



Collana diretta da Angela Di Stasi

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A. Di Stasi
R. Cadin
V. Zambrano
(a cura di)

**DONNE MIGRANTI E VIOLENZA DI GENERE
NEL CONTESTO GIURIDICO
INTERNAZIONALE ED EUROPEO**

**MIGRANT WOMEN
AND GENDER-BASED VIOLENCE
IN THE INTERNATIONAL AND EUROPEAN
LEGAL FRAMEWORK**

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La presente opera affronta il tema della violenza rispetto alle donne migranti, alla luce del collegamento violenza/genere/migrazioni che risulta analizzato mediante una riflessione su questioni giuridiche che, in alcuni casi, non risultano sufficientemente esplorate. Essa declina il tema dell'indagine lungo una doppia direttrice che si riflette nelle due sezioni in cui si articola l'opera: quella relativa alla violenza esercitata contro le donne nei Paesi di origine che assurge a fattore di migrazione "forzata" e quella relativa alla violenza di cui possono essere vittime le donne negli Stati di destinazione con un particolare (ancorché non esclusivo) *focus* dedicato al nostro Paese. La circolarità dei fenomeni trattati impedisce di creare una netta separazione tra i due piani di indagine che si intersecano anche con le delicate problematiche che riguardano il *viaggio* delle donne migranti e le sue non infrequenti criticità. L'auspicio è che la riflessione proposta contribuisca a consolidare un approccio alla tutela delle donne migranti, fondato su una valutazione della dimensione individuale e di gruppo delle loro vulnerabilità, atto a profilare soluzioni idonee a colmare le lacune esistenti negli strumenti normativi vigenti.

This volume is dedicated to the issue of violence against migrant women in the light of the relationship between violence, gender, and migration, analysed through a reflection of the legal issues, which in some cases are still not adequately dealt with. It examines the topic along two lines of inquiry reflected in the two sections into which the work is divided. The first deals with violence against women in their countries of origin, which becomes a factor of "forced" migration, while the second concerns violence that women can suffer in the host countries, with a particular (albeit not exclusive) *focus* on Italy. The circularity of these phenomena prevents a clear distinction among the two levels of investigation, which also intersect with delicate issues related to the *journey* of migrant women and the often critical aspects. The hope is that the analyses developed in this volume can help consolidate an approach to the protection of migrant women, according to an adequate assessment of the individual and collective dimensions of their vulnerability, capable of outlining solutions to fill the gaps in existing legal instruments.

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*Alla cara memoria di Maria Rita Saulle,
donna, educatrice, giurista, giudice
e sensibile garante delle vulnerabilità*

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INTRODUZIONE

DONNE MIGRANTI E VIOLENZA DI GENERE NEL CONTESTO GIURIDICO INTERNAZIONALE ED EUROPEO

*Angela Di Stasi**

La presente opera nasce da un progetto culturale che, ideato da alcuni docenti dell'Università degli Studi di Salerno e dell'Università degli Studi di Roma La Sapienza, è stato sottoposto alla più ampia condivisione di studiosi di Università ed enti di ricerca italiani ed esteri nonché di operatori del diritto. Esso (si riconduce ed) integra (al) l'insieme delle attività di ricerca promosse nell'ambito del Progetto PRIN 2017 “*International Migrations, State, Sovereignty and Human Rights: open legal issues*” di cui sono *Principal Investigator* e si muove anche nell'esercizio della delega alle pari opportunità conferitami dal Magnifico Rettore di UNISA.

L'oggetto della ricerca è costituito dal delicato tema della violenza rispetto alle donne migranti, alla luce del collegamento violenza/genere/migrazioni ed è analizzato mediante una riflessione collettanea su questioni giuridiche che, in alcuni casi, continuano a non essere sufficientemente esplorate. Risulta auspicabile, dunque, da un lato, la (più possibilmente compiuta) definizione dell'entità del fenomeno e delle sue specificità; dall'altro, l'opzione metodologica a favore di una disamina “integrata” e, il più possibile, *gender oriented* degli strumenti normativi esistenti anche alla luce delle soluzioni giurisprudenziali profilate.

* Ordinario di Diritto Internazionale e di Diritto dell'Unione europea, Università degli Studi di Salerno. Indirizzo e-mail: adistasi@unisa.it

Il *network* multidisciplinare che ha realizzato tale opera ha posto plurime competenze e sensibilità giuridiche, metagiuridiche e non giuridiche al servizio della lettura critica ed evolutiva di un fenomeno multidimensionale che, per sua natura, tende a sfuggire a rigidi steccati disciplinari. Ne è derivata un'opera di taglio giuridico, connotata da una prevalenza dei profili internazionalistici ed europei, senza che questo escluda la disamina di importanti questioni di carattere comparatistico e penalistico, e che risulta integrata per effetto dell'apporto dei contributi di specialisti di aree culturali non giuridiche (quali la sociologia e la statistica).

Come è ben noto la Commissione delle Nazioni Unite per i Diritti Umani ha riconosciuto, da tempo, il nesso intercorrente tra violenza di genere e discriminazione, sottolineando nella Risoluzione 2003/45 che “tutte le forme di violenza contro le donne si verificano nel contesto della discriminazione *de jure* e *de facto* contro le donne e dello *status* inferiore accordato alle donne nella società e sono esacerbate dagli ostacoli che le donne spesso incontrano nel cercare rimedi dallo Stato”.

Orbene è risaputo che, nell'esperienza migratoria femminile, il genere sia suscettibile di poter costituire un fattore di “svantaggio” quando concorre ad aumentare la vulnerabilità dei soggetti migranti accentuando il rischio di subire violenze, talora funzionali alla instaurazione di situazioni di grave sfruttamento nei settori del lavoro sessuale, così come di quello del lavoro domestico o dei servizi alla persona ma anche del lavoro industriale e agricolo. Invero, da un lato, le migrazioni possono costituire un'opportunità unica per poter realizzare, mediante l'allontanamento dal paese di origine, percorsi individuali tesi al conseguimento dell'autosufficienza economica e/o dell'autonomia personale; al tempo stesso, quando esse rappresentano un elemento di accresciuto rischio, suscettibile di rendere ancora più vulnerabili le donne coinvolte, rendono indispensabile la piena applicazione ed eventualmente l'interpretazione *gender-sensitive* di un insieme di strumenti di Diritto internazionale, europeo e nazionale al fine di garantire, ma anche di prevenire e reprimere, un complesso di violazioni dei diritti umani.

Costituisce, infatti, un dato ormai consolidato la configurabilità di un rapporto intercorrente tra vulnerabilità e migrazioni laddove l'incidenza del genere potrebbe configurare una doppia vulnerabilità per le donne in quanto tali e in quanto migranti. Al tempo stesso le norme sull'immigrazione, nella loro tendenziale neutralità e indifferenza rispetto al genere, sono suscettibili di creare fattori forieri di determinare discriminazioni o possono, esse stesse, produrre direttamente discriminazioni.

Donne, quindi, come soggetti (potenzialmente se non probabilmente) vulnerabili laddove, a fronte del crescente richiamo alla vulnerabilità – nelle sue varie declinazioni – nel Diritto internazionale ed europeo dei diritti umani nonché nella prassi giurisprudenziale, tale nozione, sotto il profilo giuridico, continua a conservare una sua indeterminatezza che ne rende non agevole la verifica *case by case*. Il tutto laddove, invece, l'incidenza “virtuosa” di questioni di genere sulla disciplina migratoria potrebbe tradursi nell'utilizzo, in senso sostanziale ma anche procedurale, di tale nozione quale fattore di abbassamento della soglia occorrente per integrare la violazione di un obbligo internazionale, quale strumento per consentire il potenziamento di un obbligo positivo di protezione o, infine, ai fini della configurazione di un obbligo “qualificato” di protezione, nel quadro di una, per così dire, *due diligence* qualificata.

Il volume declina il tema dell'indagine lungo una doppia direttrice che si riflette nelle due sezioni in cui si articola l'opera: quella relativa alla violenza esercitata contro le donne nei Paesi di origine che assurge a fattore di migrazione “forzata” e quella relativa alla violenza di cui possono essere vittime le donne (tanto migranti “volontarie” che migranti “forzate”) nei Paesi di destinazione con un particolare (ancorché non esclusivo) *focus* dedicato al nostro Paese. La circolarità dei fenomeni trattati impedisce di creare una netta separazione tra i due piani di indagine ricostruttivi che si intersecano anche con le delicate problematiche che riguardano il *viaggio* delle donne migranti, dai paesi di origine fino a quelli di accoglienza, e le sue, non infrequenti, criticità. Inoltre le donne migranti possono risultare caratterizzate da una cd. vulnerabilità intersezionale in ragione della eventuale coesistenza di

diversi fattori che, sommandosi, contribuiscono al formarsi di un grado di vulnerabilità maggiore o comunque peculiare e distinto da quello di altri individui o gruppi che pure, per alcuni specifici fattori o per determinate caratteristiche, sono vulnerabili.

Nello specifico la prima sezione si sofferma su alcune pratiche che, in omaggio a forme di condizionamento religioso e culturale, concretizzano forme gravi di violenza e, sovente, sistematiche contro le donne e talora le bambine (matrimoni forzati, mutilazioni genitali femminili, sterilizzazioni forzate, ecc.) e risultano idonee a giustificare migrazioni “forzate” e a legittimare il ricorso a forme di protezione internazionale fino al punto di potersi prefigurare l’attribuzione dello *status* di rifugiato. In tale sezione diventano oggetto di peculiare approfondimento alcuni contesti regionali che, seppure per ragioni non sovrapponibili, appaiono particolarmente critici (l’Afghanistan, l’Iran, la Libia e l’Ucraina). Ma in tale sezione vengono analizzate anche le problematiche legate alle violazioni particolarmente gravi dei diritti umani quali il traffico di esseri umani e la riduzione in schiavitù nonché i crimini di sfruttamento e abuso sessuale commessi nei campi profughi; il tutto senza dimenticare le questioni giuridiche legate alla legittimità del divieto di indossare il velo islamico e quelle riconducibili al complesso rapporto tra migrazioni e cambiamenti climatici, declinato alla luce di una prospettiva di genere. La sezione risulta arricchita da un contributo dedicato alla disamina critica dei dati statistici, disaggregati per sesso e per età, nella direzione indicata dalla Dichiarazione di New York sui rifugiati e migranti del 2016 e dal *Global Compact* per le migrazioni.

La seconda sezione approfondisce le conseguenze giuridiche delle lesioni dei diritti delle donne migranti nei paesi di destinazione, alla luce degli strumenti del Diritto internazionale e del Diritto dell’UE e delle prospettive evolutive (si pensi, *inter alia*, alla proposta di direttiva del Parlamento europeo e del Consiglio presentata dalla Commissione dell’UE l’8 marzo 2022 sulla lotta alla violenza contro le donne e alla violenza domestica). In essa vengono analizzate, anche dal punto di vista sociologico, forme particolarmente gravi di violenza contro le donne quali la tratta a scopo di sfruttamento sessuale ma anche la cd. di-

scriminazione intersezionale e il contrasto ai reati generati dall'odio contro le donne. Risultano oggetto di particolare approfondimento alcuni diritti quale quello alla salute, nella sua declinazione internazionalistica e costituzionalistica nonché quello al rilascio dei documenti come strumento per garantire l'effettività di determinati diritti fondamentali. Ampio spazio è dedicato all'analisi della giurisprudenza con particolare riferimento a quella della Corte di Strasburgo nei casi di violenza domestica e, più in generale, di garanzia dei diritti delle donne migranti nonché a quella della Corte di giustizia (con specifica attenzione al velo islamico e alle discriminazioni sul luogo di lavoro) e della Corte di Cassazione nei giudizi per la protezione internazionale. La violenza di genere riceve un approfondimento alla luce di un approccio comparatistico mentre essa, con specifico riferimento alla violenza domestica, risulta oggetto di un'analisi di politica criminale sotto la lente della cd. legalità reticolare. Non manca una disamina del collegamento tra donne migranti e rilevanza penale del fattore culturale in ambito internazionale, europeo e nazionale e un approfondimento di alcuni aspetti problematici relativi agli immigrati di seconda generazione "oltre il rischio della criminalizzazione". Ulteriore tema trattato – che si caratterizza per una sua spiccata specificità – è quello del rapporto tra la dimensione di genere e il cd. trauma emotivo vicario nel lavoro con i rifugiati. La seconda sezione è arricchita infine, quale caso di studio, dalla disamina della normativa e della giurisprudenza rilevante nell'ordinamento tedesco.

Nell'opera l'assunzione di una prospettiva di genere, quale prisma attraverso cui leggere o rileggere alcuni istituti e norme del Diritto internazionale ed europeo delle migrazioni internazionali, lungi dal semplificarne la trattazione, sembra far emergere significativi elementi di distonia legislativa e non trascurabili oscillazioni giurisprudenziali.

I ventotto contributi contenuti nelle due sezioni evidenziano, invece, un quadro normativo, a livello internazionale, europeo e nazionale, articolato. Esso registra la coesistenza e talora la non felice intersecazione di fonti relative, da un lato, alla tutela delle donne e, dall'altro, di strumenti in materia di tutela dei migranti, eventualmente suscettibili di una auspicabile interpretazione in senso *gender sensitive* (si pensi

alla “neutralità” della nozione di rifugiato contenuta nell’art. 1 della Convenzione internazionale di Ginevra del 1951) anche alla luce di un approccio intersezionale alla vulnerabilità fondato sull’utilizzo di diversi e complementari strumenti normativi.

Tale quadro di norme annovera fonti di *soft law* quali quelle prodotte dal Comitato delle Nazioni Unite sull’eliminazione delle discriminazioni contro le donne (CEDAW Committee) o dal Comitato sulla protezione dei diritti di tutti i lavoratori migranti e le loro famiglie (*Migrant Workers Committee*) o quali le risoluzioni e raccomandazioni dell’Assemblea Parlamentare del Consiglio d’Europa. Ad esse – che si connotano per un apporto ancora residuale rispetto alla prevenzione e repressione della cd. doppia vulnerabilità delle donne migranti – si affiancano fonti di *hard law*. Queste ultime consistono, in particolare, in una serie di accordi internazionali a vocazione universale o tendenzialmente universale (il Patto internazionale sui diritti civili e politici e il Patto internazionale sui diritti economici, sociali e culturali del 1966, la Convenzione internazionale sull’eliminazione di tutte le forme di discriminazione razziale del 1965, la Convenzione sull’eliminazione di tutte le forme di discriminazione contro le donne del 1979, la Convenzione delle Nazioni Unite sull’eliminazione di ogni forma di discriminazione nei confronti delle donne del 1979 nonché la IV Convenzione di Ginevra relativa alla protezione dei civili in tempo di guerra del 1949 e lo Statuto della Corte penale internazionale del 2002) ma anche a carattere regionale. Escludendo di soffermarsi su importanti atti, adottati in altri contesti regionali, quali la Convenzione di Belém do Pará sulla violenza contro le donne adottata nel 1994 in cui si fa espresso riferimento alla vulnerabilità delle donne migranti, rifugiate e sfollate basti citare, per l’Europa, la Convenzione europea dei diritti dell’uomo e delle libertà fondamentali del 1950, la Convenzione del Consiglio d’Europa sulla lotta contro la tratta di esseri umani del 2005, la Convenzione del Consiglio d’Europa sulla protezione dei bambini contro lo sfruttamento e gli abusi sessuali del 2007, senza escludere le possibili incidenze di un *bill of rights* di nuova generazione quale la Carta dei diritti fondamentali dell’Unione europea).

Tra tutte le fonti internazionali richiamate acquisisce una spiccata (e per certi versi prevedibile) centralità, nell’economia del presente vo-

lume, la Convenzione di Istanbul del Consiglio d'Europa sulla prevenzione e la lotta contro la violenza nei confronti delle donne e la violenza domestica. Una convenzione che può essere considerata il più importante strumento internazionale – adottato nel contesto di un'organizzazione regionale – contenente norme che prevedono in capo agli Stati che l'hanno ratificata l'obbligo di adottare disposizioni interne volte a prevenire la violenza di genere, inclusa quella domestica, a proteggere le vittime e a punire i responsabili. Essa ha registrato peraltro, nella recentissima attualità, l'adesione dell'Unione europea – a cui ha fatto seguito un Codice di condotta che stabilisce le disposizioni interne relative all'esercizio dei diritti e l'adempimento degli obblighi ai sensi della Convenzione medesima – che, alla luce dell'auspicio formulato dal Parlamento europeo, potrebbe “essere considerata una norma minima” atta a fornire all'Unione l'ispirazione per compiere “ulteriori progressi per eliminare la violenza di genere e domestica”.

Centrale nello sviluppo del volume è stato il rapporto tra dato normativo e prassi giurisprudenziale, sovente foriera di soluzioni rispetto a questioni giuridiche ancora aperte anche mediante il richiamo alla contemporanea sussistenza di vari obblighi internazionali con l'obiettivo di apportare una tutela accresciuta e più effettiva. In particolare, l'esame della giurisprudenza internazionale (specialmente quella della Corte europea dei diritti dell'uomo e della Corte di giustizia) e nazionale (in specie quella della Corte di Cassazione) ha evidenziato molteplici potenzialità nel superamento di una classica configurazione neutra del tema oggetto della trattazione alla luce di una serie di orientamenti in senso *gender oriented*.

La ricerca condotta nell'opera si è fondata sulla consapevolezza che la (sempre) delicata gestione del fenomeno migratorio, accresciuta dalla peculiare condizione di vulnerabilità di soggetti quali le donne (ma anche i minori, soprattutto quelli non accompagnati e le persone LGBT), continui a rappresentare un fattore di forte criticità per gli Stati europei *uti singuli* e per l'Unione europea nel suo complesso oltre che per le altre organizzazioni internazionali e una “sfida” complessiva per la piena garanzia dei diritti umani e l'effettività delle tutele.

Tenuto conto poi che le migrazioni internazionali creano anche una serie di effetti all'interno degli ordinamenti giuridici, nella misura in cui coinvolgono molteplici soggetti e "attori" internazionali (Stati, gruppi di Stati, organizzazioni internazionali, organizzazioni non governative, individui, ecc.), il volume ha cercato di rinvenire le risposte alle molteplici questioni aperte anche nei segmenti di "intersecazione" degli ordinamenti nazionali con quello dell'Unione europea e con quello internazionale. Nei primi, come testimonia l'ordinamento italiano, le innovazioni legislative evidenziano singolari coincidenze temporali rispetto al contesto internazionale ed europeo o perché trattasi di atti di ratifica ed esecuzione di convenzioni internazionali (cito, tra tutte, la legge 27 giugno 2013 n. 77 di ratifica ed esecuzione della già citata Convenzione di Istanbul) o perché trattasi della trasposizione di atti di diritto dell'UE (penso al decreto legislativo del 4 marzo 2014 n. 24 di attuazione della direttiva 2012/29/UE del Parlamento e del Consiglio del 25 ottobre 2012 che istituisce norme minime in materia di diritti assicurati e di protezione delle vittime) o, infine, perché trattasi di provvedimenti che, in senso lato, si inquadrano come risposta ordinamentale a pronunce della Corte europea di Strasburgo di condanna del nostro Paese (v. la Legge 19 luglio 2019 n. 69, "Codice rosso" che, oltre che considerarsi nella linea della Convenzione di Istanbul, può rappresentare una sorta di *follow up* rispetto al caso *Talpis*).

In definitiva e senza voler anticipare i profili conclusivi che emergeranno nei singoli contributi, sembra si possa rilevare che le questioni giuridiche riconducibili al tema della violenza contro le donne migranti, risultino, a prescindere dai contesti geo-politici e soprattutto etno-culturali di riferimento, in parte sovrapponibili, in parte non sovrapponibili in ragione della dissimile incidenza di identità culturali e pratiche regionali specifiche che continuano a rappresentare una minaccia rispetto alla piena universalizzazione dei diritti umani e alla compiuta tutela dei soggetti più vulnerabili (quali sovente rappresentano le donne). Invero se la circolazione dei modelli culturali, il rapporto tra "statuti" statuali e "statuti" pluri o sovra-statali in materia di diritti umani potrebbero condurre verso forme di riduzione delle inconciliabilità tra culture giuridiche diverse, il collegamento tra le migrazioni e le forme di violenza di genere che riguardano le donne migranti continua

drammaticamente a evidenziare la difficile realizzazione del Principio della “*humanité une*” (secondo, *inter alia*, la Dichiarazione UNESCO sulla razza e i pregiudizi razziali del 1978).

L’auspicio è che la riflessione condotta in questo volume – che non ha la pretesa di esaurire le molteplici facce di un prisma complesso – possa contribuire a consolidare un approccio alla tutela delle donne migranti “*vulnerability-based*”, fondato su di un’adeguata valutazione della dimensione individuale e di gruppo della loro vulnerabilità (ed eventualmente della loro doppia vulnerabilità) e atto a profilare soluzioni idonee a colmare le lacune esistenti negli strumenti normativi vigenti in una prospettiva *human rights based* di effettività, equità e di rafforzamento delle attuali garanzie.

INTRODUCTION

MIGRANT WOMEN AND GENDER-BASED VIOLENCE IN THE INTERNATIONAL AND EUROPEAN LEGAL FRAMEWORK

*Angela Di Stasi**

This book is the result of a cultural project conceived by a number of lecturers from the Universities of Salerno and La Sapienza (Rome), and widely shared among scholars from Italian and foreign universities, research institutions, and legal practitioners. It is part of, and related to, the research activities promoted by the 2017 PRIN project “International Migrations, State, Sovereignty and Human Rights: Open Legal Issues” of which I am principal investigator and also as University of Salerno Rector’s Delegate for Equal Opportunities.

The research is dedicated to the sensitive issue of violence against migrant women in the light of the relationship among violence, gender, and migration, analysed through a collective reflection of the legal issues, which in some cases are still not adequately dealt with. It is therefore desirable, on the one hand, to fully define the scope of the phenomenon and its specificities and, on the other hand, to examine, also in the light of the jurisprudence, the legal instruments in favour of an “integrated” and, as far as possible, a gender-sensitive approach.

The multidisciplinary network that has produced this work brought together a wide range of legal, meta-legal, and non-legal competences and sensibilities to provide a critical and evolutionary reading of a multidimensional phenomenon that by its very nature tends to elude rigid disciplinary boundaries. The resulting work takes a legal

* Full Professor of International and European Union Law, University of Salerno. E-mail address: adistasi@unisa.it

perspective focused on international and European issues, including important aspects of comparative and criminal law, but also enriched by the contributions of experts from non-legal cultural fields, such as sociology and statistics.

As known, the United Nations Commission on Human Rights has long recognised the link between gender-based violence and discrimination, stressing in Resolution 2003/45 that “all forms of violence against women occur within the context of *de jure* and *de facto* discrimination against women and the lower status accorded to women in society and are exacerbated by the obstacles women often face in seeking remedies from the State”.

Also common knowledge is that gender can be a “disadvantageous” factor in women’s migration, contributing to the vulnerability of migrants, increasing the risk of being subjected to violence, and sometimes leading to situations of serious exploitation in sex work, domestic work, and personal services, but also in industrial and agricultural work. On the one hand, migration can be a unique opportunity for people to leave their country of origin to pursue individual paths towards economic independence and/or personal autonomy. On the other hand, when it constitutes an element of increased risk that is likely to make the women involved even more vulnerable, it is essential to fully apply and interpret, in a gender-sensitive approach, a series of instruments of international, European, and national law to guarantee their human rights, but also to prevent and repress violations thereof.

Indeed, the relationship between vulnerability and migration has long been recognised where gender may constitute a double vulnerability for women as such and as migrants. At the same time, in their tendency towards neutrality and indifference to gender, immigration laws are prone to creating factors that can lead to discrimination, or are themselves directly discriminatory.

Thus, women are – potentially if not probably – vulnerable subjects, even if, given the increasing reference to vulnerability in its various permutations in international and European human rights law, as

well as in legal practice, this concept retains legal vagueness, which makes it difficult to verify on a case-by-case basis. Conversely, the impact of gender issues on migration law may have positive implications in that the use of this concept could lead to a lowering of the threshold necessary to include the violation of an international obligation, as a tool to strengthen the positive protection obligation, and for the purposes of establishing a “qualified” protection obligation within the framework of a what could be called qualified due diligence.

This volume examines the topic along two lines of inquiry reflected in the two sections into which the work is divided. The first deals with violence against women in their countries of origin, which becomes a factor of “forced” migration, while the second concerns violence that women (both “voluntary” or “forced” migrants) can suffer in the countries of destination, with a particular (albeit not exclusive) *focus* on Italy. The circularity of these phenomena prevents a clear distinction between the two reconstructive levels of investigation, which also intersect with delicate issues related to the journey of migrant women, from their countries of origin to the host countries, and the often critical aspects that manifest. Furthermore, migrant women may be characterized by a so-called intersectional vulnerability due to the possible coexistence of various vulnerability factors which, added together, contribute to the formation of a greater or in any case peculiar and distinct degree of vulnerability from that of other individuals or groups who, due to some specific factors or certain characteristics, are also vulnerable.

Specifically, the first section focuses on certain practices that, due to religious and cultural conditioning, determine serious and often systematic forms of violence against women and sometimes children (such as forced marriage, female genital mutilation, forced sterilization, among others), and are sufficient to justify “forced” migration and legitimise forms of international protection, even to the point of determining refugee status. In this section, a number of regional contexts are analysed in depth, namely Afghanistan, Iran, Libya and Ukraine, which for different reasons appear to be particularly critical. This section also analyses issues related to particularly serious viola-

tions of human rights, such as human trafficking and enslavement, as well as crimes of sexual exploitation and abuse committed in refugee camps, without forgetting the legal issues related to the legitimacy of the ban on wearing the Islamic veil and those related to the complex relationship between migration and environmental change, analysed from a gender perspective. The section is enriched by a contribution dedicated to a critical examination of statistical data, disaggregated by gender and age, in line with the 2016 New York Declaration on Refugees and Migrants and the Global Compact for Migration.

The second section explores the legal consequences of violations of migrant women's rights in destination countries in light of the international and EU legal instruments and emerging perspectives (for example, the Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence presented by the Commission on 8 March 2022). This section then analyses particularly serious forms of violence against women also from a sociological point of view, such as trafficking for the purpose of sexual exploitation, but also so-called intersectional discrimination and fighting hate crimes against women. Special attention is dedicated to certain rights, such as the right to health, considered in its constitutional and international dimension, and the right to documents as a means of guaranteeing the effectiveness of certain fundamental rights. Much space is devoted to the analysis of case law, with particular reference to that of the European Court of Human Rights in cases of domestic violence, and more generally, the guarantee of the rights of migrant women, as well as that of the Court of Justice (with particular reference to the Islamic veil and discrimination in the workplace) and the Italian Court of Cassation in judgements on international protection. Gender-based violence is examined in depth from a comparative perspective, while domestic violence is the subject of a criminal policy analysis from the perspective of so-called networked legality. Due attention is also given to the relationship between migrant women and the criminal relevance of the culture factor in the international, European, and national context, as well as an in-depth examination of some critical aspects concerning second-generation migrants "beyond the risk of criminalisation". Another very specific issue addressed is that of

the link between the gender dimension and the so-called vicarious trauma related to the case of working with refugees. Finally, the section is enriched by an analysis of relevant German legislation and case law.

In this work, the gender perspective is the prism through which to read or re-read some of the institutions and norms of international and European law on international migration, which far from simplifying the subject seems to bring out significant elements of legislative distortions and not insignificant jurisprudential oscillations.

Indeed, the twenty-eight contributions included in the two sections reveal an articulated legal framework at the international, European, and national level. It reflects the coexistence and in part the overlapping of sources relating to the protection of women on the one hand, and instruments for the protection of migrants on the other hand, possibly susceptible to a desired interpretation from a gender-sensitive perspective (consider the “neutrality” of the refugee concept in Art. 1 of the 1951 Geneva Convention) also in the light of an intersectional approach to vulnerability based on the use of different and complementary regulatory instruments.

This regulatory framework includes sources of soft law, such as the United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee), the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (Migrant Workers Committee), and the resolutions and recommendations of the Council of Europe Parliamentary Assembly. These sources – still characterised by a residual contribution to preventing and repressing the so-called double vulnerability of migrant women – are complemented by hard law sources. In particular, the latter consist of a series of international agreements with a universal or tendentially universal vocation (such as the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights of 1966, the International Conventions on the Elimination of All Forms of Racial Discrimination of 1965, the Convention on the Elimination of All Forms of Discrimination against Women of 1979, the Fourth Geneva Convention relative to the Protection of Ci-

vilian Persons in Time of War of 1949, and the 1998 Statute of the International Criminal Court), but also of a regional nature. Excluding to recall important acts, adopted in other regional contexts such as the Belém do Pará Convention on violence against women adopted in 1994 in which express reference is made to the vulnerability of migrant, refugee and displaced women, it is sufficient to mention, for Europe, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the Council of Europe Convention on Action against Trafficking in Human Beings of 2005, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 2007, without excluding the potential impact of a “new generation bill of rights” such as the Charter of Fundamental Rights of the European Union. Of all the international sources referred to, the Istanbul Convention of the Council of Europe on preventing and combating violence against women and domestic violence acquires a marked (and in some ways predictable) centrality in the economy of this volume. A Convention that can be considered the most important international instrument – adopted in the context of a regional organization – containing provisions that oblige States that have ratified it to adopt internal provisions to prevent not only gender-based but also domestic violence, to protect the victims, and to punish the perpetrators. Indeed, the European Union has recently acceded to the Convention, – followed by a Code of Conduct laying down the internal arrangements regarding the exercise of the rights, and the fulfilment of the obligations under this Convention – which, in the words of the European Parliament, should “be regarded as a minimum standard” that will inspire the Union “to make further progress towards the elimination of gender-based and domestic violence”.

Central to the development of this book is the relationship between legislation and case law, often a harbinger of solutions to unresolved legal issues also through the reference to the simultaneous existence of various international obligations in order to provide a greater and more effective protection. In particular, the examination of international jurisprudence (especially that of the European Court of Human Rights and the Court of Justice) and national jurisprudence (in

particular that of the Italian Court of Cassation) reveals multiple potentialities for overcoming the classic neutral configuration of the issue in light of a series of gender-oriented guidelines.

The research carried out in this book is based on the awareness that the (always) delicate management of the migration phenomenon, aggravated by the particular state of vulnerability of women (but also minors, especially if unaccompanied, as well as LGBT people) continues to be an extremely critical factor for each European State and for the European Union as a whole, as well as for other international organizations, and a general “challenge” for the full guarantee of human rights and their effective protection.

Moreover, considering that international migration also has a series of effects within national legal systems, insofar as it involves multiple subjects and international actors (States, groups of States, international organizations, non-governmental organizations, and individuals, among others), this volume has attempted to find answers to many open questions also at the intersection of national legal systems with those of the European Union and international legal systems. Within the former, as the Italian legal system testifies, legislative innovations highlight singular temporal coincidences with respect to the international and European context, either because they are acts of ratification and implementation of international Conventions (among others, Law no. 77 of 27 June 2013 on the ratifications and implementation of the aforementioned Istanbul Convention), or because they concern the transposition of acts of European Union law (such as Legislative Decree no. 24 of 4 March 2014 implementing Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support, and protection of victims of crime), and finally, because they deal with measures that, in a broad sense, are designed as a legal response to the rulings of the Strasbourg Court condemning Italy (Law no. 69 of 19 July 2019, so-called “Codice rosso”, which in addition to being considered in line with the Istanbul Convention, may represent a kind of follow-up to the *Talpis* case).

In summary, and without wishing to anticipate the final remarks that will emerge from the individual contributions, it would seem that the legal issues related to violence against migrant women – regardless of the geopolitical and particularly the ethno-cultural contexts of reference – are partly overlapping and partly not, due to the different incidences of cultural identity and specific regional practices, which continue to pose a threat to the complete universalisation of human rights and the full protection of the most vulnerable, who are often women. Indeed, if in the circulation of cultural models, the relationship between national “statutes” and multi- or supranational “statutes” on human rights could lead to reducing the incompatibility between different legal cultures, the link between migration and forms of gender-based violence affecting migrant women continues to dramatically highlight the difficulty of realising the principle of “one humanity” (according to, *inter alia*, the UNESCO Declaration on Race and Racial Prejudice of 1978).

The hope is that the analyses and reflections presenting in this volume – without claiming to exhaust the multiple facets of a complex prism – will contribute to the consolidation of a vulnerability-based approach to the protection of migrant women, according to an adequate assessment of the individual and collective dimensions of their vulnerability (and possibly of their double vulnerability), and capable of outlining solutions to fill the gaps in existing legal instruments from a human rights-based perspective with regard to the effectiveness, fairness, and strengthening of existing guarantees.

I SEZIONE/PART I

**DONNE VITTIME DI VIOLENZA NEL PAESE DI ORIGINE
WOMEN VICTIMS OF VIOLENCE IN THE ORIGIN
COUNTRY**

NOT JUST A MATTER OF NUMBERS.
PRINCIPAL STATISTICAL SOURCES
ON GENDER AND MIGRATION

*Alessandro Polli**

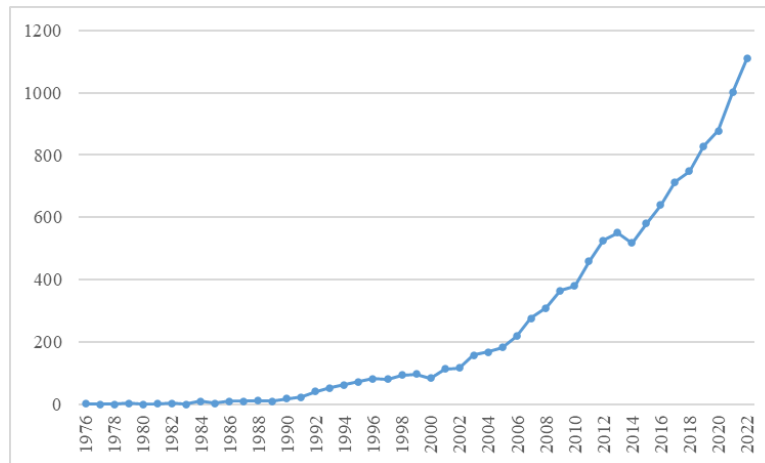
SOMMARIO: 1. Introduction. – 2. Principal statistical sources on gender and migration. – 2.1. International migration stock data. – 2.2. International migration flows data. – 3. The debate on gender breakdown in migration data. – 4. Concluding remarks.

1. *Introduction*

“Gender” refers to a set of characteristics, qualities, values, beliefs, and behaviors socially determined. As a social construct, gender varies from society to society and can change over time. In gender studies the concept of intersectionality plays a crucial role. More specifically, gender is hierarchical and produces inequalities that interact with other social and economic inequalities. Discrimination based on gender interacts with other elements, such as social and economic *status*, age, and sexual orientation.

The topic of gender and migration has gained increasing attention in literature only in the last three decades. Scientific production, essentially occasional for years after the first article of 1976, has grown exponentially since 1990 (Figure 1).

* Researcher in Economic Statistics, La Sapienza University of Rome. E-mail address: alessandro.polli@uniroma1.it

Figure 1 – Scientific production on gender and migration

This growth reflects two major paradigm shifts. The first shift is connected to the growing attention to female migration, while the second stems from the awareness that the study of migration in a gendered dimension requires more sophisticated theoretical and analytical tools than those used in the past¹.

Migration is a highly complex process, and its study should not concern only the economic domain. In order to achieve a better understanding of the migration process, one should consider other dimensions of analysis, among which gender plays a crucial role².

Indeed, as a social construct, gender is a central analytical category. Gender differences create power relations that lead to inequalities between men and women. These relationships change over time and vary according to the sociocultural context, interacting with other factors, including ethnicity, nationality, social class, and migration *status*.

¹ N. PIPER, *Gender and migration*, Paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration, Geneva, 2005.

² A.J. PETROZZIELLO, *Gender on the Move: Working on the Migration-Development Nexus from a Gender Perspective*, Santo Domingo, UN Women, 2013.

Therefore, gender influences all aspects of the migratory experience, as it determines the reasons for migrating, the choice of relational networks that migrants use to move, the integration into the host country's labor market, and decisions relating to remittances to their country of origin.

Two main aspects characterize the current migratory flows. On the one hand, there is a growing feminization of migration, understood as the number of migrant women who independently decide to move abroad for work or education. On the other hand, many studies have proved the existence of a "double disadvantage" for female migrants, who, due to their gender and migration *status*, are more likely to suffer discrimination or ill-treatment than male migrants³.

Thus, adopting a gender perspective can increase the effectiveness of migration programs and policies, although gender equality should be a goal in itself, not a tool to increase the effectiveness of those programs.

Another relevant analytical dimension of the migratory process is the spatial one. Many migration and development programs focus exclusively on countries of origin. These programs favor the national-state dimension rather than that of global capitalism, the functioning of which requires cheap, often imported labor⁴.

This approach tends to overlook many aspects of the migration-development nexus. Firstly, development is not a challenge only for the countries of the global South but also for developed countries, grappling with the crisis of the welfare state, an aging population, and a growing demand for home care, which has led to the birth and diffusion of global care chains.

Instead of trying to fix these structural problems, the governments of developed countries prefer to import migrant workers without designing adequate migration policies. This choice leads to an unsustainable situation in which there is a demand for migrant labor but little or no arrangements for migrants to meet that demand legally.

³ Z. MEGHANI (ed.), *Women Migrant Workers. Ethical, Political and Legal Problems*, London, 2016.

⁴ A.J. PETROZZIELLO, *Gender on the Move*, cit.

From a statistical point of view, a detailed analysis of the numerous aspects linked to migrations is only possible with the availability of disaggregated data, for example, by age group and gender. We collect disaggregated data when we focus on the groups that belong to the population and are homogeneous for one or more characteristics.

Without gender-disaggregated data collected at different stages of migration, it could be hard to measure gender differences and identify specific vulnerabilities related to the migration process. Furthermore, having disaggregated data on migration is crucial to design evidence-based migration policies.

In this paper, we focus on two particular aspects related to data on gender and international migration. In the first section, we present a list of statistical sources currently available. In the second section, we discuss the need for data on migration disaggregated by sex and age group, as intensive international debates have already highlighted.

2. Principal statistical sources on gender and migration

Statistical data on international migration are disseminated for migrants' stock and flows. Data on the migrants' stock refer to the number of people whom a given moment – usually on mid-year or the 31 December of a given year – live in a country of habitual residence other than their country of origin (which is not necessarily the country of birth or citizenship). National statistical offices collect data on migratory stocks through census, population records, and surveys, and data are often available by age group and sex.

Data on migratory flows refer to the number of people who change their country of habitual residence for a given period – usually one year. At the individual level, migration is a process that takes place over time and runs through a defined space, known as a migratory corridor. The migratory corridor is “the hypothetical connection between two places, through which people may or may not migrate”⁵ and often involves crossing one or more national borders. Thus, the measure of

⁵ J. CARLING, *Migration corridors: conceptual and methodological issues*, Paper prepared for the NORFACE-funded THEMIS project, 2010.

the migratory flow requires the observation of migrants on multiple occasions. The greater complexity of measuring migration flows compared to measuring the migration stock means that statistics on migration flows are only available for countries that have well-organized national statistical offices.

Furthermore, while from a statistical point of view, there is a well-established definition of the country of habitual residence (the country where a person lives for more than one year), from a legal point of view, each country adopts a specific definition of habitual residence, often hampering cross-national comparisons. There are also significant differences related to the different methods of data gathering.

The different granularity of data provided by national statistical offices further hampers cross-country comparisons. Many countries can provide only overall data on the migrant stock, relating to the total number of immigrants habitually residing at any given time. Other national statistics offices collect and publish bilateral data that refer to the number of people migrating to or from the country, broken down by countries of origin or destination.

In the following, we briefly present the characteristics of the principal data collections on migration, distinguishing between migrants' stock databases and those on migratory flows, referring to Hennebry *et al.*⁶, Buettner⁷ and Abel⁸ for further details and insights.

2.1. *International migration stock data*

The easiness of gathering statistical data on the migrants' stock makes stock data the principal source of information on international migration.

The United Nations is the leading producer of statistical information on the stock of international migrants. The United Nations col-

⁶ J. HENNEBRY, H. KC, K. WILLIAMS, *Gender and Migration Data: A Guide for Evidence-based, Gender responsive Migration Governance*, Geneva, 2021.

⁷ T. BUETTNER, *Stocktaking of migration data*, in *KNOMAD Paper Series*, 2022, n. 42.

⁸ G. ABEL, *Gender and migration data*, in *KNOMAD Paper Series*, 2022, n. 44.

lects data from national censuses and, where available, population registers or other nationally representative surveys.

The Department of Social Affairs (UN DESA) publishes the most comprehensive dataset on the stock of international migrants. The dataset contains regularly updated data on total migration and gender-specific bilateral migratory stocks of all countries member of the United Nations every five years from 1990 to 2020⁹. The data, provided by the national statistical offices, are integrated with statistics on refugees not included in the primary sources¹⁰ and processed to obtain aligned information at mid-year.

The DESA dataset is the basis of all the dissemination activities of statistical information on the international migrants' stock carried out by the various divisions of the United Nations. For example, the United Nations Statistics Division (UNSD), formerly the United Nations Statistics Office, regularly publishes data updates through the Demographic Yearbooks. UNdata, a new Internet-based data service, makes United Nations statistical databases available through a single access point.

The United Nations Population Division (UNPD) publishes the Global Migration Database (GMD). The database is a comprehensive collection of data on the stock of international migrants, classified by country of birth and country of habitual residence, sex, and age group. The estimates combine data from UNSD databases and other official sources, such as censuses and population registries for more than 200 countries and territories.

The International Labour Organization (ILO) is the specialized agency of the United Nations that promotes social justice and internationally recognized human rights with particular reference to labor rights in all its aspects. The ILO publishes estimates of labor migrant populations, applying a method that combines data on the total migrant stock from DESA with labor force participation rates from their collection of labor migration statistics. The ILO does not publish

⁹ United Nations Department of Economic and Social Affairs, *International Migrant Stock 2020. Methodology Report* (United Nations Database POP/DB/MIG/Stock/Rev.2020), New York, 2020.

¹⁰ G. ABEL, *Gender and migration data*, cit.

country-specific information, but its reports contain regional summaries disaggregated by sex¹¹.

Also within the United Nations, the Economic Commission for Latin America and the Caribbean (CELADE) provides data on total bilateral international migratory stocks for 19 Latin American and Caribbean countries, disaggregated by sex, based on the 1990, 2000, and 2010 censuses.

The statistical office of the European Union (Eurostat) plays a prominent role among the other producers of statistics on migration. Eurostat publishes two data collections about the migratory stock and the flows of over 30 countries in Europe and Central Asia. The national statistical offices of the member countries of the European Union, as well as other countries, provide the data on migration. Eurostat data is available on a web-based database. Data on the migrant stock is available by country of birth and country of habitual residence, disaggregated by sex and age group¹².

Lastly, the Organization for Economic Cooperation and Development (OECD) publishes data in various formats on the total migration stock of the 37 member countries of the organization. The most relevant OECD database is the DIOC (Database on Immigrants in OECD Countries), which provides an overview of the size and socio-economic characteristics of population born abroad and residing in OECD countries. Based on censuses carried out in more than 100 countries, the DIOC data, updated every five years starting from 2000/2001, are disaggregated by age, gender, level of education, and some key variables such as place of birth, length of residence, employment *status* and profession¹³. The summary tables are available in paper format on the International Migration Outlook and in Excel format from the OECD

¹¹ International Labour Organization, *ILO Global Estimates on Migrant Workers: Results and Methodology*, Geneva, 2021.

¹² Eurostat, *International Migration & Citizenship datasets available at Eurostat's website*, Directorate F: Social statistics - Unit F-2: Population and migration, Luxembourg, 2021.

¹³ Organization for Economic Cooperation and Development, *Migration Data Brief: The new immigrants. Global trends in migration towards OECD countries between 2000/01 and 2015/16*, Paris, 2019.

official website, while the complete dataset on the stock of international migrants is available in the International Migration Database.

2.2. *International migration flows data*

From an administrative point of view, when an individual transfers his habitual residence from a country of origin to a destination country for more than one year, this transfer entails his removal from the population register of the country of origin and his registration in the host country. Official statistics classify this movement as international migration, even if this definition leads to some difficulties in recognizing the *status* of migrants since the length of stay is unknown at the time of transfer.

We classify data on migratory flows according to the way they are collected. National statistical offices rely on various sources to collect this data, such as population registers, residence or work permits, and nationally specific surveys. National statistical offices transmit the data to international organizations for further processing so that the data disseminated by these organizations are categorized as secondary.

However, the availability of statistics on long-term international migrant flows remains very limited. Only developed countries have well-organized national statistical offices and can collect data on international migration with some detail. Yet even in these countries, the quality of the data on the flow of immigration is higher than that on the flow of emigration, often underestimated. Conversely, developing countries, which do not have effective national statistical offices, are often unable to collect detailed data on international migration flows.

As a result, secondary producers of migration flow statistics rarely disseminate data on migration flows disaggregated by sex. For example, the UN DESA database publishes forecasts of net migration flows for all UN member countries without disaggregation by sex¹⁴. The United Nations Statistics Division, which collects data on migrant flows from national statistical offices, does not publish data on international migration flows in the Demographic Yearbook since 1989. Cur-

¹⁴ United Nations Department of Economic and Social Affairs Population Division, *World Population Prospects: The 2019 Revision*, New York, 2019.

rently, data on migration flows are available on a web-based platform without disaggregation by sex.

The OECD also makes various databases on international migrant flows available for consultation on the web. The principal consultation tool on migration flows is the International Migration Database, which contains information on the incoming and outgoing flows of the foreign population for the 37 member countries of the organization and Russia. The latest year for which data are available is 2018 but without a breakdown by sex.

Therefore, the publication of data on international migration flows disaggregated by sex is the exception rather than the rule. For example, CELADE provides data on total international and bilateral migration flows for 19 Latin American and Caribbean countries, disaggregated by sex, covering three successive census rounds since 1990. The ILO's Asia and Pacific Regional Office publishes sex-disaggregated statistical information on international migration flows from ASEAN countries. In addition, UNESCO publishes data disaggregated by sex on foreign student mobility for the 189 member countries of the United Nations.

The European Union has made a great effort to encourage national statistical offices to provide data on migration that could be more easily harmonized¹⁵. Eurostat collects statistical information on migratory flows from member countries and some selected non-EU European countries within their datasets on bilateral migratory flows. The data on migration flows collected by Eurostat are disaggregated by sex and classified into three categories based on the residence country, the citizenship country, and the country of birth. Statistics on immigration and emigration flows cover many European migration corridors. However, the data on immigration flow communicated by the destination country are of better quality due to the legal and administrative steps required for an individual to move to a new country. The data collected by Eurostat are available through an internet-based database.

¹⁵ Regulation 2007/862/EU of the European Parliament and of the Council on *Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers*, of 11 July 2007, in Office Journal of the European Union of 31 July 2007, pp. 23-29.

3. *The debate on gender breakdown in migration data*

As noted above, data on international migration have significant shortcomings, especially about gender. But gender is a crucial factor in every stage of the migration process, from the decision to migrate to the choice of relational networks that help migrants to move, to the entry and integration into the host country's labor market, to the decision to return home.

The 2030 Agenda¹⁶ considers a human rights-based approach to migration of the utmost importance. Hence the relevance of gender disaggregation of migration data for the governance of international migration. Data disaggregated by sex and gender are not only essential to safeguard the rights of migrants and prevent exploitation but also to maximize the economic and social benefits of migration.

For example, data on refugees and asylum seekers do not provide either information on gender identity or gendered reasons for seeking asylum (like cases of gender-based violence). The lack of data on migrations disaggregated by gender prevents governments from estimating the contribution of migrant women to the economies of the countries of origin (through remittances) and destination, also in terms of their contribution to the welfare system through their paid and unpaid care work. Migrant women represent about half (48%) of international migrants, and such gaps in migration data affect the correct implementation of migration policies and hamper the achievement of SDG 5 (Leave no one behind).

An important turning point occurred on 19 September 2016 when the United Nations General Assembly unanimously approved the New York Declaration for Refugees and Migrants¹⁷. The New York Declaration contains a wide range of commitments by member states to strengthen and enhance mechanisms to protect people on the move.

Concerning data collection, points 25, 29, 31, and 40 of the Declaration appear relevant. In these points, the Member States undertake

¹⁶ United Nations, *Transforming our world: The 2030 Agenda for Sustainable Development*, New York, 2015.

¹⁷ United Nations, *New York Declaration for Refugees and Migrants. Resolution adopted by the General Assembly on 19 September 2016*, New York, 2016.

to collect accurate information on large movements of refugees and migrants, to adopt measures to address the particular vulnerabilities of women migrants and minors, and to integrate a gender perspective into responses to large movements of refugees and migrants. Consequently, Member States underline the need for better data collection, which should contain a gender and age group breakdown and include other information, albeit in compliance with national data protection and privacy laws.

The New York Declaration paved the way for the Global Compact for Safe, Orderly, and Regular Migration¹⁸. The Global Compact defines the map to accelerate progress toward achieving the goals set by the 2030 Agenda.

The Global Compact for Migration sets out the gender-responsiveness principle. In other words, the Global Compact ensures the respect of the human rights of everybody (women, men, girls, and boys) in every stage of migration and that their specific needs are understood and addressed. Implementing gender-responsiveness, data disaggregated by gender and age group play a central role in all phases of the migration process.

Goal 1 of the Global Compact reaffirms the need to collect, analyze and disseminate accurate, reliable, and comparable data, disaggregated by gender, age, migration *status*, and other relevant characteristics in national contexts, while upholding the right to privacy under the human rights international law and personal data protection, as a basis for evidence-based migration policies.

The approval of the Global Compact for Migration and the creation of the United Nations Network on Migration have given a strong *impetus* to the international political agenda. The Global Compact for Migration identifies specific actions to achieve the commitments of Goal 1, such as improving national data collection systems, deepening collaboration between national statistical offices on the production of migration data, improving comparability and compatibility of international data, establishing research activities and training centers¹⁹.

¹⁸ United Nations, *Global Compact for Safe, Orderly and Regular Migration*, New York, 2018.

¹⁹ J. HENNEBRY, H. KC, K. WILLIAMS, *Gender and Migration Data*, cit.

The data strategy 2020-2022 outlined by the UN Secretary-General²⁰ plans to design an ecosystem that can enable the full potential of UN-produced data and close the gender data gap, proposes to use data to measure gender gaps and to establish a gender-responsive data management council for this purpose.

Consistent with the data strategy set forth by the UN Secretary-General, the Migration Data Strategy 2020-2025 of the International Organization for Migration²¹, the most prominent intergovernmental organization in the field of migration, also commits to consider gender equality as a fundamental principle, facilitating gender analysis through the publication of data disaggregated by gender and other variables of interest, such as sex, ethnicity, education.

Finally, the United Nations Migration Network is raising awareness in the international community to build a more robust information base about migration and to promote its systematic use in a new evidence-based approach to migration policy²².

4. *Concluding remarks*

Despite the debate summarized in the previous section, the path toward a better gender responsiveness of migration data appears long and fraught with difficulties. Hennebry *et al.*²³ identify the five main gender gaps in migration data. These include shortcomings in the production and collection of data disaggregated by sex and gender, gaps in data on the intersectional experiences of women and people with different gender identities, inconsistencies in the type and frequency of measurements, lack of capacity of national statistical offices, inadequacy of data systems, challenges posed by migration data to transparency, accountability, and ethics.

²⁰ United Nations, *Data Strategy of the Secretary-General for Action by Everyone, Everywhere with Insight, Impact and Integrity 2020–2022*, New York, 2020.

²¹ International Organization for Migration, *IOM Migration Data Strategy: Informing Policy and Action on Migration, Mobility and Displacement 2020/2025*, Geneva, 2021.

²² *Ibid.*

²³ J. HENNEBRY, H. KC, K. WILLIAMS, *Gender and Migration Data*, cit.

Gender breakdown of migration data would provide a better understanding of how gender affects the multiple dimensions of migration and enable policymakers to design effective evidence-based programs. As shown above, migrant stock databases contain the most comprehensive sex-disaggregated data, while data collections on migration flows tend to be geographically or temporally limited. Furthermore, sex-specific data are more widely available for the whole migrant population than more detailed bilateral data.

Data gathering methods curb the quantitative analysis of the impact of gender in migration. In many countries, the historical reconstruction of migrants' stock relies on censuses carried out many years ago when migration and gender issues were less relevant to decision-makers and public opinion. Consequently, where alternative data sources are lacking, secondary producers of statistics such as UN DESA estimate the stock of the migrant population but do not publish data disaggregated by age group and gender. The problem is even worse for data on migration flows.

But disaggregating data on migration may not be enough, and it emerges the need to adopt a gender analysis framework at all stages of the data production process²⁴. The considerations made in the first section have shown that the lack of data for the study of migration from a gender perspective determines gaps in governance and exacerbates gender impacts on migrants²⁵.

A particularly complex issue refers to the operationalization of the gender responsiveness principle stated in Goal 1 of the Global Compact for Migration, as this passage is essential for promoting a gender-responsive migration policy based on respect for human rights. Gender responsiveness should guide the gathering and use of data on migration, developing data collection methodologies oriented towards women and people with different gender identities, also including intersectional information.

Using such data to define migration governance at all levels of the policy cycle appears quite problematic. Adopting a gender responsive-

²⁴ IOM and McKinsey & Company, *More than numbers: How migration data can deliver real-life benefits for migrants and governments*, Geneva, 2018.

²⁵ J. Hennebry *et al.*, *cit.*

ness approach requires willingness and commitment, not only in the data production stage but also in their use to guide migration policy choices. Neglecting such considerations can expose migrants to risks and vulnerabilities, not least the worsening of inequalities.

Abstract

Several studies have identified factors affecting the migratory process, among which expectations of gender, ethnicity, race, age, and social class play a prominent relevance. More specifically, gender plays an essential role in women's migratory experience. In this paper, after reviewing the principal statistical sources of gender migration, we discuss the need for more migration data sets disaggregated by sex and age, as either the New York Declaration for Refugees and Migrants and the Global Compact for Migration underlined. Also, the IOM points out that data disaggregated by sex and age allows to identify and analyze gender-specific migration processes and specific gender vulnerabilities.

KEYWORDS: Gender – migration – gendered migration – gender-disaggregated data – statistical sources

NON SOLO UNA QUESTIONE DI NUMERI. PRINCIPALI FONTI
STATISTICHE SU GENERE E MIGRAZIONI

Diversi studi hanno identificato i fattori che influenzano il processo migratorio, tra i quali un ruolo centrale è rivestito da aspettative di genere, etnia, razza, età e classe sociale. In particolare il genere esplica un ruolo essenziale nell'esperienza migratoria delle donne. In questo articolo, dopo aver esaminato le principali fonti statistiche sulla migrazione di genere, discutiamo sulla necessità di disporre di dati statistici sulle migrazioni disaggregati per sesso ed età, come sottolineato sia dalla Dichiarazione di New York per i rifugiati e i migrant, sia dal Global Compact for Migration. Anche l'OIM sottolinea che dati disaggregati per sesso ed età consentono di identificare e analizzare processi migratori specifici di genere e vulnerabilità specifiche di genere.

KEYWORDS: Genere – migrazioni – migrazioni di genere – dati disaggregati di genere – fonti statistiche

