary, short-term solutions, but with the introduction of the EU-Turkey Statement and its geographic restrictions, migrants can spend years in extremely overcrowded

³⁴⁵ Emina Cerimovic, 'Asylum Seekers' Hell in a Greek "Hotspot"' (HRW 2017) <www.hrw.org/news/2017/11/30/asylum-seekers-hell-greek-hotspot> accessed 8 July 2019

³⁴⁶ Amnesty International, 'Greece and the EU must move asylum seekers to safety' (2018) <www.amnesty.org/en/latest/news/2018/12/greece-and-the-eu-must-move-asylum-seekers-to-safety/> accessed 8 July 2019

³⁴⁷ Oxfam Media Briefing, 'Vulnerable and abandoned: How the Greek reception system is failing to protect the most vulnerable people seeking asylum' (2019) <https://www-cdn.oxfam.org/s3fs-public/file_attachments/2019-01_greece_media_briefing_final.pdf> accessed 8 July 2019

³⁴⁸ MSF (n 332)

³⁴⁹ Dutch Council for Refugees and others (n 338)

spaces. This situation has been shown to cause serious mental health problems such as stress, anxiety, and depression.³⁵⁰

Poor living conditions affect all the residents in a hotspot, but the impact they have on those individuals who already have different risks and protection needs is exacerbated since these individuals are re-exposed to serious risks. In this sense, early identification and, therefore, referral to the mainland, will be absolutely key in preventing the generation of new protection needs.

An example illustrating the above is the UNHCR's warning that 'refugee women and children face heightened risk of sexual violence amid tensions and overcrowding at reception facilities on Greek islands'.³⁵¹ Other organisations have also denounced the various gender-related risks that women and girls face on a daily basis in the hotspots. There are not enough measures to protect survivors of SGBV, and, moreover, they are dangerously exposed (or re-exposed) to all kinds of SGBV, as they are obliged to share shelters with men³⁵², there are not enough toilets and showers in the women-only area, and the shower/toilet facilities have no locks³⁵³. Additional difficulties in accessing services have also been observed, 'including a lack of effective crowd management and limited safe spaces to leave young children'³⁵⁴ and a complete lack of reproductive and sexual healthcare³⁵⁵. In addition, there is an important gap in the management of security and safety from a gender perspective, which leads to the confinement of female refugees to tents³⁵⁶.

Save the Children has emphasised the irreversible damage to migrant children caused by the hotspots – often leading to self-harm, suicide, escapism in drugs and alcohol, and smuggling and

³⁵⁰ MSF, 'A Dramatic Deterioration for Asylum Seekers on Lesbos' (July 2017) <www.msf.org/sites/msf.org/files/msf_lesbos_vulnerability_report1.pdf> accessed 8 July 2019

³⁵¹ UNHCR, 'Refugee women and children face heightened risk of sexual violence amid tensions and overcrowding at reception facilities on Greek islands' (2018) <www.unhcr.org/5a7d67c4b?utm_source=PR_COMMS&utm_medium=email&utm_content=UNHCR%20Communication%20Service&utm_campaign=HQ_EN_BriefingNotes_171027> accessed 8 July 2019

³⁵² HRW, 'Greece: Asylum-Seeking Women Detained with Men' (2018) <www.hrw.org/news/2018/06/07/greece-asylum-seeking-women-detained-men> accessed 8 July 2019

³⁵³ Mónica Costa, 'Women face daily dangers in Greek refugee camps' (*Amnesty International* 2018) <www.amnesty.org/en/latest/campaigns/2018/10/women-daily-dangers-refugee-camps-Greece/> accessed 8 July 2019

³⁵⁴ UNHCR, UNFPA and Women's Refugee Commission, 'Initial Assessment Report: Protection Risks for Women and Girls in the European Refugee and Migrant Crisis. Greece and the former Yugoslav Republic of Macedonia' (2015) 10 <www.unhcr.org/569f8f419.pdf> accessed 8 July 2019

³⁵⁵ Women's Refugee Commission, 'EU-Turkey Agreement Failing Refugee Women and Girls' (August 2016) 18 <www.womensrefugeecommission.org/images/zdocs/EU-Turkey-Refugee-Agreement-Failing.pdf> accessed 8 July 2019

³⁵⁶ Oxfam, 'Gender Analysis: The Situation of Refugees and Migrants in Greece' (August 2016) 24 <https://www-cdn.oxfam.org/s3fs-public/file_attachments/oxfam_gender_analysis_september2016_webpage.pdf> accessed 8 July 2019

trafficking networks.³⁵⁷ Furthermore, a special impact is observed in unaccompanied children, who show a high level of ‘psychological distress, including symptoms such as anxiety, depression, headaches, insomnia, and loss of appetite’³⁵⁸ which ‘exacerbates existing mental health conditions’³⁵⁹.

In fact, one of the main grounds for the complaint made by the International Commission of Jurists and European Council for Refugees and Exiles against Greece is that the life conditions for migrant children are ‘incompatible with human dignity’³⁶⁰ and that ‘unaccompanied migrant children do not have access to adequate protection, access to information, legal advice or psychological care and are not protected against violence and exploitation’.³⁶¹ The European Committee of Social Rights declared the complaint admissible on 23 May 2019 and ordered the Greek government to adopt ‘all possible measures with a view to avoiding serious, irreparable injury to the integrity of migrant minors at immediate risk of life, physical and moral integrity’,³⁶² in order to comply with its obligations under the ESC.

CONCLUSION OF PART III

Firstly, there is no intersectional approach at the law and policy-making level. There are no references to UASGs, nor are there references to intersectionality either explicitly nor implicitly. In addition, the obligations that emanate from the BIC are not met at this level either. There is insufficient information and data on the situation and the specific protection needs and risks of these girls, neither at the level of the EU nor Greece. That is, at the macro level, in the EU these girls do not exist.

³⁵⁷ Save The Children, ‘A Tide of Self-Harm and Depression: The EU-Turkey Deal’s Devastating Impact on Child Refugees and Migrants’ (2017) <www.savethechildren.es/sites/default/files/imce/final_report_eu_turkey_deal_a_tide_of_self-harm_and_depression_march_20171.pdf> accessed 8 July 2019

³⁵⁸ HRW, ‘Greece: Lone Migrant Children Left Unprotected’ (2017) <www.hrw.org/news/2017/07/20/greece-lone-migrant-children-left-unprotected> accessed 8 July 2019

³⁵⁹ *ibid*

³⁶⁰ *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v Greece* Complaint No. 173/2018 (European Committee of Social Rights, 21 December 2018) 88-89 <<https://rm.coe.int/cc173casedoc1-en/168090390c>> accessed 8 July 2019

³⁶¹ *ibid*

³⁶² *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v Greece* Complaint No. 173/2018 (Decision on Admissibility of the European Committee of Social Rights, 23 May 2019) <[89](https://hudoc.esc.coe.int/eng#{%22fulltext%22:[%22cc-173-2018-dadmissandimmed-en%22],[%22ESCDcIdentifier%22:[%22cc-173-2018-dadmissandimmed-en%22]]}> accessed 8 July 2019</p>
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Consequently, the mechanisms aimed at identifying vulnerabilities obviously did not take into account the specific social locations in which UASGs are placed.

Furthermore, UASGs are not visible in the field of law and policy implementation. The people who work in the field know that there is a constant flow of UASGs, who are more vulnerable and more difficult to identify. However, since UASGs are not part of the construction generated around the pre-established categories in which the professionals are specialised, it is assumed that their profiles and specific protection needs coincide with those of the UAMs or adult migrant women.

In this regard, the debate that is taking place in the Commission, on the treatment of vulnerable groups as part of the CEAS reform, could be positive since the factors approach is a small step towards the end of stereotyping and reductionism. However, the debate will be empty if it is not accompanied by a reflection on what the organisation needs to identify and what its objectives should be. Nevertheless, given the extreme categorisation and fragmentation present in the different tools that EASO is developing for capacity building of the MSs, it does not seem that this reflection is taking place.

A reflection is needed around the fact that the migrants' specific needs and the risks that they face from their reasons for leaving their country of origin; the circumstances they face during transit, at borders, and when being received;³⁶³ and the social and institutional xenophobia they suffer in the host society. These experiences and risks in the different phases of the migration process differ, depending on the individual's position within the spectrum, which is made up of categories such as 'age' or 'gender'. These different experiences are based on other systems of inequality and forms of domination, which each have their own structures.

Secondly, even if the BIC forces the EU to take UAMs into account regardless of their legal status, the EU's policies aimed at the identification of vulnerabilities only exist regarding those who seek for asylum, seriously breaching their own policy commitments and the EU Charter. Additionally, given the way in which the policies are configured, the EU is only putting effort into procedural safeguards that determine whether the individual will be subject to the fast-track border procedure. The

³⁶³ OHCHR, Thirty-third session 13 October 2016 'Promotion and protection of the human rights of migrants in the context of large movements. Report of the United Nations High Commissioner for Human Rights' (13 October 2016) UN Doc A/HRC/33/67 para 12 <<https://undocs.org/es/A/HRC/33/67>> accessed 16 June 2019

vulnerability identification must be addressed with the aim of allowing every person to access their human rights in a comprehensive manner.

Thirdly, this analysis evidently demonstrates that nobody has started to reflect on the situation of UASGs. This analysis demonstrates the meaning of being a girl who migrates alone, or separately, and who goes to Greece has nothing to do with the meaning of being an UAM, or being a migrant woman who travels alone, or being a girl accompanied by her parents. It is a new theme that must be addressed urgently, even if it is not a new phenomenon.

It is difficult to elaborate on concrete policy proposals for the above issues. However, this study opens the door for more concrete questions and new spaces for exploration, such as the following:

- Conducting research on the profiles of UASGs arriving in Greece, learning about their protection needs to develop indicators, and generating knowledge and information.
- Analysing how the different social locations of UASGs determine their reasons for not self-identifying as UASGs.
- Exploring the specific problematics of separated children, since it appears that this legal concept is the most appropriate profile for the girls who arrive in Greece.
- Evaluating the impact of the RIS performing the first vulnerability assessment individually, on a systematic basis, given its importance.
- Performing BIA for all children who arrive in Greece, regardless of whether or not they are unaccompanied, in order adequately protect to their needs and observe the indicators of all the vulnerability categories.
- Analysing how the new vulnerability template established by the RIS can affect UASGs who could be protected under other categories of vulnerability.
- Checking whether there is a higher level of identification of UASGs at the time of the asylum interview, in the appeal, or in the subsequent request, and properly assessing whether the passage of time is decisive.
- Assessing whether the influence of EASO has a larger impact on UASGs' self-identification in the different procedural moments.

- Ensuring that the EASO vulnerability experts hear the individuals when drafting their opinions, as well as assessing the impact of doing so on the identification of the girls.
- Making the change of data more flexible in case of disclosure of vulnerabilities, while always ensuring that the girls' right to be heard is respected.
- Making sure that any vulnerability assessment is a human procedure. Vulnerability assessments should be studied on a case-by-case basis with care and with great caution, using a holistic, personalised approach, while considering the specific circumstances of each case.
- Generating safe spaces in the reception facilities for girls, where they can build trust relationships that allow the observation and identification of vulnerability indicators.

Finally, this will never be achieved if the vulnerability identification policy is aimed at obtaining data and classifying people into categories. If the policy has such aims, the opportunity to receive and individually detect the life histories of migrants, and to initiate the processes of protecting human rights, will be lost. Furthermore, it seems impossible for any issues regarding UASGs or other individuals to be addressed, in the inhumane conditions created by the hotspot approach and the EU-Turkey Statement.

FINAL CONCLUSION

This thesis started with a specific aim: to study how intersectionality could improve the effectiveness of EU migrant vulnerability identification mechanisms by providing a better way to identify the vulnerabilities of people like UASGs, who are at the complex intersection of different oppressions and inequalities.

Although the complications and obstacles encountered throughout the investigation have prevented a concrete analysis of the impact that this mechanism could have on UASGs in Greece, they have also led us to reach much broader conclusions that still support - and even reinforce - the thesis's main hypothesis: the introduction of an intersectional approach will not only improve the efficiency of EU mechanisms that identify vulnerabilities, but is a *conditio sine qua non* to end the invisibility of UASGs.

1. THE URGENT NEED OF INTERSECTIONALITY IN HUMAN RIGHTS LEGAL AND POLICY FRAMEWORK

The most relevant conclusion is that the problem does not begin with the policy studied, but has an earlier source, which is the configuration of the IHRL System.

The concept of vulnerability has become the dominant approach for addressing inequality and human rights violations and justifying the special protection of certain individuals. As explained in Part I, the development of this approach has been a significant contribution to the struggle for substantive equality, but it has also had a negative impact in practice.

First, the way human rights rhetoric has used this notion implies that vulnerability resides in people's intrinsic characteristics. Consequently, if an individual has any of those characteristics, he or she is automatically vulnerable. This results in essentialism, paternalism, and victimhood and prevents the analysis of the power relations and privilege structures that lie behind any inequality axis.

However, the most relevant consequence for this thesis is that this rhetoric has inevitably led the IHRF to develop a collective approach to vulnerability, based on the identification of categories of persons and groups in need of special protection. This is the so-called 'vulnerable group' approach. In this approach, vulnerability depends on a personal condition shared by the members of a group, which has justified the proliferation of group-differentiated catalogues of rights: for women, for children, for

migrants, and for people with disabilities.³⁶⁴ Basing the approach on unitary categories will lead to the severe fragmentation of the IHRF for any individual or group of individuals who do not fit into any category or who fit into several overlapping categories: a ‘vulnerability shopping’³⁶⁵.

The real problem is that the entire international human rights protection system (its normative instruments, its protection mechanisms, its doctrine, the organisation of scholars, international organisations, NGOs, and human rights defenders) is based on this approach. Therefore, these categories structure not only all the political actions, but also the existing or potential knowledge and information about human rights violations.

This thesis has been able to prove this reality in the case of UASGs, whose multiple social locations proclaim them as one of the most paradigmatic examples of individuals at the intersection of different systems of oppression. Part II has demonstrated how the IHR legal and policy framework that is applicable to these girls, both at the universal and CoE level, has clearly disintegrated around the protection of two vulnerable groups: ‘migrant/refugee unaccompanied minors’, and ‘migrant/refugee women and girls’. However, the tension between the discourses fails to address the specific needs of these girls, which are displaced by the needs of the dominant groups.

Surprisingly, this displacement has led to the absolute invisibility of these girls in all fields. There is no trace of them in academic articles or in the reports of experts, international organisations, or NGOs. They cannot be found in the press or in jurisprudence, nor at a universal level or at a European regional level.

This study suggests that the fragmentation explored in Part II has extended to the point of conditioning the specialisation and knowledge of the people who work in the field and are face to face with this problem. Consequently, even a barely adequate analysis on the impact of EU vulnerability identification mechanisms on the misidentification of UASG was not possible, as demonstrated in Part III. All the findings of the field research are based on presumptions of people in the field and specific professional experiences, which means that far from giving concrete policy conclusions and recommendations, the policy analysis just reflected on the existing gaps and indicated the path for

³⁶⁴ Maija Mustaniemi-Laakso and others, ‘The Protection of Vulnerable Individuals in the Context of EU Policies on Border Checks, Asylum and Immigration’ (2016) 11(3) FRAME www.fp7-frame.eu/wp-content/uploads/2016/08/Deliverable-11.3.pdf> accessed 5 June 2019

³⁶⁵ Referring to ‘forum shopping’, a practice adopted by litigants to get their cases heard in a particular court that is likely to provide a favorable judgment.

future studies. The final consequence is not only the invisibility of these persons, but also the reinforcement of their subordinated position.

Therefore, this thesis highlights the urgent need to incorporate an intersectional perspective to understand inequality and human rights violations. People's lives cannot be explained by single categories; they are multidimensional and complex, and shaped by different factors and social dynamics operating together. We cannot pretend to address all the complexity of the reality lived by the subjects with simple unitary legal and policy frameworks.

However, there is a need to deconstruct restrictive identity politics and avoid excessive competition between fields and discourses of protection, to create alliances between actors, and network to build intersectional frameworks. It is necessary that the legal framework opens for to contemplate and protect the intersecting effects of inequality, that different levels of coverage are not established for each of the inequality axis, and that the ideological paradigm of inequality is not restrictive.³⁶⁶ On the contrary, the framework must consider power relations and privilege, as well as deconstruct categories and expose false universalisms, so as to avoid paternalism and victimisation. It should also approach the complexity of reality and bring the attention of law and policy towards that complexity.

Intersectionality stands as one of the most complex and challenging approaches for law and policymakers, and its relative 'newness'³⁶⁷ in the field of law and policy makes the gap between theory and implementation more pressing. Recently there has been a 'broad spectrum of intersectionality studies noting that intersectional insights and frameworks are put into practice in a multitude of ways,³⁶⁸ from whose processes we can learn.

We must evaluate the impact of the existing attempts to introduce intersectionality at the UN level, through substantive interpretation of the legal framework, institutional developments, and reasoning in decisions, reports and official documents. We must also continue to reflect on and develop new

³⁶⁶ Marta Cruells López, 'La interseccionalidad política: tipos y factores de entrada en la agenda política, jurídica y de los movimientos sociales' (DPhil Thesis, Universitat Autònoma de Barcelona 2015) 94 <www.tdx.cat/bitstream/handle/10803/288224/mcllde1.pdf?sequence=1&isAllowed=y> accessed 6 June 2019

³⁶⁷ Olena Hankivsky and Renee Cormier, 'Intersectionality and Public Policy: Some Lessons from Existing Models' (2011) 64 *Political Research Quarterly* 217, 220 <www.jstor.org/stable/41058335?seq=1#page_scan_tab_contents> accessed 11 July 2019

³⁶⁸ Sumi Cho, Kimberle Crenshaw and Leslie McCall, 'Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis' (2013) 38 *Intersectionality: Theorizing Power, Empowering Theory* 785, 807 <www.jstor.org/stable/10.1086/669608?seq=1#page_scan_tab_contents> accessed 11 July 2019

ways of incorporating the intersectional perspective into the IHRF, at every level, without the creation of infinite vulnerable sub-groups.

2. BEST INTEREST OF THE CHILD AS A TEMPORARY ‘BRIDGING’ SOLUTION TO FILL THE INTERSECTIONALITY GAP

The second major conclusion of this thesis is that while we continue to move towards the incorporation of an intersectional perspective in the IHRL and policy framework, we have an international obligation that can function as a temporary bridging solution to fill the intersectionality gap in the case of children and girls, especially UASGs. This obligation is the BIC concept, which explicitly identifies and addresses the individual’s specific protection needs and risks from an intersectional approach. It can serve as a basis for the individual to gain comprehensive access to human rights.

The configuration of the BIC as a right, principle, and procedural rule involves taking into account the unique experiences of each child or group of children, who may be in multiple social locations and a specific context and moment, when making any individual decision or when legislating and developing policies that may directly or indirectly affect them. This is very similar to the configuration of political intersectionality in the terms explored in this thesis’s first chapter. Categorisations are avoided, and all actors are obliged to consider and ponder the material consequences of the intersection of the target group’s different social locations. This consideration should occur in a specific context, with the objective that the children access adequate protection.

Moreover, this revolutionary tool of an intrinsically intersectional nature imposes explicit obligations on the signatory states of the CRC. It has also been universally adopted by most of regional and national legislations, including the CoE and EU.

3. THE UNACCOMPANIED AND SEPARATED GIRLS’ RIGHT TO BE VISIBLE

UASGs have always existed, to a greater or lesser extent. However, the numbers should not be an excuse for the lack of protection. Human rights are universal, and all individuals have the right to access them comprehensively.

However, Part III has demonstrated how neither the EU nor Greece have even begun to reflect on the invisibility of these girls or how it should be addressed. First, there is no intersectional approach at the law and policy-making level, or at the policy implementation level. In addition, the obligations

under the BIC have not been met. These girls simply do not exist. As a result, the mechanisms aimed at identifying vulnerabilities obviously do not consider the specific social locations in which UASGs are placed, heavily violating their human rights.

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