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# Toward effective protection of victims of human trafficking in mixed migration flows: referral mechanisms shaped on individual need. The Italian experience and the European perspective

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An overview of emerging trends on trafficking of human beings in Italy shows not only an extremely heterogeneous phenomenon but also a complex overlapping of experiences and need of protection of every single victim. In the context of mixed migration flows, persons reaching Italy through the Central Mediterranean and the Balkan routes have often experienced or are at risk of trafficking, and they also apply for international protection upon arrival. Legal categories such as “victims,” “asylum seekers,” and “refugees” are increasingly interconnected and not exhaustive in describing individual experiences and multifaceted vulnerabilities. Against this background, ensuring early identification and assistance for victims of trafficking among asylum seekers is extremely relevant. In Italy, this has led to the development of good practices aimed at implementing the coordination between the asylum and the anti-trafficking systems. In particular, specific Guidelines for Asylum authorities have been adopted to preliminarily identify potential victims of trafficking within the asylum procedure and enable their effective access to protection measures. To comply with specific provisions of the European Trafficking Directive and its transposition into the Italian legal framework, the Guidelines have created a referral mechanism among the asylum authorities and the anti-trafficking system that is unique in the European context. For this reason, the present contribution aims at describing this good practice, its implementation and effects—also at the juridical level—and its limits. Indeed, after the adoption of the instrument, a higher recognition rate of international protection for victims of trafficking has been registered in Italy, both at the administrative and judicial levels; asylum seekers and refugees have also increased their access to the specific protection program for trafficking survivors. In general, the system has strengthened its capacity to fulfill the legal obligation of identifying victims through a multi-agency approach. On the other hand, the ability to conduct screening and preliminary identification of victims of trafficking among asylum seekers is still limited to the “victim model” in terms of gender (women) and form of exploitation (sexual), and to certain stages of the asylum procedure (the first instance before the asylum authorities). With reference to this latter, a comprehensive protection response at the borders is missing despite the political debate on sea and land arrivals to Italy and the recent introduction of border procedures for the assessment of asylum applications. Given the geographical and political centrality of the south-Mediterranean situation in the current migration agenda, the goal of this paper is to analyze the Italian experience on referral mechanisms among trafficking and asylum as an experience that would help to shape future European prospects.

The ongoing evolution of mixed migration flows—with particular reference to secondary movement across European countries—and the revised European Directive on trafficking in persons impose the promotion of a reflection on referral mechanisms with a transnational perspective enabling effective protection and the meeting of specific human rights.

#### KEYWORDS

**human trafficking, human rights, mixed migration flows, identification of victims of trafficking, international protection, referral mechanisms**

## 1 Introduction

In Europe and in Italy, trafficking of human beings is closely related to the so-called “mixed migration flows.”<sup>1</sup> Approaching the migration phenomenon through a person-centered lens, it could be said that those crossing the borders have different experiences and specific needs. These entail that they could be in need of different forms of protection, including international protection and specific forms of protection for victims of trafficking. Among persons reaching Europe and Italy, indeed, there are those fleeing armed conflicts, the impact of climate change, human rights violations and persecutions; unaccompanied and separated minors; survivors of gender-based violence and or torture; persons with disabilities, pregnant women and families. These profiles and vulnerabilities could be interrelated and linked to trafficking experiences or factors that expose them to the risk of trafficking.

In this context, legal categories such as “victims,” “asylum seekers,” and “refugees” are not exhaustive in describing individual experiences and multiple vulnerabilities (ICAT, 2022); on the other hand, they are increasingly interrelated at different levels.

In Italy, a country particularly affected by migration flows from the Mediterranean and Balkan Routes, this interconnection has become increasingly frequent over the years. The nexus between trafficking and asylum takes place at the phenomenological level—as shown by an overview of trends on trafficking and asylum applications in Italy—and in the institutional and legal framework—as shown by specific provisions aimed at establishing referral mechanisms between the anti-trafficking and the asylum systems.

For the purposes of this article, it is important to clarify the meaning of these two terms in the Italian context. The term “asylum system” refers broadly to the legal and policy framework developed for the protection and assistance of asylum seekers and refugees in

Italy.<sup>2</sup> It is the Italian transposition of the Common European Asylum System (CEAS) (EUAA, 2020) and includes the asylum authorities involved at the administrative and judicial levels in the procedure for the recognition of international protection (AIDA and ECRE, 2024a).<sup>3</sup> The asylum system, which is coordinated at a national level by the Ministry of the Interior, is also composed of the actors involved in the reception measures for asylum seekers and refugees (AIDA and ECRE, 2024b) and of the local and international organizations involved in providing asylum-seekers and refugees with information and assistance including the borders and during disembarkation procedures.

The term “anti-trafficking system” broadly refers to the legal and policy framework established for the protection of victims of trafficking in Italy.<sup>4</sup> The policies framework is given by the National Action Plan on Trafficking in Human Beings (Department of Equal Opportunities, Council of Ministers of Italy, 2022), which sets out the strategy to protect victims and countering the crime in the country and includes the National Referral Mechanism (NRM) for the identification, assistance and protection of victims of human trafficking and/or severe exploitation (Department of Equal Opportunities, Council of Ministers of Italy, 2023).<sup>5</sup> The

2 The main legal provisions on international protection in Italy are included in the Legislative Decree 251/207, which has transposed the EU Directive 2011/95; Legislative Decree 25/2008, which has transposed the EU procedure Directive 2013/32, and in the Legislative Decree 142/15, which has transposed the EU Directive 2013/33 on the standards for the reception of applicants for international protection. The Immigration Act, adopted with the Legislative Decree 286/98, includes the provisions on entry and residence of third-country nationals.

3 In Italy, the Territorial Commissions for the recognition of international protection are the first instance authorities deputed to assessment of the asylum applications. There are more than 20 Territorial Commissions in the whole territory. At the central level, the National Commission for the Right of Asylum has a coordination role. For further information on the asylum procedure in Italy and its functioning refer to AIDA and ECRE (2024a, 2024b).

4 The key legal provisions are included in the Italian Immigration Act (Legislative Decree No. 286/1998) with specific reference to Article 18 that foresees specific projects of assistance and protection and the issuance of a specific permit of stay for victims, also without their cooperation in criminal proceedings.

5 The National Action plan against trafficking and serious exploitation of human beings (2022–2025) was adopted by the Italian Council of Ministers and published by the Department of Equal Opportunities in 2022. The National Referral Mechanism was updated in 2023.

1 The European Commission has adopted the definition of mixed migration flows, as a “complex migratory population movement including refugees, asylum seekers, economic migrants, and other types of migrants as opposed to migratory population movements that consist entirely of one category of migrants.” The International Organization for Migration (IOM) uses the term with the following definition: “A movement in which a number of people are traveling together, generally in an irregular manner, using the same routes and means of transport, but for different reasons.”

anti-trafficking system is mainly composed of the 21 anti-trafficking projects operating in different areas throughout the Italian territory and funded by the Department of Equal Opportunities of the Presidency of the Council of Ministers of the Italian Government.<sup>6</sup> The anti-trafficking projects are implemented by the anti-trafficking specialized and qualified organizations: public or private bodies entitled to identify victims of trafficking and provide them with adequate protection, assistance, long-term integration measures, including safe shelters.<sup>7</sup>

In recent years, the importance of coordination between anti-trafficking and asylum actors has increased, also due to new trends in mixed migratory movements. This has led to the development of measures aimed at coordinating the two systems.

Indeed, the Italian context could serve as a working example for wider reflection, including at European level.

## 2 The context and the different levels of the interconnection among anti-trafficking and international protection systems

### 2.1 An overview on recent trends on trafficking and serious exploitation and its interconnection with international protection in Italy

The analysis of trends related to mixed migration flows allows us to take a closer perspective to a constantly evolving phenomenon while, at the same time, to put into focus the complexity of human mobility, avoiding stereotypes and categorizing of experiences.

A look at the profiles, nationalities and needs of those arriving in Italy make clear the interconnection between trafficking and asylum. In many cases those reaching in Italy by sea or via the Balkan Route apply for international protection (UNHCR, 2023; Frontex, 2023; IRC, 2024)<sup>8</sup> and, at the same time, have experienced or are at risk of trafficking and exploitation also in the country of destination, during

and after the procedure for the recognition of international protection (Savill and Hoff, 2024).

Despite this empirical consideration, there is a lack of data collection on the link between trafficking and asylum and, more practically, there are no aggregated data on people who are asylum seekers, refugees and identified as survivors or at risk of trafficking at the same time. This is not only a gap at the Italian level, but also more broadly at the European level as well.<sup>9</sup> At the global level, the UNODC, 2022 Global Report on Trafficking in Persons—covering the year 2020—includes in its key findings the impact of conflicts and forced displacement as factors that increase the risks of trafficking not only in countries affected by hostilities but also outside of crisis areas (UNODC, 2022). Climate change also has a domino effect on trafficking: it increases economic vulnerability, which is exploited by traffickers; and it determines forced displacement, often in the context of natural disasters. This long-standing evidence is well known to the international community, but a global picture of the linkages between trafficking and asylum is lacking. This also poses a challenge in describing the phenomenon and its evolution at the local level.

In order to describe it from an Italian perspective, it seems necessary to go back to the last decade.

During the 2015–2016 so-called “refugee crisis,”<sup>10</sup> the political debate put the spotlight on the sea arrivals of persons on the move on the European shores. The Italian asylum system started to look with more attention at the anti-trafficking system, given the evident interrelation among the profiles of asylum seekers and of potential victims of trafficking in the country. Indeed, during this period Nigerians—and Nigerian women in a significant number—represented one of the main nationalities in sea arrivals and of those applying for international protection in Italy (UNHCR, 2016a,b). At that time, the majority (almost all) of the victims identified and assisted by the anti-trafficking system were Nigerian women who reached Italy via the Central Mediterranean route. These women presented several indicators of being trafficked for the purpose of sexual exploitation and in many cases were identified as such, after that exploitation occurred both in Libya and in Italy (IOM, 2015).<sup>11</sup> In many cases they were aged between 18 and 25 years old, originating from the Edo State and poorly educated.

Nigerian women represented the “victim model” around which policies have been shaped and implemented. Over the years, the asylum system—and in particular the Italian asylum authorities—has improved its capacity to identify Nigerian women surviving or at risk of trafficking within the context of the procedure for the recognition of international protection and to refer them to the anti-trafficking organizations.<sup>12</sup> The anti-trafficking system has responded effectively

6 According to the Decree 24/14, the Department of Equal Opportunities is the National Authority in charge of coordinating the anti-trafficking system and it operates as an equivalent mechanism as provided for in article 19 of EU Directive 2011/36.

7 A key role is also played by the National Anti-trafficking Helpline, a toll-free number set up by the Department for Equal Opportunities in 2000. It gives information on the legal framework and on the services available to the potential victims through a qualified and multilingual staff. It can be contacted by potential victims directly or by whoever gets in contact with them, including private citizens. The service puts in communication the different anti-trafficking projects operating all over the country also with the aim of promptly transferring a person at risk from one territory to another. Information available at <https://osservatoriointerventitratte.it/en/human-trafficking-in-italy/>.

8 According to UNHCR, arrivals by sea in Italy in 2023 amounted to almost 160,000; in 2024, so far, they are almost 18,000 (UNHCR, 2023). There is no official data on arrivals in Italy via the Balkan route. Some interesting information on recent trends are provided by IRC in its 2023 Monitoring Report (IRC, 2024). Regarding the migration routes to reach all the European countries, in 2023 Frontex registered 380,00 entries (Frontex, 2023).

9 In 2022, the number of registered victims of trafficking in human beings was 10,093 in the EU. Among them, no mention is made to asylum seekers or refugees (EUROSTAT, 2024).

10 During 2015, movement of refugees and migrants into Europe significantly increased. International organizations and academic sources use both *migrant crisis* and *refugee crisis* to refer to the 2015 events, sometimes interchangeably.

11 IOM estimated that 80% of young women arriving from Nigeria—whose numbers soared from 1,454 in 2014 to 11,009 in 2016—were likely forced into prostitution as sex trafficking victims (IOM, 2015).

12 See paragraph 2.3.

and—in many cases—promptly to their needs and provided them with protection and assistance.

However, the phenomenon of trafficking and exploitation and its link to the asylum system has significantly changed within the last few years and the responses of both systems have had to be adapted accordingly. A variety of nationalities, genders, and forms of exploitation have been increasingly detected. At the same time, the phenomenon of Nigerian women has also changed in terms of profiles, specific needs, vulnerabilities, and trends related to their secondary movement within European borders.<sup>13</sup>

Since 2019, Nigerian citizens no longer are among the top nationalities of those arriving to Italy by sea (UNHCR, 2023). Nevertheless, according to the data from the Italian National Commission for the Right of Asylum, in 2021 and 2022 Nigeria was still among the list of the top 10 countries of origin of asylum applications and a relevant number of Nigerian asylum seekers are women (Ministry of Interior of Italy, 2023a). In the same period, Nigerian women were still the majority of victims of trafficking assisted by the Italian anti-trafficking system (National Anti-trafficking Helpline, 2021; National Anti-trafficking Helpline, 2022).<sup>14</sup>

For 2023, data on asylum applications has not been published yet. However, partial information can be gathered through the anti-trafficking system. The number of Nigerian women is steadily decreasing, but still significant (National Anti-trafficking Helpline, 2023).<sup>15</sup> These figures should be read in conjunction with an analysis on the profiles, needs and migration history of these women. In many cases, these women have been referred or self-referred to the anti-trafficking system after having been in contact with specialist services in previous years. This means that they have been on the European territory for a considerable period of time. In particular, these are the same women who arrived during the years of the greatest influx by sea. Once in Italy, they applied for international protection and often spent time in the Italian reception system for asylum seekers and refugees. They then moved on to other European countries, mainly Germany and France, where they often applied for international protection again and gave birth to one or more children. Nigerian women returned to Italy after a few years, with a peak in 2020–2021. Although they stated that they had also applied for asylum in these

countries, their return is mainly informal and outside the mechanism provided for by the Dublin III Regulation (Maccioni, 2024).<sup>16</sup> They often return to Italy with minor children and in an extreme condition of vulnerability, due to their legal status, family situation and lack of accommodation and economical resources. The grounds for their secondary movements are extremely heterogeneous and there is no single self-explanatory reason for the phenomenon. Researches on the subject suggest that a mixture of circumstances determines the departure to Germany (or other countries) and the return to Italy: access to better welfare in Germany and the instrumental use of social benefits, emerging new forms of exploitation—including illicit activities, e-trafficking, baby selling and “claiming of social benefits”) (OSCE, 2022) and possibilities to obtain a resident permit are just some of the explanations (Maccioni, 2024).

Public social services and anti-trafficking organizations have pointed out that these women are at a high risk of re-trafficking or of further processes of re-victimization in different forms of exploitation (including illicit activities) once back in Italy. Their legal condition is heterogeneous: in many cases they lodge a subsequent asylum application in Italy, citing as new elements aspects related to their trafficking experiences. The situation of these individuals and their families is particularly complex as they are exposed to labor exploitation and precarious living conditions, while their children often have autonomous protection needs and psychological or health vulnerabilities.<sup>17</sup> The role of the declared fathers is also ambiguous: in many cases the family has not moved together across European countries and family ties are difficult to (re)build. Another common feature is the lack of information exchange on these cases at European level, both in the context of asylum procedures and the Dublin III Regulation. There is also no transnational referral and cooperation mechanism between anti-trafficking NGOs working on the ground in the different European countries.

The level of complexity described makes it clear that the profile of these Nigerian women—currently beneficiaries of the asylum and anti-trafficking systems—no longer corresponds with the stereotype of the victim of sexual exploitation known in the previous years. These women are no longer young, they are mothers with children in a fragile state. They do not need to be identified as victims, rather they need to be supported and empowered in their parenthood and social and labor integration to avoid further processes of re-victimization.

13 The European Commission intends the term “secondary movements” as follows: “the movement of migrants, including refugees and asylum seekers, who for different reasons move from the country in which they first arrived to seek protection or permanent resettlement elsewhere” ([https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/secondary-movement-migrants\\_en](https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/secondary-movement-migrants_en)).

14 According to data collected by the National Anti-trafficking Helpline, in 2021, the 57% of the 2.294 persons who got in contact with the anti-trafficking staff and the 54% of the 695 persons who undertook a social protection pathway were Nigerian women (National Anti-trafficking Helpline, 2021). In 2022, the 46.4% of the 2.422 persons who got in contact with the anti-trafficking staff were Nigerian nationals. The 47.3% of the 808 victims sheltered and provided with protection and assistance are Nigerian (National Anti-trafficking Helpline, 2022).

15 According to data shared by Anti-trafficking Helpline, in 2023, Nigerian women were the 31.3% out of the 2.595 of the potential victims met by the specialized services and the 33.7% of the 762 persons sheltered (National Anti-trafficking Helpline, 2023).

16 Further information on the phenomenon could be find in Maccioni, 2024. The research report—published by IRES Piemonte—has been drafted after a qualitative research on the field conducted by interviewing 101 stakeholders in Italy and Germany. It describes data and key trends of the secondary movements between Italy and Germany and gives an overview on common features and specific profiles of the Nigerian women returning from Germany to Italy. The research also investigates the reasons for moving to Germany, with a special analysis on pregnancy as a form of exploitation or as a method of regularization. Specific risks profiles are highlighted concerning the risk of re-trafficking and exploitation associated with their return to Italy. In addition, the presence of the minor raises specific issues on their protection and best interest determination, involving practical aspects such as the recognition of their German birth certificates in Italy.

17 In many cases, their births were registered in Germany (or France) and there are problems with the recognition of their birth certificates in Italy.



Their needs overlap with those of their children, requiring a comprehensive, complex and multidimensional response.

An overlapping of protection needs also characterizes other nationalities of asylum seekers and potential victims arriving in Italy, including those from sub-Saharan countries and those from South American countries.

With regard to the persons coming from sub-Saharan countries, in 2021 and 2022, Ivorians were among the top nationalities of sea arrivals (UNHCR, 2022) and in 2021 among the top 10 nationalities of asylum applications (Ministry of Interior of Italy, 2023a,b). In the same period, a significant number of female potential victims of trafficking identified in Italy are from Ivory Coast and, to a lesser extent, from Senegal, Gambia, Cameroon, Guinea, Ghana, and Burkina Faso. With regard to persons from Ivory Coast, the data collected by the Italian anti-trafficking hotline show an increase of the phenomenon (National Anti-trafficking Helpline, 2021; National Anti-trafficking Helpline, 2022).<sup>18</sup>

These women often reported gender-based violence suffered both in the country of origin (domestic violence, forced marriage, and FGM) and in transit countries (rape suffered in detention centers in Libya or in Tunisia). Indicators of different forms of exploitation (sexual exploitation, domestic slavery) are also noted by anti-trafficking and international organizations (IOM, 2019a) and are related to the exploitation that occurred in the forms of domestic servitude or forced labor in transit countries, mainly in Tunisia.

However, in the case of Ivorian women, identification is not a straightforward process and often leads to problems in their assistance: indicators of trafficking are detected but exploitation has not taken place in Italy and/or is related to uncommon forms of exploitation. They do not fit the “victim model” of women sexually exploited and further information and knowledge are needed to understand the phenomenon. Furthermore, Ivorian women often leave the reception centers for asylum seekers and refugees where they are accommodated before a decision is made on their asylum application. Organizations operating at the French-Italian borders report that their staff encounters these women—along with other Sub-Saharan Francophone women—while attempting to cross the border and go to France. Indeed, they are part of the flow of secondary movements of potential victims of trafficking within European countries and research suggests that these nationalities are also involved in a return flow to Italy (Maccioni, 2024).

Regarding persons from South America, during (and due to) the pandemic emergency, an increasing number of trans persons originating from Brazil, Colombia, and Peru approached the anti-trafficking services mainly seeking assistance for health-related issues (National Anti-trafficking Helpline, 2021; National Anti-trafficking Helpline, 2022). Peru and Colombia were among the top nationalities applying for asylum in Italy in 2022 (Ministry of Interior of Italy, 2023a). In the same year, trans persons from Brazil, Colombia, and

Peru were the main nationalities of sex workers observed by anti-trafficking organizations during outreach activities (National Anti-trafficking Helpline, 2022; National Anti-trafficking Helpline, 2023). In some cases trafficking indicators and sexual exploitation emerged and these persons often applied for international protection with claims related to their sexual orientation and gender identity. The macho culture of their country of origin exposes them to social stigma, ostracism by family members and communities, and various forms of gender-based violence. These are also risk factors for economic vulnerability and trafficking, including debts related to the transition process. Challenges in identification and in the implementation of intersectional approaches in their assistance are faced during the asylum procedure. Over the years referral pathways to the anti-trafficking network have been built keeping in mind cisgender women while a gender-sensitive and holistic approach entails the opportunity to involve in protection measures other stakeholders such as LGBTIQ+ associations and specialized services for transition or hormonal therapies.

The importance of involving other actors in defining concrete responses to recent trends in the phenomenon is even more crucial concerning less researched forms of exploitation.

In recent years, the Italian anti-trafficking system has fostered its capacity to detect cases of potential victims of trafficking for labor exploitation and for other purposes, such as begging or criminal activities. The Italian data<sup>19</sup> has confirmed a trend recognized also at the European level: according to Eurostat, in 2022 “forced labor prevalence matches that of sexual exploitation for the first time” (EUROSTAT, 2024).

In Italy, the increased number of detected cases of labor exploitation should be seen in the context of growing attention on the phenomenon at the institutional and operational level (Ministry of Labour of Italy, 2021).<sup>20</sup> In other words: the system has also adopted the “lens of labor exploitation” while looking at the mixed migration flows of persons reaching Italy and the identification of cases increased.

Labor exploitation involves a very wide range of nationalities and profiles. The majority of those identified by the anti-trafficking system are young men and boys from Morocco, Tunisia and from India, Bangladesh, and Pakistan (National Anti-trafficking Helpline, 2023). These latter countries of origin are particularly relevant for the interconnection with the asylum system: in 2022 Bangladesh and Pakistan are the two main nationalities of asylum seekers in Italy (Ministry of Interior of Italy, 2023a,b). Their asylum claims are heterogeneous and include, for example, economic reasons, the effects of natural disasters (mainly floods), honor crimes, and political

18 Women from Ivory Coast were, in 2021, the 4% and in 2022, the 5.9% of the potential victims met by specialized anti-trafficking services. In 2023, the 13.4% of potential victims who had been in contact with the Italian anti-trafficking system were from Ivory Coast and they are mainly women (National Anti-trafficking Helpline, 2021; National Anti-trafficking Helpline, 2022; National Anti-trafficking Helpline, 2023).

19 In 2021, the 24% of the total number of the victims who have been in contact with the Italian anti-trafficking network were victims of trafficking for labor exploitation, an increasing percentage compared with past years. In 2022, the number of victims of labor exploitation was 38.8% and in 2023, labor exploitation (58.1%) exceeded sexual exploitation (32.3%).

20 In 2021, the Italian Ministry of Labor adopted specific “Guidelines for the early identification of victims of serious labor exploitation in the agriculture field” and their scope goes behind the field of agriculture and aims at establishing a referral mechanism. At the operational level, the Ministry of Labor also funded several projects in different Italian Regions to put into practice the Guidelines (Ministry of Labour of Italy, 2021).

affiliation with opposition parties. Of course, the history of the two countries and the background of persons from Pakistan and Bangladesh are extremely different. However, there is a recurring element in their stories: a debt for the journey to Europe, or rather several debts with different intermediaries for the different parts of the journey to Europe. One of the main challenges in identifying victims from Pakistan and Bangladesh is to gather sufficient information to establish the link between their recruitment in the country of origin and the purpose of their exploitation in transit countries or in Italy. They are also breadwinners and anti-trafficking projects are called upon to provide them with concrete alternative employment opportunities to compete with their traffickers and exploiters. This includes the necessary involvement of trade unions and specialized labor agencies (such as Labor Inspectors).

The lack of aggregated data makes it difficult to gather information on women or LGBTIQ+ persons exploited in the labor sector (Giammarinaro, 2022). However, an intersectional approach to the phenomenon leads to affirming that women asylum seekers are particularly vulnerable to exploitation, especially in certain productive areas such as domestic work (Degani and Cimino, 2021). This type of work makes the phenomenon even more hidden with relevant gaps in implementing gender-sensitive identification strategy (Palumbo and Sciorba, 2018; Giammarinaro and Palumbo, 2022).

Also sexual exploitation is taken form in increasingly hidden ways. In particular, in comparison with the previous period, a decrease in the number of potential victims of outdoor sexual exploitation has been registered during the outreach activities carried out by anti-trafficking organizations all over Italy. Despite the lack of precise data on the phenomenon, an increase in indoor (and online) sexual exploitation is presumed.

A final consideration on recent trends is related to the protection of unaccompanied children (UAC), applying for international protection in Italy and identified as potential victims of trafficking. In 2023 the number of minors identified by the anti-trafficking system slightly increased (National Anti-trafficking Helpline, 2023) and, at the same time, UAC are the 12% of those who arrived in Italy by sea (UNHCR, 2023). A recently introduced provision enables UAC to be hosted in reception centers for asylum seekers and refugees for adults, under certain conditions.<sup>21</sup> In these spaces, there is a lack of children-friendly services, qualified personnel, and legal counseling. Indeed, UAC are more exposed to recruitment and exploitation also in the field of illicit activities (such as drug selling).

## 2.2 The interconnection among trafficking and asylum in the legal framework: victims of trafficking as refugees

International Refugee and Trafficking law recognize the importance of guaranteeing effective protection to asylum seekers and refugees who are survivors or at risk of trafficking, while ensuring access to asylum procedures for victims of trafficking, also in accordance with the principle of non-refoulement. These are the so-called “saving clauses” enshrined in the UN Protocol on

Trafficking<sup>22</sup> and by the Council of Europe Convention on Action against Trafficking in Human Beings.<sup>23</sup>

These principles provide the international legal basis for the establishment of channels of communication between the two systems, also at the national level.<sup>24</sup> The practical implication of these provisions is that two systems of protection are to be seen as complementary and not alternative. However, to be effective they have to be accompanied by other provisions on substantial and procedural aspects. On substantive issues, states are called upon to ensure that both protection pathways can be pursued in parallel, including in relation to the recognition of residence permits. In particular, the definition of refugee should be interpreted in light of the specificities of the experiences and risks of trafficking in human beings (UNHCR, 2006).

Therefore, a victim of trafficking could be recognized as a refugee in case is owing a well-founded fear of persecution upon return to the country of origin for one of the five grounds listed in the 1951 Convention (race, religion, nationality, membership of a particular social group and political opinion) (GRETA, 2020).

The concept of persecution is intended as a serious violation of human rights and trafficking itself is a gross violation of human rights and dignity (UNHCR, 2019).<sup>25</sup> Trafficking is a gender-based form of persecution: it is an example of the impact of social norms and gender

22 Article 14 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime provides that “Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.”

23 Article 14 of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime provides that “Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.” Article 40 of the Council of Europe Convention on Action against Trafficking in Human Beings states that “Nothing in this Convention shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.”

24 Also the European Directive on Trafficking (Directive 2011/36/EU) states that “this Directive is without prejudice to the principle of non-refoulement in accordance with the 1951 Convention relating to the Status of Refugees (Geneva Convention), and is in accordance with Article 4 and Article 19(2) of the Charter of Fundamental Rights of the European Union.” As for the Italian legislation, the Legislative Decree No. 14/2014, which has transposed in the domestic legal framework the Directive 2011/36/EU, provides the saving clause, referring explicitly to the non-refoulement principle.

25 For the meaning of persecution: Paragraphs 51–53, of the “Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees” (UNHCR, 2019).

21 Decree 133/23 converted in Law 176/23.

roles and it takes form through different forms and types of gender-based violence (UNHCR, 2002a,b; UN Special Rapporteur on trafficking in persons, especially women and children, 2018a; Council of Europe, 2019). Furthermore, in situations of armed conflict trafficking can be used as a weapon and a form of gender-based violence to deconstruct social systems through victimization processes (UNHCR, 2016a; UN Special Rapporteur on trafficking in persons, especially in women and children, 2016).

Risks upon return to the country of origin include re-trafficking and further process of re-victimization, in particular when family or community members are involved in the recruitment process. Exploitation is not a necessary condition: persons at risk of trafficking can also be recognized as refugees with a prognostic assessment of the risk of persecution (UNHCR, 2006).

Concerning the Convention grounds, the causal link may be established and victims of trafficking are to be targeted due to the five elements, interpreted considering the trafficking experience. In this regard, in conflict situations trafficking could be used against certain ethnic groups or minorities (race as a ground for persecution). In addition, victims of trafficking can constitute a particular social group in the meaning of the Geneva Convention: they share the common and immutable characteristics of their experiences and they are perceived as different from the society (UNHCR, 2006; EUAA, 2023). This interpretation has been more promptly adopted about minors and women but is valid also concerning LGBTIQ+ persons, men and young boys. The uniqueness of personal experience and the individual circumstances of each case must be considered when applying the legal categories. A person who is at the same time an asylum seeker and a victim of trafficking has specific procedural rights and guarantees. In particular, victims of trafficking are included within the list of asylum seekers with specific needs by the European and Italian legal framework.<sup>26</sup> It has several practical implications concerning the type of procedure (ordinary or accelerated<sup>27</sup>) and the possibility of being accompanied by qualified staff (such as psychologists) during the asylum interview also to avoid re-victimization.

In addition, asylum seekers and refugees can have access to the specific reception conditions and safe shelters envisaged for victims of trafficking.<sup>28</sup>

26 The European Directives on asylum and their transposition in the Italian legal framework provide the following list of vulnerable applicants: “minors, 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” Article 21 of the Reception Condition Directive.

27 According to Italian Law, applications of asylum seekers with specific needs can be prioritized—which implies that they can be summoned for their asylum interviews earlier—but not channeled into accelerated procedures, which implies a limited time frame for the adoption of the asylum decision. Prioritization means taking into account the time needed for the persons to recover and to clearly express their stories. Accelerated procedures obliged asylum authorities to take a decision without allowing the person to have the proper time to recover and reflect.

28 According to article 17 of the Legislative Decree 142/2015 asylum seekers who are identified as victims of trafficking can benefit from the specific protection program offered by the anti-trafficking system.

## 2.3 The Italian experience on coordination mechanisms among the trafficking and the asylum system

In order to apply the above principles and procedural safeguards, a victim of trafficking must be identified and, once identified, referred to specialized services. This is the practical consideration that makes it necessary to establish coordination mechanisms. Specific legal provisions have this specific scope: in the Italian legal framework, the Legislative Decree 24/2014 provides that the Italian authorities are to establish measures for coordination between the anti-trafficking and international protection systems.<sup>29</sup>

To put this principle into practice, in 2015 UNHCR and the Ministry of the Interior launched a specific project to ensure both the early identification of victims of trafficking among asylum seekers and the mutual referral of trafficking victims in need of international protection to the asylum system.

To reach these goals and to promote the establishment of local referral mechanisms, UNHCR and the Italian National Commission for the Right of Asylum<sup>30</sup> published the *Guidelines for the Identification of Victims of Trafficking among asylum-seekers and referral procedures* (UNHCR and National Commission for the Right of Asylum, 2021).

The Guidelines represent a practical tool for the effective protection and assistance of victims of human trafficking in the asylum context. More into practice: they include a list of specific trafficking indicators within the procedure for the recognition of international protection in order to improve the capacity of Asylum authorities to preliminarily identify possible victims of trafficking among asylum seekers. The Guidelines also set out Standard Operating Procedures (SOPs) to promote the referral of potential victims identified during the administrative asylum procedure—and in particular during the asylum interview—to the specialized staff of the anti-trafficking organizations.

The set of indicators differs from the typical ones previously developed by international organizations<sup>31</sup> or by the Italian Action Plan against Trafficking in Human Beings.<sup>32</sup> In fact, the indicators

29 Article 10 of Legislative Decree 24/2014, which transposed the Directive 2011/36/EU, states that “The authorities responsible for the protection and assistance of trafficking victims, as well as those responsible in asylum issues, shall identify coordination measures between the respective institutional activities within their competence, also aiming to establish referral mechanisms between the two protection systems.”

30 The National Commission for the Right of Asylum operates within the Department for Civil Liberties and Immigration of the Minister of Interior. It has a coordination role of the Italian Asylum authorities of first instance: the Territorial Commissions for the recognition of international (AIDA and ECRE, 2024a, 2024b).

31 The most relevant sets of trafficking indicators have been developed by UNODC “Human Trafficking Indicators” ([https://www.unodc.org/pdf/HT\\_indicators\\_E\\_LOWRES.pdf](https://www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf)); IOM “Indicators of Trafficking in Persons” ([https://www.iom.int/sites/g/files/tmzbd1486/files/documents/atip\\_levant/indicators-of-trafficking-in-persons-1.pdf](https://www.iom.int/sites/g/files/tmzbd1486/files/documents/atip_levant/indicators-of-trafficking-in-persons-1.pdf)); ILO “Operational Indicators of Trafficking in human Beings” ([https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_105023.pdf](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105023.pdf)).

32 The Italian National Action Plan against Trafficking and serious exploitation includes an annex with a set of trafficking indicators (Department of Equal Opportunities, Council of Ministers of Italy, 2022).



included in the guidelines consist of symptomatic elements that often recur during the asylum procedure. They are grouped in the following areas: the personal and psychological profile of the asylum seeker (place of origin, age, family, and education); the journey and experiences in transit countries (recruitment strategies of traffickers, route, and debts); the current situation of asylum seekers in Italy (lack of social integration, presence of a partner with whom the relationship is unclear); and their general attitude during the interview (contradictory or partial statements, behavior during the interview, reluctance to disclose information).

To address an emerging and relevant phenomenon, the 2021 updated version of the Guidelines also includes a set of indicators on labor exploitation. This specific set refers to elements that often recur in the analysis of the situations of asylum seekers who have experienced, are still experiencing, or are at risk of labor exploitation. These indicators were collected through desk research and consultations with national stakeholders from both the asylum and the anti-trafficking systems. These recurring “warning signs” include: the fact that the family members of the asylum seekers are living in conditions of slavery in the country of origin, exploitation of the asylum seeker in countries of transit, and threats of retaliation in case of unpaid debts. Some indicators also refer to the poor working conditions to which exploited asylum seekers are often exposed in Italy (e.g., discrepancies between the number of hours declared in the job contract and the number of hours actually worked).

The indicators have been considered very useful given the difficulty of identifying victims of trafficking in the specific context of the asylum procedure. Victims generally do not disclose their complete experience due to various, complex and interconnected factors: fear of retaliation by the traffickers, lack of trust in authorities, also due to previous experiences in the country of origin and transit, trauma related to exploitation and human rights violations, shame or lack of awareness of their condition. The identification of indicators makes it possible to overcome some of these issues, and the list and its updating according to emerging trends contribute to a growing common knowledge of the phenomenon.

The detection of indicators is one of the first steps of SOPs foreseen by the Guidelines. In particular, if the asylum authority has reasonable grounds to believe that applicants may have been trafficked the following procedures will be followed during the asylum interview: the asylum officer advises asylum seekers on the rights and protection measures available to victims of trafficking in Italy. The potential victim is also informed about the possibility to meet specialized anti-trafficking organizations in order to receive assistance. If relevant to the asylum claim, the asylum authority may suspend the asylum procedure for a few months and postpone the decision concerning the asylum claim. This period is intended to give the person time to reflect on the information received and to build trust between the potential victim and the social service providers.<sup>33</sup>

Following informed consent, a meeting is arranged with anti-trafficking staff. The person is given qualified information about the

trafficking program, including the possibility of safe accommodation. After the conclusion of the suspension period, the anti-trafficking organization provides the asylum authority with a feedback note. This report focuses on the specific needs of the persons (e.g., health related issues and vulnerability), their current condition in Italy, and, in particular, their trafficking experience. These latter are related to the technical mandate of the specialized anti-trafficking organizations, that in Italy are entitled to formally identify victims of trafficking.<sup>34</sup>

This additional information provided by the specialized staff of anti-trafficking organizations may also be relevant to the asylum authority in order to facilitate the gathering of material facts to establish a well-founded fear of persecution upon return. The most appropriate setting and the expertise of the social workers and cultural mediators facilitate the uncovering of key aspects related to the trafficking experience, enabling the authorities to obtain more information for the recognition of international protection.

### 3 Practical results of the referral mechanisms in the asylum system and positive impacts on victims of trafficking: the Italian case law

The Guidelines have been considered a best practice at the international level (U.S. Department of State, 2018; UN Special Rapporteur on trafficking persons, especially women and children, 2018b; GRETA, 2019). Their effectiveness is demonstrated by the high number of potential victims intercepted by the asylum authorities over the past few years. Between 2018 and 2020 about 10,500 asylum seekers have been identified as potential victims of trafficking within the asylum procedure.<sup>35</sup> Most of them were young women, mainly coming from Nigeria, survivors or at risk of sexual exploitation. These data confirm the expertise acquired by members of the Asylum authorities in terms of understanding the phenomenon in its various facets and dimensions, and their ability to identify indicators of trafficking.

Since the adoption of the Guidelines, over 30 Memoranda of Understanding between Asylum authorities and anti-trafficking projects have been signed at the local level. This has fostered cooperation between the two actors, often resulting in meetings or multi-agency training for continuous updates and sharing on the phenomenon.

Another result is that the number of victims recognized as beneficiaries of international protection in both first and second instances has increased in recent years. As noted above, this is a result

<sup>33</sup> This measure was developed as a practical application of the right to the “recovery and reflection period,” provided by Article 13 of the Council of Europe Convention against trafficking of human beings and by Article 6 of the EU Directive 2004/81/CE.

<sup>34</sup> According to the National Action Plan Against Trafficking, “formal identification” must be entrusted to the public and private social entities authorized to implement the protection program referred to in art. 18 of Legislative Decree 286/98, as well as to law enforcement agencies or the Public Prosecutor’s Office in the context of judicial or investigative proceedings (Department of Equal Opportunities, Council of Ministers of Italy, 2022).

<sup>35</sup> Data UNHCR available at <https://www.unhcr.org/it/tratta-esseri-umani/#:~:text=UNHCR%20e%20vittime%20di%20tratta,cadano%20vittime%20della%20tratta%3B%20e>.



of the recognition of the importance of the trafficking indicators and their inclusion in the Guidelines.

In this regard, new and relevant case law on the recognition of international protection to persons survived or at risk of has been developed. First and second-instance asylum authorities, have increasingly recognized refugee status, based on an interpretation of Italian law<sup>36</sup> and of the Geneva Convention, in line with UNHCR Guidelines No. 7 of 2006 on the application of Article 1A (2) of the 1951 Geneva Convention to victims of trafficking (UNHCR, 2006).

The Italian Courts have carried out an in-depth analysis of all the elements of the refugee definition applied to trafficking cases. In particular, they have examined the meaning of: acts of persecution, considering that the experience of trafficking reaches the threshold of a serious violation of human rights<sup>37</sup>; well-founded fear of further persecution, with particular regard to the risks related to trafficking upon return (such as retaliations, social stigma and re-trafficking)<sup>38</sup>; the unavailability of State protection, according to the information on the countries of origin related to Nigeria and other nationalities; the grounds of persecution with particular regard to the membership of a particular social group.<sup>39</sup>

Courts have gradually adopted an increasingly inclusive approach with specific reference to women survivors of sexual exploitation.<sup>40</sup> In particular, some decisions of the Courts concern the possibility of recognizing international protection even if the applicants give vague, incomplete, or even contradictory statements and do not disclose their trafficking experience. Italian judges have considered the factors that affect the capacity of disclosure such as the fear of retaliation, the trauma suffered as a result of the trafficking experience, the difficulty to trust the authorities, and the lack of awareness of being victims of a situation of exploitation. In these cases, the Courts have considered that the judge has a duty to cooperate, even when asylum seekers'

statements are incomplete or unreliable. The Court of Cassation in different cases has highlighted that in the asylum procedure the applicant has to provide the facts, but not to qualify them. The qualification of the material facts falls within the responsibility of the judge who must “analyze them and assess their coherence with the information on the country of origin and those of transit, as well as with the structure of the phenomenon, as described by conventional and international sources, and by the UNHCR Guidelines for the Identification of Victims of Trafficking.”<sup>41</sup>

In a recent decision,<sup>42</sup> the Supreme Court established that “the duty to identify victims of trafficking is one of the state obligations imposed by international provisions,” thereby giving relevance to the positive obligation of identification, provided by article 10 of the Council of Europe Convention and by Article 11 par. 4 of the EU Directive 2011/36/UE.

The Court of Cassation has also emphasized that the indicators developed in the Guidelines—addressed to the Territorial Commissions—can assist the judge in substantiating the decision to recognize international protection, with particular reference to those related to general or contradictory statements made during the asylum interview.<sup>43</sup>

Some important decisions have been taken in cases where the trafficking experience emerged during the judicial process because the victims did not disclose their situation during the administrative process for the reasons mentioned above. In practice, the referral procedures adopted by the Territorial Commissions are sometimes unsuccessful, either because victims do not give their consent to be referred to the anti-trafficking organization or because, even if they agree to meet them, they do not open up. Sometimes the formal identification of asylum seekers as victims of trafficking occurs after the negative decision of the Territorial Commission and during the judicial process.

Indeed, the good practice of adopting the referral procedure has also been experimented with in the judicial process: courts require the assistance of anti-trafficking organizations to facilitate identification and to gather other elements useful for the decision. In some cases, the referral procedures have been formalized in Memoranda of Understanding between the courts and the anti-trafficking projects.<sup>44</sup>

Although there is significant jurisprudence, it mainly relates to situations involving women trafficked for sexual exploitation. However, important decisions were recently taken regarding also victims of trafficking for labor exploitation. This case law concerns cases of young men, mainly from Bangladesh and Pakistan,<sup>45</sup> who are recruited through fraud or abuse of a position of vulnerability and persuaded to leave in search of better living conditions. The applicants often experienced serious exploitation during the journey in the

36 Legislative Decree 19 November 2007 n. 251, which has transposed the Qualification Directive 2011/95/UE, contains the provisions on standards for the qualification of third-country nationals as beneficiaries of international protection. Legislative Decree 28 January 2008 n. 25, on the procedure, in article 2, includes victims of trafficking among applicants with specific needs.

37 UNHCR Guidelines No. 7 clarify that all the acts related to trafficking, such as rape, sexual enslavement, forced labor, and removal of organs are forms of persecution as serious violation of human rights (UNHCR, 2006).

38 According to UNHCR Guidelines No. 7 victims may face reprisals and/or possible re-trafficking should they be returned to the territory from which they have fled or from which they have been trafficked. They may also risk discrimination, ostracism or punishment by families and local communities or they may be exposed to reprisals or re-trafficking upon return to their country of origin (UNHCR, 2006).

39 According to UNHCR Guidelines No. 7 persecution could be linked to one or more of the Convention grounds: victims of trafficking could be targeted because of their race, religion, nationality or political opinion and for their membership to a particular social group. The latter has acquired relevance for the recognition of victims of trafficking as refugees because, in several contexts, they actually “share a common characteristic (...) or are perceived as a group by society” (UNHCR, 2006). See also UNHCR (2002a, 2002b).

40 In the decision n. 676 12 January 2022, the Supreme Court affirmed an important principle, stating that “victims of trafficking may be recognized as refugees provided that all the elements contained in the definition given by the law are satisfied.”

41 Court of Cassation n. 676 12 January 2022; Court of Cassation Section I, 5 November 2021, n. 32,083.

42 Court of Cassation, section I, n. 23,883, 4 August 2023.

43 Court of Cassation, section. II, n. 1750 del 27 January 2021; Court of Cassation, Section I, n. 30,402, 27 October 2021; Court of Cassation n. 676, 12 January 2022; Court of Cassation, n. 3,393, 3 February 2023.

44 To date, Memoranda of Understanding have been signed by the Courts of Florence, Milan, Rome, Catanzaro, Venice, and Bologna.

45 Decisions have been adopted also for applicants from other countries such as Nigeria.

transit countries (mainly Libya, Tunisia, or, within the Balkan route, in Greece or Turkey) and finally at the destination.

Italian judges were initially more reluctant to identify these asylum seekers as victims of trafficking, partly because their claims and profile differ from the victim model. Gradually, a more sensitive and inclusive interpretation has been given, leading in some cases to the recognition of refugee status for victims of labor exploitation.<sup>46</sup>

These recent decisions analyze the statements of asylum seekers in the light of information on trafficking of human beings in the countries of origin, with particular reference to the well-known mechanisms of recruitment and intermediation by various non-institutional actors, which facilitate the assumption of very large debts at usurious interest rates. This modus operandi of criminal networks exposes migrants to repeated and prolonged exploitation and human rights violations along the migration route. In relation to labor exploitation, the Italian judges also carefully examined the well-founded fear of persecution in relation to the presumptive assessment of the risk of persecution upon return to the country of origin. In particular, the following acts are considered to amount to persecution: the retaliations carried out by traffickers and/or creditors (DFAT, Australian Government, 2019; EASO, 2017), the possibility of being subjected to bounded labor or slavery (IRIN, 2009; Qureshi and Khan, 2016; U.S. Department of State, 2022a), and the risk of being re-trafficked. Re-trafficking may occur because a return to the country of origin would put the person at risk of making the journey again because of an inability to repay the debt, thus exposing them to exploitative conditions again (U.S. Department of State, 2022b; IOM, 2023). Finally, the Italian judges recognized that returnees may fear ostracism, discrimination, or even punishment from their family and/or local community, or even from the state authorities, as a result of their failed migration project as breadwinners (DFAT, Australian Government, 2021; GFEMS Media, 2022; IOM, 2023; Shah, 2023).

## 4 Present challenges and future perspective in the European context

Considering these cross-cutting achievements, the effective protection of victims in the context of mixed migration flows requires the adoption of further legislative and policy measures. The responses should be designed in accordance with the trends that are emerging at both the Italian and the European level.

The Italian system is considered to be quite advanced both in terms of legislation on protection and assistance to victims of trafficking and in terms of coordination mechanisms between the asylum and anti-trafficking systems.

With regard to coordination mechanisms, the asylum system has developed a methodology for establishing referral mechanisms for other sensitive issues, based on the experience gained with the anti-trafficking network. It consists of identifying the specific needs of asylum seekers,

mapping the existing services that are able to formulate a response to these needs, establishing SOPs, and formalizing them with a Memorandum of Understanding. In this sense, the Italian asylum authorities have established communication channels and coordination mechanisms for cases related to gender-based violence, torture, and psychological vulnerability, involving relevant stakeholders at national and local levels.<sup>47</sup>

However, an intersectional approach is still far from being realized (Cimino and Degani, 2024). Asylum authorities should improve their capacity to detect trafficking indicators among asylum seekers whose profile does not fit the “victim model”: women coming from countries other than Nigeria, males recruited for sexual slavery (in particular LGBTIQ+ persons from Latin America countries), men and women, including minors and persons trafficked for forced labor, begging, criminal activities, or the removal of organs. Based on recent practices, there is still a lack of expertise to address these forms of exploitation, which often overlap and cumulate (GRETA, 2024).<sup>48</sup>

Asylum authorities are not only more reluctant to identify non-stereotypical victims but also find it difficult to provide a response that is sensitive to the person and their complexity. This is the case with LGBTIQ+ victims of trafficking, who are usually referred to anti-trafficking organizations without adequate counseling by an LGBTIQ+ organization. Or the case of single mothers who are victims of sexual exploitation, where a best interest assessment on the risks faced by their children is not carried out.

The adoption of an intersectional approach implies the need for professional training of all actors involved—border/immigration police officers, reception staff, decision-makers on international protection—on the specific protection conditions of victims of trafficking, with particular attention to age and gender considerations (OSCE, 2021).

A multi-agency response also needs to be put into practice: it is crucial that all actors involved in both the protection and law enforcement aspects of trafficking cooperate by defining roles and effective protection measures. Although the Italian government has recently adopted the National Referral Mechanism,<sup>49</sup> which sets out roles and procedures, it needs to be put into practice. A multi-agency response should also be complemented by a multi-disciplinary approach to overcome barriers to victim identification and to provide concrete alternatives and prevention to exploitation and re-victimization. In the case of labor exploitation, labor inspectors, police and judges need to be part of the identification process, also to allow victims to make informed decisions about their condition and possible compensation for the crime suffered (GRETA, 2024).

<sup>47</sup> An example is the adoption of specific Standard Operating Procedure for the identification and referral of persons survived or at risks of gender-based violence in the contexts of the asylum procedure. The SOPs have been jointly drafted by UNHCR and the National Commission for the Right of Asylum and they were published in 2022. Text, only in Italian, available at: [http://www.libertacivilimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/sops\\_gbv.pdf](http://www.libertacivilimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/sops_gbv.pdf).

<sup>48</sup> GRETA has urged Italian authorities to “strengthen efforts to proactively detect and identify victims of trafficking for different forms of exploitation, including among migrants at all borders, in reception facilities and detention centers for migrants, and among Italian and EU nationals. This should include the provision of sufficient resources, capacities, guidance and training to all professionals concerned” (GRETA, 2024).

<sup>49</sup> See paragraph 1.

<sup>46</sup> Some relevant decisions have been taken by the Courts of Rome (28 July, 2023 proc. n.10182/23), Catanzaro (18 February 2021 proc. n. 6346/18), Milan (1 August 2023 n. 7099/23), Florence, (3 May 2023 proc. n. 16935/19 - 10 May 2023 proc. n. 6142/19), Salerno (28 November 2022 proc. n. 5147/19 - 19 October 2022 n. 11731/19).

Concerning the Italian legal framework, the Italian Immigration Act provides for a specific residence permit for victims of trafficking in human beings and serious exploitation,<sup>50</sup> which can be granted also irrespective of their cooperation with the authorities in criminal proceedings. This is the so-called “social path,” an advanced measure that has made Italian legislation particularly cutting-edge in the European framework, although some restrictive implementations have been noted in practice.<sup>51</sup> In any case, the effective protection of victims is provided by the overall legal framework governing the legal status of foreigners in the country, which includes at least the general provisions of the Immigration Act and the Asylum Laws.

The migration legal framework—and its recently introduced new provisions—does not adequately address the situation of vulnerable persons, including victims of trafficking. Over the years, restrictive migration policies have reduced legal access to the territory of the country affecting the ability to make safe journeys and facilitating the recruitment by criminal organizations involved in human trafficking (IOM, 2019b).

In addition, the border management policies introduced at various times by Italian governments have severely hampered access to the right to seek asylum. This is the effect of the sum of various provisions: the compulsory Code of Conduct for search-and-rescue operations in the Central Mediterranean;<sup>52</sup> the amended provisions on the asylum procedure and on the limitation of the national and complementary form of protection;<sup>53</sup> the addition of further nationalities to the list of safe countries of origin.<sup>54</sup>

Given the nexus between asylum and the protection of victims of trafficking, the latter face the consequences of the implementation of the recently introduced provisions. Once again, a look at recent trends in mixed migration highlights these aspects. The updated list of

countries considered safe includes the main nationalities of asylum seekers and persons identified as victims of trafficking in Italy: Ivory Coast, Cameroon, Colombia, Peru, Nigeria, and Bangladesh. Asylum applications of persons from these countries are currently channeled into accelerated procedures which means that their asylum claims are procedurally assessed in a very short time-frame.<sup>55</sup> In practice, there is a high risk that trafficking indicators may go unnoticed by the Asylum authorities also due to time constraints. As a result, the asylum application may be considered unfounded and the person would not be entitled to remain on Italian territory, with, among other things, fewer procedural guarantees and a possible violation of the principle of non-refoulement.<sup>56</sup>

Furthermore, Italian immigration policy is moving toward a deterioration of the rights of people on the move, adopting instruments to restrict the entry of migrants, including vulnerable ones. Memoranda of Understanding with transit countries such as Libya<sup>57</sup> and Tunisia<sup>58</sup> result in high risks of serious human rights violations. The risk of re-trafficking is very high considering that exploitation often takes place in these countries. Again, the Memorandum of Understanding recently signed with Albania<sup>59</sup> raises deep concern: it foresees the construction of two centers in Albania for the handling of arrivals of migrants and asylum seekers. The legal nature of these centers is still unclear, but their purpose is well known: to detain asylum seekers and migrants to assess their asylum claims under the accelerated border procedure and to expedite their deportation (CEPS, 2023).

The externalization of border control has a serious impact on the capacity to intercept potential victims of trafficking and, consequently, to fulfill the legal obligation to identify and refer them to specialized

50 Article 18 of Legislative Decree No. 286/1998 provides that trafficked or exploited persons, in case of severe and current danger, can be issued with a resident permit in order to allow them to enter an assistance and protection program. The residence permit is renewable for 1 year and can be eventually converted into a residence permit for study or work purposes.

51 In practice, a number of Immigration offices do not apply the “social path,” but issue the special residence permit solely in the case of victim’s report to the police or of cooperation with criminal judicial authorities and, in some cases, only if the information provided by the victim leads to significant public security interventions or results to be well-founded, following relevant investigations.

52 The Decree Law n. 1/23 converted into Law n. 15 of 24 February 2023 on “Urgent provisions for the management of migratory flows” has introduced a new compulsory Code of conduct for search-and-rescue operations in the Central Mediterranean which applies to operations conducted by NGOs.

53 In Italy, a national form of protection complements the international protection system and is considered to be a part of the right of asylum foreseen by the Constitution. It has been named “humanitarian protection” and, since 2018, “special protection.” The Decree Law n. 20/23 “Urgent provisions on regular migration flows and on prevention and fight against irregular immigration,” converted into Law 50/23, amended article 19 concerning the resident permit for special protection and introduced further accelerated and border procedures for asylum seekers who come from Safe Countries of origin.

54 Decrees of the Minister of Foreign Affairs, 17 March 2023 and 7 May 2024 have expanded the list of safe countries of origin, including Nigeria, Ivory Coast, Cameroon, and other countries from which many victims of trafficking arrive.

55 These procedural effects are not applied in case an asylum seeker is considered to belong to vulnerable categories—and victims of trafficking are among them—but the challenge is that they have to be identified to enjoy the guarantees foreseen by the law. Also GRETA, in its 10th General Report, highlighted that in accelerated asylum procedures there is a risk that indicators of trafficking in human beings are not noticed. Therefore the Group of Experts stressed the importance of carefully screening cases channeled into the accelerated procedure for possible trafficking claims, and the need to proactively identify possible victims of trafficking among asylum seekers in order to avoid possible victims of trafficking being subjected to the accelerated procedure (GRETA, 2020).

56 In these cases, according to article 35 bis par. 3 Legislative Decree 25/08, the appeal to the Court does not suspend the decision of the asylum authority in the first instance.

57 The Memorandum of Understanding between Italy and Libya “on cooperation in the development sector, to combat illegal immigration, human trafficking and contraband and on reinforcing the border security between the Libya State and the Italian Republic” has been signed in 2017 and it has been automatically renewed in November 2022.

58 In July 2023, European Union and Tunisia signed a Memorandum of Understanding to strengthen the partnership in some areas including migration, providing funds to Tunisia to strengthen border management.

59 On 6 November 2023, Italy signed a Memorandum of Understanding with Albania concerning the disembarkation and processing of asylum applications in Albania of migrants who have been rescued at sea by the Italian authorities. It provides for the setting up of two centers for such migrants in Albania, operating under Italian jurisdiction.

services.<sup>60</sup> It is difficult to imagine adequate detection of trafficking indicators in a short procedural timeframe or in pre-removal detention facilities. Factors undermining identification (fear of deportation and mistrust of authorities among others) predominate.<sup>61</sup> For the same reason, the self-identification of victims seems almost impossible. In the case of identification, referral mechanisms with anti-trafficking organizations seem unattainable: there would also be the practical gap of referring them to Albanian or Italian specialized staff.

These considerations are even more relevant taking into consideration the broader perspective concerning European policies with specific reference to the New Pact on Migration and Asylum.<sup>62</sup> The Asylum Procedure Regulation (including the Return Border Procedure Regulation) aims at establishing mandatory border procedures and return processes at the external border as the normal course of action.<sup>63</sup> Combined with the screening procedure set out in the Screening Regulation, this will have the effect of further reducing (or eliminating) the time taken to carry out individual assessments of asylum claims.

Despite a formal declaration of “*more attention to vulnerable individuals with special needs*” (European Commission, 2024) identification of survivors or persons at risk of trafficking will be difficult. Victims of trafficking need time to open up and have the right to recover and reflect upon their situation (La Strada International, 2020). In the coming scenario, their needs and rights are unlikely to be met with a potential violation also of Article 4 of the ECHR (Tammone, 2024).<sup>64</sup> In addition, there will be a risk that the principle of no detention for victims of trafficking will be in breach.<sup>65</sup>

60 Article 10 of the Council of Europe Convention against trafficking provides that each country shall adopt measures to identify victims. Also the Directive 2011/36/EU, in article 11, provides that member States shall take the necessary measures to establish “appropriate mechanisms for the prompt identification” of victims of human trafficking.

61 In its last Evaluation Report on Italy, GRETA expressed its concern with regard to “the restrictive immigration measures adopted by Italy,” which, the Group of Expert said “foster a climate of criminalization of migrants, resulting in many potential victims of trafficking not reporting their cases to the authorities for fear of detention and deportation” (GRETA, 2024).

62 After a long negotiation phase, the European Parliament voted in favor of the new rules on migration on 10 April 2024. The Pact was formally adopted by the Council of the EU, on 14 May 2024.

63 The border procedure is expected to last 12 weeks and will be applied in case the applicant intentionally misled the authorities or intentionally destroyed or disposed of an identity or travel document; the applicant is a danger to the national security or public order; or the applicant is of a nationality of a third country for which the proportion of decisions granting international protection is 20% or lower. This latter possibility will have a relevant impact on the asylum seekers identified as victims of trafficking in Italy. Indeed, for example Nigeria and Bangladesh have a very low recognition rate.

64 See Tammone (2024).

65 “*The Recommended Principles and Guidelines on Human Rights and Human Trafficking stipulate that it should be ensured that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody. According to Article 10(2) of the Convention, also presumed victims of trafficking are entitled to appropriate and secure accommodation. Therefore, accommodating presumed victims of trafficking in a holding center for foreigners in which they are confined until receiving a residence permit does not fulfil the obligations of the Convention. Trafficked persons should have access to specialized shelters and accommodation should be separate from the immigration system*” (GRETA, 2020).

Given the challenges posed by the current and future legal framework for the implementation of protection measures, coordination mechanisms with the asylum system are even more crucial, also in the European context.

First of all, to counter the short time frame for identification, it is necessary to institutionalize mechanisms allowing early identification immediately upon arrival (Ministry of Interior of Italy, 2023a,b).<sup>66</sup> In other words, the SOPs contained in the UNHCR/MoI Guidelines are to be applied at all stages of the asylum procedure, i.e., during the screening procedures at disembarkation or at land borders, as well as during the initial registration at the Immigration Office and during the reception measures in the reception centers.

Moreover, with regard to the phenomenon of secondary movements, a prompt identification in the context of the return procedures according to the Dublin Regulation is extremely relevant. This would avoid (re-)victimization and address the challenges emerging from recent trends (Sorrentino, 2021).<sup>67</sup> As already highlighted, secondary movements of potential victims concern a significant number of families on the move, not only originating from Nigeria but also from other Sub-Saharan and North African countries (Maccioni, 2024). However, the Pact on Migration and Asylum—and in particular the Asylum and Migration Management Regulation (AMMR) that replaces the current “Dublin III Regulation”—intends to stop secondary movements of migrants and asylum seekers within the European borders<sup>68</sup> rather than to understand and address the needs of those on the move, who often have also experienced or are at risk of exploitation.<sup>69</sup>

The evolution of the phenomenon calls for a broadening of the perspective for the design of common European policies.

In this respect, the recast Directive 2024/1712/UE, amending the Directive 2011/36<sup>70</sup> takes steps toward effective protection of victims within the context of mixed migration movements. In line with the Italian experience, the revised Directive outlines the complementarity

66 Concerning the screening of vulnerabilities also at the borders, in 2023, the Italian Ministry of Interior published an ‘Handbook for the identification, referral and care of persons living with vulnerabilities entering Italy and within the protection and reception system’ (Ministry of Interior of Italy, 2023a,b).

67 In this sense, also the recast Directive 2011/36/UE affirms in its recital that ‘to prevent victims from being re-trafficked within the Union, it is important that, when victims are transferred under Regulation (EU) 2024/... of the European Parliament and of the Council(13)(14), Member States do not transfer victims to a Member State where there are substantial grounds for believing that the victims, because of the transfer to that Member State, would face a real risk of violation of their fundamental rights that amounts to inhuman or degrading treatment within the meaning of Article 4 of the Charter.’

68 This scope is pursued through stricter rules concerning obligation to apply in the country of first entry.

69 For detailed information on the phenomenon of secondary movements of potential victims of trafficking see paragraph 2.1 “An overview on recent trends on trafficking and serious exploitation in Italy.”

70 The Directive 2024/1712/UE, amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims has been published in the Official Journal of the European Union on the 24th of June 2024 and it will enter into force on the 15th of July. The text is available at [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L\\_202401712](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202401712).



among the asylum and the anti-trafficking systems<sup>71</sup> and introduces the establishment of formal referral mechanisms.<sup>72</sup> The latter must be provided for in national legal instruments and aim to establish minimum standards for the identification and referral of victims to specialized services, including the establishment of communication channels with the asylum authorities.

To enhance transnational cooperation, the revised Directive also introduces the appointment of national focal points for the cross-border referral of victims. These could be the first legal basis for the creation of a European and transnational referral mechanism, including information exchange and common protection measures.

However, the challenge would be to implement these cross-border coordination mechanisms without the adoption of SOPs identifying the actors to be involved at national and European level and their roles. Anti-trafficking specialized organizations should be part of this process and actively participate in the construction of procedures to guarantee the rights of the victims (*La Strada International*, 2024).

The referral system has to be shaped to meet the needs of victims and, to this end, a shared understanding of trends is essential. The revised text of the Directive introduces a system of data collection to be reported annually to the European Commission.<sup>73</sup> However, despite the relevance of the phenomenon, no information is required on the migration status of the victims,

their application for asylum, or their recognition as beneficiaries of international protection. A common understanding of recent trends would also improve the capacity to cluster common indicators of trafficking in human beings, which are the necessary practical tools to facilitate the identification of potential victims, as the Italian experience shows.

Information on profiles, specific needs of victims and their interconnections, modus operandi of traffickers, and emerging forms of exploitation<sup>74</sup> would be the antidote to counter policies and legislative measures that undermine the identification process, especially in the context of asylum. Recognizing the specificity of individual experiences would be the key to addressing the phenomenon and its complexity and to developing concrete solutions and person-centered referral mechanisms.

## Data availability statement

The original contributions presented in the study are included in the article/supplementary material, further inquiries can be directed to the corresponding authors.

## Author contributions

FN: Writing – original draft, Writing – review & editing. CC: Writing – original draft, Writing – review & editing.

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## Conflict of interest

The authors declare that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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71 Article 11a provides that "Victims of trafficking who may need international protection. 1. Member States shall ensure complementarity and coordination between the authorities involved in anti-trafficking activities and the asylum authorities. 2. Member States shall ensure that victims of trafficking are able to exercise their right to apply for international protection or equivalent national status, including when the victim is receiving assistance, support and protection as a presumed or identified victim of trafficking in human beings."

72 Article 10, paragraphs 4 and 5.

73 Article 19a: Data collection and statistics "1. Member States shall ensure that a system is in place for the recording, production and provision of anonymized statistical data to monitor the effectiveness of their systems to combat offenses referred to in this Directive. 2. The statistical data referred to in paragraph 1 shall, as a minimum, include data available at the central level on: (a) the number of registered identified and presumed victims of offenses referred to in Article 2, disaggregated by registering organization, sex, age groups (child/adult), citizenship, and form of exploitation, in accordance with national law and practices; (b) the number of persons suspected of the offenses referred to in Article 2, disaggregated by sex, age groups (child/adult), citizenship, and form of exploitation; (c) the number of persons prosecuted for offenses referred to in Article 2, disaggregated by sex, age groups (child/adult), citizenship, form of exploitation, and nature of the final decision to prosecute; (d) the number of prosecution decisions (i.e., charges for offenses referred to in Article 2, charges for other criminal offenses, decisions not to charge, other); (e) the number of persons convicted for offenses referred to in Article 2, disaggregated by sex, age groups (child/adult), and citizenship; (f) the number of court judgments (i.e., acquittal, convictions, other) for the offenses referred to in Article 2; (g) the number of persons suspected, persons prosecuted, and persons convicted, for offenses referred to in Article 18a (1), disaggregated by sex and age groups (child/adult) 3. Member States shall transmit annually to the Commission, in principle by 30 September and, where this is not possible, at the latest by 31 December each year, the statistical data referred to in paragraph 2 for the previous year."

74 Article 2 of the recast anti-trafficking Directive includes new forms of exploitation under the definition of trafficking of human beings: "the exploitation of surrogacy, of forced marriage, or of illegal adoption." However, as pointed out by NGOs working in the field, these new forms have not emerged from qualified data on the phenomenon (*La Strada International*, 2024).

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