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**ASYLUM-SEEKING AND REFUGEE WOMEN:
A NORMATIVE FRAMEWORK**

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LIST OF ABBREVIATIONS

AIDA	Asylum Information Database
CEAS	Common European Asylum System
EASO	European Asylum Support Office
ECtHR	European Court of Human Rights
EU	European Union
FGM	Female Genital Mutilation
GBV	Gender-based Violence
ILO	International Labor Organization
IOM	International Organization for Migration
NGO(s)	Non-governmental Organization(s)
PSG	Particular Social Group
PICUM	Platform for International Cooperation on Undocumented Migrants
PTSD	Post-traumatic Stress Disorder
SGBV	Sexual and Gender-based Violence
STD(s)	Sexually-transmitted Disease(s)
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office for Drugs and Crimes

INTRODUCTION¹

This research on asylum-seeking and refugee women arises from a pervasive feeling that something important was missing in the narration of refugeehood, forced displacement, and asylum, especially in studies and research in political philosophy that address this topic. I first approached the topic of women refugees during a Master course.² At that time, I wanted to write an essay about the reasons why women were left behind and would cross borders less frequently than men. I soon found out how wrong I was, since the numbers indicated something completely different. So why did I have this impression in the first place? Studying the theories on refugeehood occurred to me that very little was being said about the women, about how gender can impact the experience of forced displacement and asylum decision-making, and how gendered this whole process is. This face of refugeehood seemed to be invisible, effaced by the pretension of universality that the existing theories were pursuing. While reading important academic works I was disappointed from the lack of space that women occupy in the theories that these scholars were delineating. “What about the women?”, “Where are them?”, and “Does this really apply to them?”, were the questions that first struck. There was much more to say about how gender-related issues influence the experience of forced displacement of nearly half the population of refugees than that. What was missing in the literature was precisely a gender and intersectional perspective on refugeehood and asylum. This work attempts precisely to fill this gap.

The point is that a few exceptions excluded, the refugee crisis enduring from 2015 is widely considered as a male or gender-neutral phenomenon, since women’s voices are hardly ever heard (Georgiou & Zaborowski 2019). Although it is true that in the last decade, and even before the refugee crisis had begun, there had been a ‘feminization’ of migration, there

¹ A disclaimer is necessary. Given that this research has been conducted and written in the last years, it does not consider the Ukrainian war and the new wave of refugees caused by it. Consequently, this thesis does not address all the changes that this war has caused in relation to sex-disaggregated data, numbers of arrival, different policies and actions taken by EU Member States in order to face this emergency. Due to this shift in the international order, it is also possible (likely, even) that new elements might bring something new to the argument. Further studies will be needed in order to address this issue.

² More precisely, it was the course ‘Public Ethics’, held by Professor Valeria Ottonelli, University of Genoa.

seems to be no doubt that the narrative of refugees divides displaced people and people seeking asylum in two groups, the one of adults and the one of children, or minors (Sirriyeh 2010). This shows that in over ten years the main narrative has not changed. Where are the women in this picture? Are they assimilated together with the group of the adults, or considered as minors' responsible? Asylum-seeking and refugee women, as a conceptually independent subgroup of refugees, are hardly noticed by media, politicians, and public opinion, or even when evaluating relevant policy measures. They are almost invisible.

Why is that? First, the perception tells us that men constitute the great majority of refugees and asylum seekers in Europe. We notice more men than women in the streets, reading the newspapers, in the pictures shared on social media and on television. Also, when we take a deeper look at the official data, it happens that official portals do not even differentiate asylum seekers by sex. For example, the last European Commission Eurydice³ report (2019) gives, in details, the numbers of the arrivals in Europe, without differentiating the asylum applications by sex, but only between adults and minor.⁴ According to UNHCR's monitoring of the Mediterranean situation, the arrivals in 2019 have been 117,820: 95,870 by sea to Italy, Greece, Spain, Malta and Cyprus, and 21,950 by land to Greece and Cyprus. The analysis of the demography of the sea arrivals reveals that they are constituted by 57.2 percent of men, 17.1 percent of women and the last 25.7 percent of children.⁵ The numbers of first-time asylum application in Europe in 2018 were 581,000, and the great majority of them is constituted by men.⁶ According to the webpage of the European Parliament, in 2018 the asylum applications were 646,060 and the number of refugees 2,476,361,⁷ but the sex of the applicants and refugees is not shown. This is directly linked with the neutrality perception: the gender of migrants is often ungiven. Therefore, they would seem not to be considered

³ A network that analyzes European education systems and migrant educational integration.

⁴ 431.1 thousand applications in 2013; 627.0 thousand in 2014 and just over 1,3 million in 2015. In 2016, 1,3 million citizens of non-EU countries claimed for international protection in EU. Finally, in 2017, the number dropped to 704,6 thousand. Retrieved from: European Commission/EACEA/Eurydice (2019). Integrating Asylum Seekers and Refugees into Higher Education in Europe: National Policies and Measures. *Eurydice Report*, Luxembourg, Publications Office of the European Union.

⁵ All UNHCR's data are retrieved from: <https://data2.unhcr.org/en/situations/mediterranean>. Last update: December 9, 2019.

⁶ Retrieved from: https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics#Number_of_asylum_applicants:_drop_in_2018

⁷ https://www.europarl.europa.eu/infographic/welcoming-europe/index_en.html#filter=2018.

with a gender perspective: “The official picture renders women’s extra-legal border crossing almost invisible” (Pickering 2011, p. 9).

However, the sociological academic literature (Arbel et al. 2014; Pickering 2011; Singer 2014), the United Nation High Commissioner for Refugees (UNHCR 2002, 2016), and NGOs’ and numerous European Commission’s and Council of Europe’s reports (Amnesty International 2016; Bekyol et al. 2016; Bonewit 2016; Council of Europe 2016-2019; Honeyball 2016) highlight the need for a gender perspective in the refugee and forced migration area. This suggests that there might be a difference in the experiences lived by female asylum seekers. This peculiarity is also suggested by the fact that UNHCR’s guideline on international protection (2002) specifies that women (and, consequently, asylum-seeking women) are members of a ‘particular social group’ (from now on, PSG), which is one of the five grounds listed in Article 1A(2) of the 1951 Convention relating to the Status of Refugees. According to Michelle Foster (2014), “it remains undoubtedly the case that the PSG ground is the only available Convention ground where gender-based persecution is at issue” (p. 17).⁸

Hence, since the 2015 ‘refugee crisis’ has begun, it would seem that public opinion, national policies and media have often been blind regarding asylum-seeking women, especially when it comes to their particular gender-related needs, and experiences of vulnerability (Newman 2013; Georgiou & Zaborowski 2017). Despite public and private agencies and the European Institutions making numerous calls (Honeyball 2016), there is still a general low consideration for women’s specific situation. On review, it is noted that there is a lack of philosophical and normative literature in the field.

Given that “extra-legal border crossing has significant gendered dimensions [...] and is significantly different for women” (Pickering 2011, p. 1), and that refugee and asylum-seeking women have specific needs and face specific situations, which “can only be addressed through gender-sensitive migration and asylum policies” (Council of Europe 2019, p. 3). This is where the importance of the present research relies: in order to implement these gender-sensitive policies, we need a normative framework that gives us the right lenses to understand the asylum-seeking women’s experiences. This means that we need to study this

⁸ The definition of women as a PSG is a highly debated issue. The different positions and arguments on this topic will be briefly discussed in Chapter 1, §1.1 and Chapter 2, §2.1.

issue within the lenses of normative political theory, because, I argue, the fact that women are under-represented and suffer from a distorted visibility is a matter of (in)justice. Therefore, the aim of the study is to investigate what characterizes asylum-seeking women's particular situation, in order to prepare the ground to allow for more gender-sensitive policies and actions. The purpose of this research is relevant precisely because it has not been adequately addressed by political theorists, who in fact tend to focus on issues that do not apparently relate to gender specificities. The originality of the aim of the research is better understood if the paradigm of intersectionality is applied. Intersectionality was defined for the first time by Kimberlé Crenshaw (1989, 1991), who referred primarily to women of colour, as an overlapping membership to distinct groups (the group of women and the group of black people), each of whose members are victimized by discrimination. It is observed that this overlapping membership can generate experiences of discrimination that are very different from those of persons who belong to only one group (Altman, 2016; Crenshaw, 1989; McCall, 2005). I will argue that women's group and the group composed of refugees and asylum seekers overlap and create a case of intersectionality. In stating that, I take seriously the fact that all women are potential intersectional subjects, since it is possible that "their womanhood (already a socially disadvantaged position) will intersect with other social positions to multiply disadvantage them" (Nash 2008, p. 10). I accept Crenshaw's distinction between structural, political, and representational intersectionality (1991).⁹

Applying this concept to asylum-seeking and refugee women, I argue that they fall under these three categories of intersectionality. In the first place, there seems to be a qualitative difference between what this group of women and their male counterpart experience, and also between the group of (non-displaced) women in general and this group of women. Secondly, there is the feminism of equal treatment and the degendering movement (Bacchi 2009; Facchi 2012; Lorber 2000), which seeks for a sort of gender neutrality and refuses protectionist rules and approaches, on the one hand. On the other hand, the field of normative refugee studies, which does not address the issue of women refugees, or at least do not treat it as something worth to be studied specifically, have led to a sort of theoretical

⁹ See Chapter 2.

marginalization of them.¹⁰ This leads to the third aspect of intersectionality: asylum-seeking and refugee women are victims of a distorted visibility and representation within both groups of refugees and women.

Thus, this research aims to answer the following questions: How do we conceptualize asylum-seeking and refugee women experiences of asylum and refugeehood? What does it happen when different states of vulnerability¹¹ intersect? Does this translate into injustice? And, if it is the case for injustice, what kind of injustice is it? What is it based on and what are the peculiarities that make it different from all the other groups and specific of this group of women?

The goal that this research tries to achieve is to uncover the vulnerabilities of asylum-seeking and refugee women and show how these vulnerabilities lead to some forms of injustice and oppression. This is not an end in itself. The research – in accordance with the gender mainstreaming approach¹² – has a normative purpose, that is to pave the way for gender-sensitive norms and policies. The goal of gender mainstreaming is to take into account that men and women have different needs, circumstances and living conditions – according to country, social origin, age, religion, and also to unequal access to and control over human rights, institutions, power and resources, in order to solve these differences and enhance gender equality. Therefore, it recognizes the necessity for providing differences when designing, implementing and evaluating policies, programs and projects. Therefore, what this research does is to start from investigating asylum-seeking and refugee women living conditions and experiences, their vulnerability and the injustice they suffer from, with the hope that it will constitute an element that will facilitate both the theorization and the implementation of gender-sensitive international protection policies.

¹⁰ I found a lack of normative literature in the field of normative political theory regarding women refugees. Some examples, among the latest books on the topic, which do not address specifically the issue of women: *What do we Owe to Refugees?*, by Owen (2020); *The Political Philosophy of Refuge* edited by Miller & Straehle (2020); *The Arc of Protection*, by Aleinikoff & Zamore (2019); *Refuge: Transforming a Broken Refugee System*, by Betts & Collier (2017); *No Refuge*, by Parekh (2020).

¹¹ Namely, the vulnerability resulting from their being women, displaced, and from their being foreigner and from different cultures and religions.

¹² Gender mainstreaming is “the (re)organisation, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels at all stages, by the actors involved in policy-making” (Council of Europe 1998, p. 12).

The cited goals are meant to be achieved by facing the peculiarity of women refugeehood in three steps.

a) The first step is to precisely delineate the subject of the research. This is only possible if we understand these women's real-life experience, from their decision to escape from their home countries to the process of asylum applications in receiving countries, and their life during and after the decision-making procedures. In the present work, this work will be done by analyzing the sociological literature, NGO's appeals, UN agencies', and European Union's reports. This analysis and the descriptive background make it possible to examine in detail what it means for asylum-seeking and refugee women to constitute an intersectional group. By that, I mean that female refugees and asylum seekers face experiences that are peculiar of their identity, such as their sex, gender, culture, religion and ethnic background, which also combine with the political, social and structural conditions of the international protection and refugee area.

b) The second step is to acknowledge that their intersectional identity makes them vulnerable, and that the vulnerabilities they experience are very peculiar of the specific social context there are situated in. The job is done by a clarification of the concept and theoretical framework of vulnerability, and by specifying what it is exactly that makes them vulnerable, what are these vulnerabilities, and how are they structural of the refugeehood system. In particular, the taxonomy of vulnerability made by Mackenzie et al.'s (2014)¹³ and the notion of layers of vulnerability by Florencia Luna (2018)¹⁴ are used as tools to serve this purpose.

c) The third and most fundamental step is meant to link the vulnerability of asylum-seeking and refugee women with the account of injustice: particular vulnerabilities lead to a particular form of injustice, that in this research I name as *effacement*, a concept that explains why other theories of injustice, discrimination and oppression do not capture the peculiarities of this group's experiences. Among the theories that the research analyzes, there are Iris

¹³ The authors propose a taxonomy of two different states of vulnerability – *dispositional* and *occurrent* – and three different sources – *situational*, *inherent*, and *pathogenic* – vulnerability. The scope of the taxonomy is to give an account of vulnerability that acknowledges both the ontological and context-specific characters, and to identify responsibilities and potential interventions aimed to mitigate the effects of context-specific vulnerabilities. See Chapter 3.

¹⁴ The author treats vulnerability not as a unificatory concept, but it is described as being constituted by layers that can each have a domino effect, able to cause other layers of vulnerability. See Chapter 3.

Marion Young's five faces of oppression (2011),¹⁵ Andrea Sangiovanni's five inferiorizing modes of treatment (2014),¹⁶ and the concept of epistemic injustice (Fricker 2006, 2007; Kidd et al. 2017; McKinnon 2016).¹⁷ The point is that all the conditions of vulnerabilities, injustice, discrimination and oppression converge and intersect to create the category of effacement, which is something that still needed to be conceptualized. The effacement is here preliminary defined as the complex of causes¹⁸ that concur to make invisible the intersectional nature of the vulnerabilities of this group of women and to a consequent emptying of its meaning in their real life. The result is that we fail to see and to understand their specific situation, causing all the injustices and oppressions described by the theories mentioned above.

That being said, the present study appears divided in five chapters, preceded by a brief premise which has the role of framing this research into a specific conceptual framework. This consists in delineating how this thesis endorses a bottom-up and negative approach to justice, in what senses, and why. Accordingly, on the one hand I argue that for the purposes of this research it is important to begin theorizing about injustice only after it is well clear what are the lived experiences of these women. On the other hand, I state that the question of what justice would involve for forced displaced women arises only after what is unjust of their peculiar situation has been clarified. The subsequent five chapters are dedicated to the steps that I described above. Chapter 1 is the more descriptive part of the research, where I try to summarize all the steps of the experience of refugeehood of this group of women, from the home country to the reception systems in host countries. In Chapter 2, I analyze and delineate the subject of this research and the features of this social group. This means that the intersectional nature of the group of refugee and asylum-seeking women is investigated,

¹⁵ Sexual and work *exploitation, marginalization, powerlessness, cultural imperialism, and systematic violence*. See Chapter 4.

¹⁶ *Infantilization, objectification, dehumanization, instrumentalization, and stigmatization*. See Chapter 4.

¹⁷ This idea "Considers how epistemic practices and institutions may be deployed and structured in a way that are simultaneously infelicitous toward certain epistemic values (such as truth, aptness, and understanding) and unjust with regard to particular knowers" (Kidd et al., 2017, p. 13). Scholars have identified three different declinations of epistemic injustice: *testimonial injustice, hermeneutical injustice and epistemology of ignorance*. See Chapter 4.

¹⁸ Early examples: the role of gender neutrality in a part of feminist theory, implicit biases, multicultural and not intercultural societies, the poor conceptualization of this group of women as a different group both from the ones of adults and minors or children.

together with the concept of discrimination. In Chapter 3, I commit to applying the conceptual framework of vulnerability to the group of asylum-seeking and refugee women. I recognize that the most efficient way to talk about the vulnerability of this group of women is to do it through the account proposed by Luna (2018), that is the one of layers of vulnerability. This account in fact better describes the intersectional nature of these vulnerabilities. In Chapter 4, I take three frameworks of injustice and analyze them in the light of asylum-seeking women's experiences. These accounts of injustice are Iris Marion Young's (2011) five faces of oppression – exploitation, marginalization, cultural imperialism, powerlessness, violence -, Andrea Sangiovanni's (2017) five inferiorizing modes of treatments – infantilization, objectification, dehumanization, stigmatization, and instrumentalization -, and the line of thought of epistemic injustice – testimonial injustice, hermeneutical injustice, and epistemologies of ignorance (Fricker 2007; Medina 2013; Kidd *et al.* 2017). Finally, Chapter 5 works on the notion of *effacement*, the process of interaction between injustices that creates vicious cycles of injustice and makes invisible the real nature of the compound injustice of these women. It will be explained what this concept is, why it is necessary, and what its source and effects are, both at theoretical, practical, and political levels.

I will conclude by arguing that this concept can potentially give the necessary support for the development of norms and standards, regulatory frameworks, policies, and guidelines for ameliorating the experience of displacement of asylum-seeking and refugee women, thereby breaking the vicious cycles of injustice.

METHODOLOGICAL STATEMENT

Before starting with the central body of this work, it is worth to spend few words on the methodology endorsed. It should be clear by now that the aim of this dissertation is not to theorize a just distribution of refugees among states, or a just system of classification, or still a theory that addresses what a just system of protection for asylum-seeking and refugee women would entail. However, I do not consider these kinds of theorizing pointless, or wrong. The reasons to break away from this is that the most common way of theorizing within the area of refugee studies have not sufficiently (if not at all) addressed issues regarding gender and the way intersectional factors influence the experience of refugeehood of the people involved. Surprisingly, they have not considered enough the way just or fair distribution, definition, and systems of protection are shaped by gender and racial issues.

Most of the normative works in the field of Refugee studies focus their interest on inquiring what just distribution of refugees among states would entail, what is the best way of classifying refugees, how to defend special consideration to refugees in respect to other types of migrants, what a just system of protection would look like.¹⁹ This looks in agreement with the *normal model* – or the *positive approach* – of justice, which seems to ignore issues of injustice, or at least it seems to take for granted that injustice is the mere violation or absence of justice and that “once we know what is just, we will know all we need to know” (Shklar 1990, p. 15). In the case of this research, once we know what would be right for this group of women, all the work is done, and we can recognize the wrongs that are happening to them. Certainly, there is no theory of justice that ignores injustice, since principles of justice, laws and conventions that follow from them are meant to eliminate it.²⁰ However,

¹⁹ I am thinking, among other scholars, of David Miller, David Owen, Alexander Betts, Paul Collier, and Serena Parekh.

²⁰ For example, Rawls, in the development of his theory of justice he identifies the Difference Principle, which puts great emphasis on the condition of the worst-off (Rawls 1999). The problem, according to whom criticize the normal model of justice, is that Rawls does not provide a complete definition of the disadvantaged other than on economic grounds. The social and structural dimensions of injustice (i.e., oppression, domination, humiliation, and discrimination) are not considered (Simon 1995).

Shklar continues, these theories treat injustice “intellectually as a hasty preliminary to the analysis of justice” (Shklar 1990, p. 19). However, without accurately addressing what injustice for these women looks like, we may never arrive to measures and policies that are really effective in order to eliminate these injustices. On the contrary, I argue, this way of approaching the issue may be furtherly damaging for these women, since it causes itself a concealment²¹ of the real injustices they suffer. What it is contested to the normal model is that injustice is reduced to some sort of deviation or departure from justice, which is the ideal standard that we need to recognize the wrongdoing. Justice in this framework is the prior concept, or a prior and balanced state of affairs, and injustice is something that negatively affects it. This is the reason why philosophical works put their focus primarily on the concept of justice: “We need justice the way we need a pattern or standard that something can fail to fit” (Wolgast 1987, p. 125). However, this is precisely what it is questioned: not to give to the concept of injustice the right importance. In accordance with Shklar, I argue that the theories that address refugeehood within the framework of the normal model fail to offer an adequate account of injustice, especially gender and intersectional injustice.

Then, how to focus on injustice? What does it mean to *put injustice first*? And, ultimately, what does it mean for this research to focus on injustice? There are three ways of conceiving the relation between justice and injustice within a non-normal model of justice (Simon 1995):

- a. Accommodation theses: A theory of justice can be accommodated into a theory of injustice, and a greater emphasis on injustice is a valuable addition to a theory of justice;
- b. Separability thesis: justice and injustice constitute independent areas of inquiry (methodological independence). In addition, injustice is an independent concept with its own dynamics and our judgements about injustice do not depend upon judgments about what we consider justice to require (conceptual independence);
- c. Priority thesis: elimination of injustice takes (methodological, psychological, empirical, chronological, or normative) priority over justice. According to this view, injustice is empirically perceivable, whereas justice does not match this feature.

²¹ See Chapter 5 of this work.

Moreover, injustice has a temporal priority over justice, in the sense that our demands for justice arise as correction of injustices. Psychologically, we sense injustice, through indignation and anger, more deeply than justice, which is a cold virtue that does not cause any deep feeling. But there is also a methodological purpose of the priority thesis, according to which “a theory of injustice pleads for people to first focus on what is wrong before embarking upon a program based on what is right” (Simon 1995, p. 24).

First, consider the accommodation thesis. As anticipated, the accommodation thesis relies on the fact that justice still represents the fundamental concept, but alone does not capture the systematic character of injustice, which is not the exact contrary of justice, especially in a paradigm of distributive justice. This seems to be Iris Marion Young’s position. She states that the distributive model of injustice is not sufficient for recognizing injustice. However, what is injustice according to Young? Iris Marion Young highlights the structural character of injustice as social phenomenon (Young 1990). Young does not, at *prima facie*, call into question the priority of a theory of justice, but criticizes the major paradigm of distributive justice. Rather than being focused on the distribution of income, wealth, capabilities, rights, and other material or non-material goods, justice should concentrate on issues of decision-making, culture and division of labor. Injustice, according to Young, is defined through the concepts of oppression, “the institutional constraint on self-development” and domination, “the institutional constraints on self-determination” (Young 1990, p. 37). This approach still recognizes a dependence and priority to the concept of justice over justice, since it is not justice the notion at stake, but the particular paradigm of distributive justice. If we look at the widespread and systematic character of oppression and domination, she claims, it is very clear that the contrary of these sorts of wrongs is not captured by any possible distribution and the solution cannot rely on redistribution of any kind. Therefore, the role that injustice has in Young’s theory is to highlight the inadequacy of a specific kind of theory of justice rather than the soundness of the very attempt to formulate a theory of justice.

Moving on to the second thesis, the skeptics, as defined by Shklar, argue that philosophy should be giving injustice its due and that it should be not considered merely the opposite of justice. This, according to Shklar, would lead to a twofold insight. The first is that current

theories of justice tend to conceal “the full, complex, and enduring character of injustice as a social phenomenon” (Shklar 1990, p. 9) and the point of view of the victims, or the individuals that perceive themselves as victims, of such injustice. Therefore, she defends a conception of injustice as a social and independent phenomenon with its own right. Furthermore, she states that injustice “has an exuberant life of its own and which no system of justice, however fair, can ever expect to eliminate” (ibid. p. 87).

The last observation seems to suggest a demand for an independence of injustice from justice. However, what kind of independence is Shklar arguing for? It is problematic to understand how Shklar interprets such an independence. Justice and injustice, according to Shklar, occupy different realms. Justice the one of the amoral and pre-legal state of nature, whereas injustice occur in the realm of reality, within the framework of an operative system of law. Even psychologically, justice and injustice are not symmetrical nor complementary. Also, as it has been already mentioned, they are not the exact opposite of one another. Finally, her skepticism about human nature seems to suggest the necessity for an independence, since the attempts to conceive a theory of justice, within a positive approach, can only lead to further injustices.

The normal model of justice may be entirely unobjectionable, but it is just not made for us. It is not wrong, just futile and deceptive in practice because it ascribes psychological and intellectual qualities to us that we simply do not possess. In our radical uncertainty, therefore, the best we can do is to regret our insuperable limitations and to do as little harm as possible (Shklar 1990, p. 27).

This passage, indeed, suggests that the kind of independence that Shklar is arguing for is not conceptual, but rather methodological and normative.

Now that the question regarding the independence of justice and injustice is faced, it is also worth to inquiry whether injustice has a priority over the other, and, if this is the case, what kind of priority it entails. As it has already been claimed, I argue that the normal model of justice, that gives priority to justice, is to be seriously questioned. Therefore, I am going to discuss the third possibility of conceptualizing this reversed relationship. Shklar claims that we should be doing is “putting injustice first”, to paraphrase the title of one of her most

famous articles.²² This claim has different senses. The first is that injustice has a methodological priority: we would achieve better outcomes from focusing on ordinary vices rather than from studying virtues (Shklar 1984; Yack 1999). The second is that injustice has a psychological priority over justice, because injustice plays a central and intense role in our moral sentiments whereas justice does not inspire any feelings but cold ones (Shklar 1990; Yack 1999). Wolgast claims that although the idea of a primacy of justice seems at *prima facie* (psychologically and socially) reasonable, it is mistaken. According to the scholar, a demand for justice is in fact an appropriate response to wrongdoings. It means that justice represents a correction. Therefore, she argues that in a logical order justice comes last: “Justice is not an original notion from which injustice is derived but vice versa” (Wolgast 1987, p. 132). Justice is a corrective to injustice, and it is not something definable. Therefore, what political philosophy should be adopting is a *negative approach*: in order to discover what justice is, it first needs to consider injustice. This is because the belief that every wrong have a correction, i.e., every injustice has a just response, is mistaken. On the contrary, Wolgast says, it is often true that in the case of many injustices we can do anything without creating some other wrongs. Therefore, her proposal is to take injustice as the primary notion, still without implying that for every wrong there is a just response.

Finally, Avishai Margalit (1996) goes on the direction of a normative, logical, and cognitive priority of the notion of injustice over justice. The scholar defines a decent society negatively as a nonhumiliating²³ one rather than positively as a respectful-of-its-members society. He explicitly rejects the idea that the aim of political philosophy is to find what perfect just states of affairs and society look like and proposes that it should instead try to achieve a ‘decent’ society. The normative ground for the priority of injustice over justice relies on the urgencies of eradicating the wrong rather than to theorize the good. The logical argument relies on the distinction between products, goals that can be directly achieved, such as non-humiliation, and by-products, which cannot be achieved directly, such as respect.

²² Shklar, J. (1982), “Putting Cruelty First”, *Daedalus*, Vol. 111, No. 3, *Representation and Realities*, pp. 17-27.

²³ Humiliation is “any sort of behavior or condition that constitutes a sound reason for a person to consider his or her self-respect injured” (Margalit 1996, p. 9).

Finally, the cognitive reason is that it is easier to identify humiliation than respectful behavior.

I argue that what is needed in this case is a *methodological priority* of issues concerning injustice because my worry is that focusing only on justice, we cannot capture the actual experiences of the subjects involved and, therefore, cannot indicate the right ways to eliminate, or ameliorate, situations of injustice – in terms of vulnerability, discrimination, and oppression. In this regard, I am in complete agreement with Parekh (2020), when she affirms that

We cannot make things more just for refugees until we fully understand the situation that refugees find themselves in. Having developed an understanding of the real problem for refugees and the crucial role Western liberal democracies play in it, we can begin to think concretely about what actions we can take and what policies we should support.

(Parekh 2020, p. 182)

The aim of this research is thus not to make a strong claim against normal models and ideal theories of justice. Rather, the correct question would be: What do we want from non-ideal theories of justice? They should address injustice in a way to grasp what is really going on in the actual world, in order to correct it. My idea is to provide a basis for theorizing from the bottom and develop a framework in which it may be possible to develop policies and practices that can ameliorate the actual experiences of this group of women. This is the reason why I also committed to include these women's voices, even though without engaging in original empirical research. Endorsing in a bottom-up approach means, in fact, to begin from the bottom, from actual reality, and start theorizing from it.

As already stated in the Introduction, this dissertation will start from an empirical description of the experiences of asylum-seeking and refugee women, to pass to an analysis of why they can be considered a group, notably an intersectional social group and what characterizes it. Afterwards, I will see these women's experiences through the lenses of a vulnerability account, which sets the tone for a first conceptualization of this group's injustices. I will then conceptualize these injustices thereby using different categories that I argue fit these women's experiences. Lastly, I will theorize a further category of injustice,

called effacement, which is a concept meant to put everything together to make better sense of the vulnerabilities and injustices suffered by these women.

CHAPTER 1.

Asylum-seeking and Refugee women: Drawing out the subject of the research

The subject of this research is the group of asylum-seeking and refugee women, and this chapter is precisely dedicated to portraying, in the most complete way possible, their experiences of displacement. Thus, this first descriptive chapter aims at providing an answer to the following questions: Who are asylum-seeking and refugee women? Where do they come from? Where are they directed? What is waiting for them? What is their background? Why are their experiences relevant?

As explained clearly by Betts & Collier (2017) and Parekh (2020), due to the way in which the global refugee regime is structured, refugees around the world face the ‘impossible choice’ between three options: dangerous journeys, long-term encampment, and urban destitution.

Let’s take the example of Amira, a Syrian refugee whose situation is typical of many. Amira is a woman with children, like around a quarter of the world’s refugees. She can’t go home, because her home has been destroyed – she comes from the city of Homs. She won’t be resettled to a third country: less than 1 per cent of the world’s refugees will be lucky enough to get that lottery ticket. (Betts & Collier 2017, p. 8)

Amira can therefore go live in a camp, risking being stuck there for long time, as the abovementioned scholars highlight. She can also decide to live in a neighboring country, in a urban area, at risk of extreme poverty due to right to work restrictions and scarcity of host countries policies of integration. Lastly, Amira can do a third, difficult and extremely costly, choice, which is the one to risk her life by attempting to reach the Global North and to obtain asylum there. The point is: “If you were a refugee trying to figure out the best course of action for yourself and your family—with the goal of having a real life, a life where you can work towards building a future and not merely staying alive—what would you do?” (Parekh 2020, p. 128). For many, the answer is the third option: asylum in the Global North. Thus, my research mainly focuses on those women who cross borders and try to reach Europe, even

though it also treats the experiences of the women in camps and in urban settlements, since they are often a necessary step of the journey to the Global North.

In this chapter, I will thus explain who these women are, what are their motivations for leaving their home countries, the routes they take to reach Europe, what they experience during the journey, what happens to them when they pass through hotspots and transit countries and, finally their life after their arrival to reception countries in EU, including cures, claims, asylum procedures, refugee status granting or refusal. To reconstruct the salient events of their whole journey through refugeehood, this chapter uses three main groups of sources: the academic sociological literature, which is particularly rich; the reports and appeals of various governmental and non-governmental organizations, equally abundant; and, finally, media productions, such as journal articles. In a bottom-up framework, this first part of the research is understood as the first fundamental step through the ascending stairs that bring to a conceptualization of the experiences of injustice of this group of women.

1.1 Refugeehood: A gendered story

As highlighted by Ala Sirriyeh (2010), although the predominant narrative of refugees divides people seeking asylum into two main groups, the ones of adults and children (or minors), it is also true that there has been lately a ‘feminization’ of migration, both in reality¹ and in the narratives of refugeehood.

I shall give some more precise information about this. For what regards the number of forcibly displaced persons,² at the end of 2019 they were 79.5 million. Of these, 26 million were refugees, 45.7 million were internally displaced, and 4.2 were asylum seekers.³ There are no sex disaggregated data, which, in general, are difficult to find. However, this does not mean that there has not been a recognition of the fact that a significant proportion of arrivals

¹ In the last years, we are witnessing an increasing number of women on the move. Globally speaking, it is estimated that half of the displaced people are women (Council of Europe 2017). See also: <https://www.unhcr.org/women.html>.

² A forcibly displaced person is a person who is forced to move, within or across borders, due to various reasons: effects of climate change and natural disasters, armed conflict, persecution, terrorism, human rights violations and abuses, violence, or a combination of these factors. Definition available at <https://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/ForciblyDisplacedPersons.aspx>.

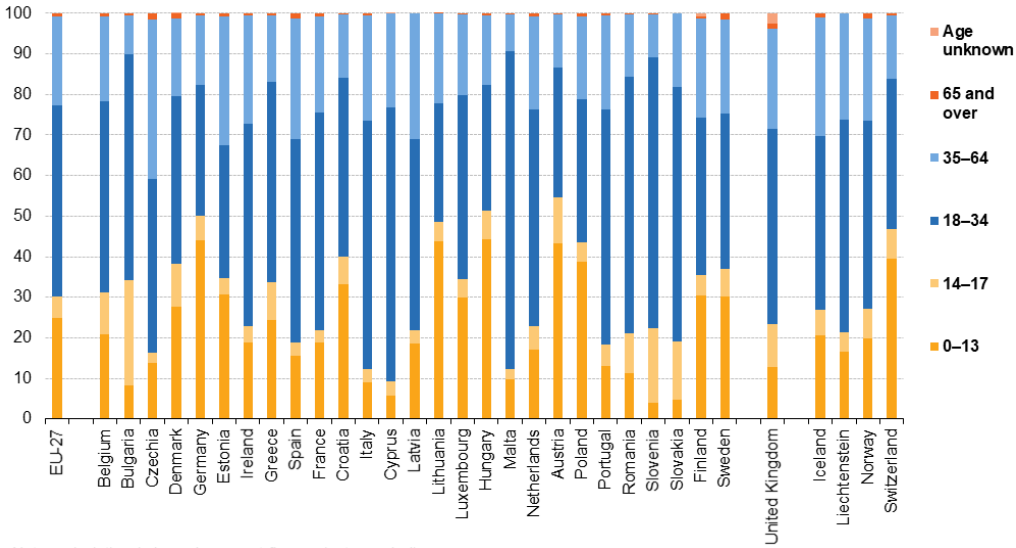
³ Data retrievable at <https://www.unhcr.org/figures-at-a-glance.html>.

and people seeking asylum worldwide and in Europe are women: In 2017, women represented the 52% of asylum-seekers in Europe (Council of Europe 2017).

From January to August 2020, the total of arrivals to Europe by the Mediterranean route⁴ amounts at 39,309 (last update August 3, 2020). 58.5% of those arrivals are men, 16.3% are women and 25.2% are children. At the end of 2019, the arrivals were 123,663. Through the Balkan route,⁵ at the end of 2019 the new arrivals to Europe amounted at 250,622. Among the group of the adults, 95.79% were men (152,769) and 4.21% were women (6,713); among the minors, 83.28% were child boys (14,254) and 16.72% were child girls (2,861).

As Figure 1. shows, Eurostat still divides mainly into age groups.

Figure 1. Distribution of first-time asylum applicants in EU, 2019



Note: calculation is based on exact figures (not rounded).
Source: Eurostat (online data code: migr_asyappctza)



Despite of that, the Eurostat report also show the distribution of first-time asylum applicants by sex: in 2019 more men than women were seeking asylum. In percentage, 61.9%

⁴ By sea to Italy, Greece, Spain, Cyprus and Malta; by land to Spain and Greece. Data retrievable at <https://data2.unhcr.org/en/situations/mediterranean>.

⁵ Albania, Kosovo, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia. Data available at <https://data2.unhcr.org/en/dataviz/103?sv=41&geo=0>.

were men asylum seekers and 38.1% were women. Among the youngest group (0-13) male first-time applicant represented in 2019 the 51.2% of the total.⁶

Yet, if my aim is to find more precise sex disaggregated data on asylum applications in EU, the Eurostat is not of much help. It is more fruitful to search for each country available data, or, as it is shown in table 1.2, to visit the ‘Asylum in Europe’ portal. It provides information about the total number of asylum application in a given European country, sex disaggregated data on this total, and also, it gives the percentage of new applicants’ country of origin. As shown in the table below, not every European country provides sex disaggregated data.

Table 1. Disaggregated data on asylum applications in a selection of EU receiving countries, in 2019

Country	Total	Women	Men
Italy	43,783	11,698	32,085
Germany	165,938	28,392	42,696
Spain	140,637	53,723	64,541
France	132,614	-	-
Belgium	27,742	6,001	13,821
Serbia	12,937	885	12,052
Greece	77,287	25,536	51,749
Malta	4,021	372	3,195
Portugal	1,849	496	1,353
Sweden	21,984	8,837	13,147
Total	628,792	135,940*	234,639**

Origin: Asylum in Europe <https://www.asylumineurope.org/>

⁶ Data available at: https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics#Age_and_gender_of_first-time_applicants.

*Data incomplete
 **Data incomplete

The ‘Asylum in Europe’ portal is also useful to find data regarding the numbers of rejections and international protection granting in Europe. Unfortunately, it does not provide disaggregated data on this topic. According to Eurostat,⁷ in European Union 27 Member States in 2019 were granted 295,800 protection statuses. This data comprised of 72,700 grants of humanitarian protection (25% of all positive decisions), 82,100 grants of subsidiary protection (28% of all positive decisions) and 141,100 grants of refugee status (48% of all positive decisions). The largest group of beneficiaries of a type of international protection remains composed by Syrians, followed by Afghans and Venezuelans. The 39% of all positive decisions were made in Germany, followed by France (14%), Spain (13%) and Italy (10%). Again, no sex disaggregated data are available. In general, 38% of asylum applications in Europe resulted in some form of protection status. The following figure shows sex disaggregated data in 2010 of those countries:

Figure 2 Refugee Status and Subsidiary Protection Statistics in 2010

	Women			Men			Appeals allowed	
	Refugee Status	Subsidiary Protection	Total positive decisions	Refugee Status	Subsidiary Protection	Total positive decisions		
Belgium	16.4 %	1.8%	18.2%	15.8 %	7.4%	23.2%	8.8%	
France	12.1 %	5.3%	17.4%	10.1%	1.3%	11.4%	22% ⁶⁰	
Hungary	14.8%	11.7% ⁶¹	26.5%	4%	12.2% ⁶²	16.2%	N/A	
Malta	5%	64%	69%	2%	63%	65%	N/A	
Spain	10.4 %	5.2 %	15.6%	4.8 %	6.2%	11%	1.09% ⁶³	
Sweden	8 %	23.5 %	31.5%	5.1%	19.5%	24.6%	Women	Men
							9.5%	6.4%
UK	19 %	7 %	26%	16.4%	9%	25.4%	Women	Men
							32.3%	24.8%

Source: Ali et al. 2012, European Parliament Study

⁷ Data available at: <https://ec.europa.eu/eurostat/documents/2995521/10774018/3-27042020-AP-EN.pdf/b8a85589-ab49-fdef-c8c0-b06c0f3db5e6#:~:text=In%202019%2C%20the%20European%20Union,200%20resettled%20refugees%20in%202019.>

What do all these data mean for asylum-seeking and refugee women? Gendered study of refugeehood is relevant if we think that it was lacking for so many years (Freedman 2007), and in normative political philosophy is still suffering of lack of attention and insights. Of course, to study the gendered consequences of refugeehood without precise disaggregated data is difficult, and that is why the Council of Europe made a specific recommendation in this regard: “Gender and age disaggregated data and information must be available for policy makers to be able to develop evidence-based responses and policies” (Alam et al. 2019).⁸ The figure of the asylum seeker and refugee is still assumed to be male for the most part. This is another example of what Criado Perez (2019) calls ‘male default’.

Women are defined as a ‘Particular Social Group’ by the 1951 Geneva Convention relating to the Status of Refugees. “Membership of a particular social group” is indeed one of the five grounds for claiming the refugee status of the mentioned Convention. Although it does not include a list of all ‘particular social groups’, it is open to the diverse and changing nature of groups in various societies and the evolution of international human rights norms. This ground has been invoked frequently in refugee status determination and states have been recognizing, among others, women, homosexuals, and families as particular social groups (UNHCR 2002). The UN Refugee Agency definition of particular social groups (PSG):

A particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identify, conscience or the exercise of one’s human rights.

(UNHCR 2002)

The definition of women as a PSG is highly debated among legal scholars (Anker 1995, 2002, 2020; Edwards 2010; Foster 2014; Indra 1989; 2008; Marouf 2019; Musalo 2010; 2019, 2021; Querton 2012, 2022). In general, it is pointed out that “The interpretation of ‘Particular Social Group’ continues to present a challenge to the protection of women at risk of gender-based violence” (Querton 2022, p. 3). For the very concept of PSG is contested. In fact,

⁸ See <https://rm.coe.int/report-migrant-women-scpo-jan-2019/168092d8cd>.

Inclusive legislative and jurisprudential developments in one area of refugee law doctrine, such as that concerning refugees at risk due to their sexual orientation, may have unforeseen effects in other areas, such as refugee women fearing gender-based violence whose claims are not related to their sexual orientation. This article argues that this has contributed to the deterioration of refugee protection standards for women who are seeking asylum on the basis of gender-based violence.

(Querton 2022, p. 4)⁹

Among others, Querton (2022), Anker (2002), Pickering (2011), Sertler (2018), and Freedman (2007; 2016; 2018) effectively highlight that refugeehood and the European refugee crisis present gender-based specificities. Indeed, throughout the whole context of refugeehood, women have gender-specific experiences and – they say – it is for this reason that it is time to consider refugeehood as a gender specific process. Women flee conflicts, poverty, environmental calamities, and the impact of gender inequality, which leads to, among others, forced marriages, violence, oppression and inheritance losses (Zimmerman et al. 2009).

Women migrants and refugees are vulnerable to SGBV on their journeys, as well as in their country of destination. Many may also be fleeing different forms of GBV in their countries of origin. The prevalence of sexual violence in the current Syrian conflict has been documented by several reports by human rights organizations and thus a significant number of the women fleeing Syria are likely to have been victims of such violence. However, there are few provisions in place on the migration routes or in the EU to protect women, or to help survivors of GBV.

(Freedman 2016, p. 20)

Freedman (2016; 2018) highlights that SGBV is a constant feature of women's refugeehood experience is sexual and gender-based violence:¹⁰ it starts from the country of origin, it exacerbates during the journey, and it continues in the receiving countries in EU. Arbel, E., Dauvergne, C. & Millbank (2014) highlight that female refugees suffer and die in more than men and they are more vulnerable to abuse, violence and human trafficking. They suffer of poor mental health due to rapes, sexual violence, abuse, torture, human trafficking, conflicts (McKnight et al. 2019).

⁹ This issue will be further problematized in Chapter 2 of this work.

¹⁰ From now on: SGBV.

1.2 At home: why are they leaving their countries?

“Male violence is often the reason women are refugees in the first place” (Criado Perez 2019, p. 322). The author of *Invisible Women. Data Bias in a World Designed for Men* (2019) argues that while men more often flee their countries of origin because of war, natural disasters and political persecution, the reason why women are displaced is the gender-based violence that face from men. In her words,

Women flee from ‘corrective’ rape (where men rape a lesbian to ‘turn her straight’), from institutionalized rape (as happened in Bosnia), from forced marriage, child marriage and domestic violence. Male violence is often why women flee their homes in low-income countries, and it is why women flee their homes in the affluent West.

(Criado Perez 2019, p. 323)

Of course, it is true that male violence is the reason why many women flee their countries (Webber 2012). However, I would be cautious in stating that the reasons for fleeing their countries are completely different for men and women, as Criado Perez (2019) seems to suggest. Rather, I believe that it is more reasonable to highlight that both men and women leave their countries usually driven by the same macro-events, such as armed conflicts, natural disasters and political persecution, but that those macro-events present gendered dimensions. This means that women and men experience these events differently, women are disproportionally and specifically affected by those events, since they may lead to male-to-female violence (Nguyen 2019).

Shall we first consider the case of wars and conflicts. The UNHCR’s report *Woman Alone: The Fight for Survival by Syria’s Refugee Women*, (Guterres *et al.* 2014) highlights that when husbands or other male reference persons die or get captured during war, women are systematically emarginated and marginalized. Before the beginning of the conflict, they are used to manage the households, but also to get protection and financial support from the men of their family. Of course, the loss of the male figures changes all of that, families are teared apart, and the communities where they felt secure are destroyed. The women interviewed by UNHCR felt anxious and isolated. The majority of those women left the country when they lost the husband, or another head of the household. During armed conflicts, men are more likely to die, being injured and harmed from war’s direct effects, since it is undoubtable that

they constitute the large majority of combatants (Plümper & Neumayer 2006). However, women are more likely to suffer the indirect effects and consequences of wars, which relates “To the breakdown in social order, human rights abuses, economic devastation, and the spread of infectious diseases” (O’Reilly et al. 2015, p. 5). In particular, wars have dramatic effects on social order, agriculture, infrastructure, and public health provision.

The indirect effects of militarized conflicts result from, among others, reduced access to food, hygiene, health services, and clean water-and by lifting the thin veil of civilization. Women suffer more severely from the damage to the health and other infrastructure and the wider economic damage as well as from displacement and dislocation during and after conflict. The breakdown of social order and the ensuing brutalization fuels male aggression against women, who suffer from sexual violence both within and outside their domestic household.

(Plümper & Neumayer 2006, p. 724)

The authors of the quoted study identify three major indirect effects of war, that reinforce one another: economic damage, sexual violence, and displacement effects. The first refers to the food shortage, the distribution of poverty, the access to sanitation, electricity and safe water caused by militarized conflicts. Moreover, pharmacies and hospitals are destroyed, there is a lack of doctors and nurses, because they have been killed or have fled the country, loss of average incomes, and a rise of the price of basic need products. Plümper & Neumayer (2006) also argue that all of this affects more the women than the men, because they are more susceptible to famines and the raise of food prices, and women’s specific reproductive role makes them more vulnerable to the decline on public health assistance,¹¹ because men often have the priority over the distribution of resources. Secondly, the scholars highlight how women and girls often become victims of sex trafficking, systematic rape, forced pregnancies, enforced sterilization, and are obliged to work in military brothels. As also Querton (2014) notices, rape and sexual violence are often used as weapons. This happens especially when the civil war has ethnic reasons, and rape is used to hit a particular group. Systematic rape and sexual violence are used to spread HIV and other sexual transmitted diseases, and to create permanent damage in women’s body with the aim to affect their reproductive abilities. Moreover, they represent a symbolic attack to a community, which

¹¹ “Damage caused to the health infrastructure reduces obstetrical care and increases the number of miscarriages as well as maternal and infant” (ibid., p. 730).

aims at humiliating and demoralizing opponents, since women are often considered ‘honor keepers’ (Carpenter 2004; Collier 2007; Gottschall 2004).¹² Also, often men are forced to watch while their wives, daughters, other relatives are raped (Friedman 1992). Indeed, in ethnic civil wars women are the prime victims of the violence, especially in ‘failed’ states (Plümper & Neumayer 2006).

Also, domestic violence is exacerbated by conflicts, and it is even more prevalent than the direct use of sexual violence by combatants, and it continues even in post-conflict settings: demobilized and accustomed-to-force fighters find themselves frustrated because of the transformation of gender roles caused by unemployment (Criado Perez 2019; O’Reilly *et al.* 2015). The exact impact of the phenomenon, in terms of numbers, is uncertain, also due to the fact that, during wars and in the immediate post-conflict settings there are no authority where to press charges (Criado Perez 2019). The third effect presented by Plümper & Neumayer (2006) refers to the fact that, during conflicts, buildings are often targeted and destroyed, causing internally displaced people to find refuge into crowded shelters and refugee tent camps. In these shelters and camps, healthcare conditions are poor and female hygiene practices are often not allowed, due to the fact that for certain cultures a separation of women’s facilities from men’s is strictly necessary.¹³

Women also flee from natural disasters. After the occurrence of natural disasters, the issues that women have experience of are similar to the war or post-war situation, even if with important differences. As Plümper & Neumayer (2007) and Enarson (2000) notice, “Women are especially hard-hit by the social impacts of environmental disasters” (Enarson 2000, p. 2), because the human impact of those disasters is never entirely determined by nature. Natural disasters affect social relations: the disasters themselves, and the shock and stress caused by it can bring changes in gender and power relations. According to Le Masson *et al.* (2016), “Women and girls experience a reemphasis of (i) their traditional and often lower household position or status and (ii) a worsening of their condition” (p. 9). Indeed, reported gender-based and sexual violence increases in communities affected by natural

¹² See also the following entry of OHCHR: <https://www.ohchr.org/en/newsevents/pages/rapeweaponwar.aspx>.

¹³ And, I would add, even if culturally not sanctioned, I doubt that females would feel at ease and safe to use non-separated crowded facilities.

disasters (Enarson 1999) and they also rise the mortality rate among women, who show a higher mortality rate (Plümper & Neumayer 2007). Furthermore, areas affected by wars and natural disasters are more vulnerable to the spreading of infectious diseases, and when a pandemic occurs, women seem to die in larger numbers than men (Criado Perez 2019; O'Reilly et al. 2015).¹⁴ To a higher mortality rate collaborated disadvantages that women face during rescue attempts (Oxfam International 2005; Schwoebel and Menon 2004).

In many countries women's roles are to look after and protect children and the elderly as well as the family's domestic property, which hampers their self-rescue efforts in almost any type of natural disaster. Dress codes can restrict women's ability to move quickly, and behavioral restrictions can hinder their ability to relocate without the consent of husband, father, or brother (Plümper & Neumayer 2007, p. 554).

Thus, women may die while waiting for their husband, father, or brother permit to leave the house to find refuge to shelters during a natural disaster (Criado Perez 2019).

Thirdly, even though the traditional image of a refugee is a man who leave his country for political reasons, women flee for reasons related to political persecution too. However, women's political activism can take a different form, making it difficult to recognize (Collier 2007). As it has been shown, during conflicts women can be used as sexual slaves for combatants, be coerced to fight and forced to marry members of military forces and rebels. Also, women may pass messages and provide food, medical care, clothing, and other services, and they may hide people. As the author of the report also recognizes, "Women may be persecuted for their imputed political opinion for which they may be subjected to human rights violations simply because they are the wives, mothers or daughters of people whom the authorities consider 'dangerous' or 'undesirable'" (ibid., p. 10).

¹⁴ As the cited sources highlight, the Ebola virus case in Sierra Leone in 2014 is the most emblematic in this sense, because pregnant women are more likely to contract the virus, since they have more frequent contacts with healthcare structures and health care workers (Taylor 2014). On the other hand, it is still not clear whether the same occurs for the ongoing COVID-19 pandemic. Rather, it seems to hit men more than women, and the mortality rate is again in favor of women (Moeser 2020; Pérez-López et al. 2020; Sharma et al. 2020). This is because the women seem to have a more effective immune system to face the virus. Yet, it is still soon to make predictions on the real COVID-19 pandemic's impact on women around the world: power relation and gender roles are likely to affect women negatively, since women around the world are still responsible of the most of care responsibilities (Criado Perez, 2019; UNHCR 2020b).

There is also a type of persecution that is even more specifically related to gender-based violence, for which women are unable to get their state's protection, which involves SGBV. It is perpetrated both by state and non-state agents,¹⁵ female and male individuals, and includes forced sterilization, systematic rape, sexual violence and harassment, acid attacks, honor crimes,¹⁶ female genital mutilation,¹⁷ trafficking,¹⁸ domestic violence,¹⁹ forced and early marriages.²⁰ Sometimes women that do not conform to ascribed gender roles and

¹⁵ The category of state agents is composed by individuals working in an official capacity for the state: for example, it includes police officers, state militaries, government officials and operative of intelligence. On the other hand, non-state agents include a woman's husband, father, other relatives and community members (Collier 2007). Most of the violence listed are perpetrated by privates and are tolerated or authorized by the State and various institutions (Hajjar 2004; Leach 2004; OHCHR 2012).

¹⁶ It is defined as a murder in the name of family honor. It is a crime where the ones to be injured are prevalently women, due to the safeguard of the honor code of a household or community. These women are guilty of immoral behavior, which is classified as anything that deviates from the image of a virgin daughter, a submissive wife and a self-sacrificing mother. Examples of dishonorable behavior include refusal of forced or arranged marriage, sex before and outside the marriage (even if it is rape), the suspect of having an affair, inappropriate clothing, seeking for independence and education. The scope of these crimes – which involve murder, imprisonment, stoning, poisoning, rape, disfigurement, coercive suicide – is to deny women's basic right to make decisions for themselves and, in particular, in the sphere of sexuality and relationships (Collier 2007).

¹⁷ From this point on, FGM. It includes partial or total removal of external female genitalia for non-medical reason, usually practiced on young girls between infancy and 15 years old. According to the World Health Organization, it is estimated that more than three million girls are at risk of FGM. For an exhaustive explanation of the practice, see <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>.

¹⁸ Human trafficking is defined as “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs” (UN's Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>).

¹⁹ It includes forms of physical (punching, slapping, dragging etc.), psychological (controlling behaviors, insults, intimidation, humiliation, undermining, threats of harm), economic (taking money, withholding documentation etc.) and sexual (rape and sexual assault) abuse, and occurs within the home and causes long-term health consequences, physical and psychological (Amnesty International 2001; Collier 2007). All over the world, women victims of domestic violence find it difficult to leave their homes and seek protection, due to shame, fear of not being believed, inappropriate police and state response.

²⁰ A forced marriage is carried out without a valid consent by one, or both, the parties and is characterized by threats and violence, since it includes forced sexual relations and child rearing. Sometimes, this is accompanied

norms²¹ are persecuted from the state and/or their community, and specific vulnerable women may be targeted, such as single mothers, elderly, victims of rape, widows and disabled (Collier 2007). As Amnesty International (2001) observes, the abuses are intentionally inflicted by their family, states and communities for similar reasons to torture in custody:

“Torture in custody is often used not only to extract confessions but also to instill profound dread into victims, to break their will, to punish them and to demonstrate the power of the perpetrators. Similar purposes characterize acts of torture in the family or the community. The perpetrators may seek to intimidate women into obedience or to punish women for allegedly bringing shame on relatives by their disobedience”.²²

Thus, these women often escape from armed conflicts, natural disasters and persecution, other than from situations of SGBV, exclusion and marginalization, also related to those events.

1.3 The Journey: What is expecting them?

Not all victims of SGBV, state persecution, natural disasters, and war-related violence that are displaced decide to cross a border. However, some of them will eventually decide to make this move. As acknowledged by Pickering & Powell (2017), “As irregular migration routes are established, women begin to travel in increasing numbers” (p. 119). Deciding to leave their homes and then countries put them at risk to face once again SGBV, exclusion and marginalization throughout every step of the journey. This might be carried on by private and public actors, including smugglers, traffickers, other refugees, police officers, coastguards, NGOs’ staff and volunteers (Amnesty International 2016; Fernandez 2019; Freedman 2016; Freedman 2017; Friedman 1992; Gerard & Pickering 2014; Pickering & Cochrane 2012; Pickering & Powell 2017; UNHCR 2018).

The increase in the securitization of border leads these women to find new, longer and much more dangerous routes, by land and by sea: “When women face environmentally hazardous conditions – such as maritime or harsh land crossings – they are often more likely

by the practice of bride price. On the other hand, an early (or child) marriage is a marriage that occurs before 18 years old and it is particularly at risk of serious harm since it can lead to early pregnancies (Collier 2007).

²¹ See § 1.3.1.

²² See: <https://www.amnesty.org/download/Documents/120000/act400012001en.pdf>.

to succumb to physical difficulties including drownings and exhaustion” (Pickering & Powell 2017, p. 120). Also, the authors notice, once detected, they face more difficulties in taking themselves out of detention centers or detention-like arrangements. Those arrangements are put in place by states or agencies, often working on behalf of migrant smugglers.²³

Another gender-based risk that women face during the journey is to fall into the hands of human traffickers (Graham-Harrison 2017), to experience violence in refugee camps and in exchange of the money they need to cross a border (Amnesty International 2016a; Amnesty International 2016b; Fernandez 2019; Gerard & Pickering 2014; UNHCR 2018).

A first example is the experience of Hasina, as reported by Parekh (2020).

Before Hasina was able to flee the violence in Myanmar, she was brutally tortured by the military. “They beat me, tied my hands and feet and hung me from a tree. Next to me there was another woman. The soldiers cut her belly and vagina. They cut off her breasts and put them in plastic bag. I started screaming and a soldier bit a piece of my cheek off. Then they pulled me down and gang raped me.” When she woke up naked, three days later, with stab wounds on the side of her face, she immediately began her journey to Bangladesh. When she arrived at the refugee camp a friend asked her if she would like a job in a garment factory and she accepted willingly. The friend turned out to be a trafficker, and she was taken to a brothel and made to work as a sex worker. She works seven days a week and gets about \$1 per client. The poor pay and degradation is not the worst part for Hasina: working as a prostitute, she has to relive the trauma of her torture by military every day.

(Parekh 2020, p. 102)

I now go through all these elements one by one. As, among others, Friedman (1992, 2016), Gerard and Pickering (2014) and Amnesty International (2016a; 2016b) highlight, to escape their home countries does not mean escaping from violence. They report that asylum-seeking and refugee women declare to have been scared during the entire journey to Europe. Amnesty International (2016b), in particular, spoke to fifteen women who made the journey through the Libyan coast, “most of whom said they lived in perpetual fear of sexual violence along the

²³ Migrant smuggling is a business where smugglers facilitate illegal migration by land, sea or air routes both into and within the EU. Migrant smuggling is associated with deaths and human rights violations: https://ec.europa.eu/home-affairs/what-we-do/policies/irregular-migration-return-policy/facilitation-irregular-migration_en.

journey”.²⁴ Women told that they were sexually assaulted by smugglers and traffickers,²⁵ and member of armed groups. In the same report, Amnesty International tell the story of two Eritrean girls. The first, Ramya (22 years old), said that she was repeatedly raped by traffickers in a camp in northwestern Libya. These are her words:

The guards would drink and smoke hashish [cannabis] and then come in and choose which women they wanted and take them outside. The women tried to refuse but when you have a gun pointed at your head, you don't really have a choice if you want to survive. I was raped twice by three men...I didn't want to lose my life.

(Amnesty International 2016a)

She also admitted that she had witnessed other rapes, including one that particularly shocked her: a woman was gang-raped because she was accused to have failed to pay her fee: “Her family couldn't pay the money again – she said -. They took her away and she was raped by five Libyan men. They took her out late at night, no one opposed it, everyone was too afraid” (ibidem). Another example is the one of Maria, a 26-year-old woman from Cameroon, rescued by Médecins Sans Frontières in June 2016, who said she was kidnapped by four armed men, forced into prostitution, and repeatedly raped:

“People sell people. Selling people is normal in Libya.” She said that, after being abducted by four armed men, she was forced into prostitution and raped repeatedly. *“They took all our things. Everybody has a gun in Libya – children too (...) I spent three and a half months in Libya, in two different houses. One day a girl died in front of us. She was sick, no food, and no water. If you go to hospital, they kidnap you. My friend is still in prison; she has been there seven months”*.²⁶

²⁴ See <https://www.amnesty.org/en/latest/news/2016/07/refugees-and-migrants-fleeing-sexual-violence-abuse-and-exploitation-in-libya/>.

²⁵ For a definition of migrant smuggler, see footnote n. 18. Trafficking of human beings is defined by *The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* as: “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat, or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs”. See <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>.

²⁶ Médecine sans Frontières (2016), “Trapped in Transit. Refugees, migrants and asylum seekers locked up in Libya del 2016”, <https://msf.exposure.co/trapped-in-transit?platform=hootsuite> (italics present in the text).

Hope, a 20-year-old Nigerian singer, was betrayed by a friend, who invited her to Lagos. When she arrived in Lagos, “she sold me to another lady, and they took me to a brothel in Libya. Men would come and pay to have sex with the women. I refused to have sex with the man and they locked me away and beat me over and over” (Msf 2016).

Finally, Amnesty International (2016) reports the testimony of Amal, 21 years old, from Eritrea. Amal told of the kidnapping, by a militia believed to be linked to the Islamic State, of the group of 71 people with whom she was traveling, near Benghazi, Libya, which took place in July 2015.

They asked the transporter why he was helping Christians. He replied who didn't know we were Christians and they let him go. Then they have us separated, first Christians on one side and Muslims on the other, then in the two groups men on the one hand and women on the other. They took the Christians and brought us in Tripoli, where we were kept for nine months in a basement, without ever seeing the sunlight. We were 11 women, all from Eritrea. There have been times when they did not feed us for three days, others in which they gave us a meal at day: half a slice of bread. When we refused to convert, they beat us with them pipes and sticks threatened to shoot us or cut our throats. When in the end we women we have been forced to convert, we have been subjected to sexual violence. The men in fact they considered us their 'wives' and treated us as sex slaves. I'm she was raped by several men before being assigned to one of them, who has continued to rape me.²⁷

(Amnesty International 2016a, my translation)

Reem, a Syrian refugee, told the same NGO:

I never got the chance to sleep in settlements. I was too scared that anyone would touch me. The tents were all mixed and I witnessed violence... I felt safer in movements, especially on the bus, the only place I could shut my eyes and sleep. In the camps we are so prone to being touched, and women can't really complain and they don't want to cause issues to disrupt their trip.

(Amnesty International 2016b)

Amnesty collected testimonies from other women who were raped before reaching Europe. Substantial in this sense is the story of a 22-year-old Eritrean who tells of having witnessed sexual violence against other women. After being accused of failing to pay the transporter, one of them was subjected to gang rape: “Her family didn't have the money to pay a second time. Then five Libyan men took her aside and raped her. It was night, none of

²⁷ See: [Libia: migranti e rifugiati in fuga da violenza sessuale, persecuzione e sfruttamento - Amnesty International Italia](#)

us could do anything, we were too afraid”²⁸ (My translation). Or again, Ramya, another 22-year-old Eritrean girl, has suffered more than one sexual violence by traffickers who held her prisoner in a camp near Ajdabya in north-eastern Libya.

After drinking alcohol and smoking hash, the guards walked in and picked the women. Then they took them out. They were trying to resist but when you have a gun to your head, you have no choice but to survive. They raped me two or three times. I didn't want to lose my life.²⁹

(Ibidem)

Natasha, a 23-year-old girl from Cameroon, rescued at sea with her four-month-old daughter Divine, told Médecin Sans Frontières:³⁰

When we arrived in Tripoli, they kidnapped us. They brought us to a house where hundreds of people were held in captivity. I stayed there for five months. I was so afraid to die there, I was so afraid they would rape me in the same way they did other women.

Also, Freedman (2016) reports in her research about refugee women travelling by sea to Turkey and then through Kos and Serbia and to France that several women had experienced violence at the hands of smugglers, “including sexual violence and also the pressure to exchange sexual relations in return for the price of their passage when they did not have enough cash to pay for this journey” (p. 21). A testimony in this sense is given also by Oumo, a young girl from a country in Sub-Saharan Africa at war, reported in a document by UNHCR, UNFPA and the Commission of Refugee Women³¹. She fled her home country due to political persecution against her family, including the killing of her brother-in-law and the disappearance of her sister. Fearing for her life, she traveled alone to Germany. During her trip to Greece, Oumo was forced into prostitution twice, the first time to gain access to a fake passport and the second time to get a ride on a boat from Turkey. Once on a Greek island,

²⁸ “La sua famiglia non aveva i soldi per pagare una seconda volta. Allora cinque uomini libici l’hanno presa da parte e l’hanno stuprata. Era notte, nessuno di noi ha potuto far niente, avevamo troppa paura”. See: [Libia: migranti e rifugiati in fuga da violenza sessuale, persecuzione e sfruttamento - Amnesty International Italia](#).

²⁹ “Dopo aver bevuto alcool e fumato hashish, le guardie entravano e sceglievano le donne. Poi le portavano fuori. Loro cercavano di opporsi ma quando hai una pistola puntata alla testa, non hai altra scelta se vuoi sopravvivere. Mi hanno stuprato due o tre volte. Non volevo perdere la vita”. See: [Libia: migranti e rifugiati in fuga da violenza sessuale, persecuzione e sfruttamento - Amnesty International Italia](#).

³⁰ Testimony taken from: Trapped in Transit. Refugees, Migrants, and Asylum Seekers locked up in Libya. <https://msf.exposure.co/trapped-in-transit?platform=hootsuite>

³¹ <https://www.unhcr.org/569f8f419.pdf> (Last access: 01/07/2021).

Oumo slept for two nights in the open air, at the harbor, without any shelter, privacy, or information regarding the services available to her. She was not even allowed to register. She admitted that she was afraid of going insane.³²

As Freedman reports, this mechanism - for which women are forced to swap sexual intercourses in exchange of help on their journey to Europe – is called ‘transactional sex’. If this this kind of violence is typically perpetrated by smugglers, Freedman (2016) also reports the case of a woman who told to be approached by a police officer for something similar in a Macedonian detention center: “He tried whatever he could to get me alone in a room with him. He used to approach me and whisper to me that I am very beautiful and that he would help me out, that he would personally look into my case” (p. 20). Staff working in refugee camps in France, around Calais, also declared that it was commonplace to witness women migrants working as prostitutes in such camps. Turning back to episodes of sexual harassment at hand of public actors, Freedman also highlights responsibility of violence to Turkish police officers and coastguards when women cross the country to reach Europe through Greece. Also, other refugees are found to perpetrate violence against refugee women, and the latter feel insecure to travel alone or to share the facilities with many single men (Amnesty International 2016a; Freedman 2016). Moreover, there are reported cases of either psychological or physical violence within families of refugees during the journey.

According to Médecins sans Frontières (2018), in 2017 two out of three of the women and girls on the move were traveling unaccompanied. Among those, two in five came from Nigeria, a group of women which is particularly vulnerable of being trafficked for the European sex trade. Indeed, human trafficking is another example of the threat and violence women may encounter. Although also men may be subjected to it, women represent the great majority of the victims (Graham-Harrison 2017) and Nigerian women rescued in this crossing are more women than men (Médecins sans Frontières 2018). In 2011, according to the UNODC (the UN Office of Drugs and Crime), approximately 79 per cent of all human trafficking occurred for sexual exploitation purposes, and the ILO (International Labor Organization) estimated that 98 per cent of the people trafficked for sexual exploitation are

³² To read her testimony, see: UNHCR et al. (2017) Initial Assessment Report: Protection Risks for Women and Girls in the European Refugee and Migrant Crisis, pp. 1-24.

women and girls (Christensen 2011). In 2017, the ILO recognized that women and girls are disproportionately affected by forced labor, since they account for 71% of modern slavery victims (28.7 million). More precisely, it is estimated that women account for 99% of victims in the commercial sex industry (3.8 million people in total), and 58% in other sectors (ILO 2017).

How do women fall victims of sexual exploitation? According to Christensen (2011) they are promised by smugglers and traffickers for a work in Europe (or, in general, wealthier countries) as nannies or waitresses, but they are immediately forced into sex work once they start the journey or when they arrive in countries of destination.³³ Traffickers use many coercive methods to manipulate, control and force women and girls to remain into the sex industry:

Deception, including offers of employment abroad which result in forced prostitution, or statements indicating that the victim will be punished by national law enforcement or immigration authorities if they find out about her presence in the country; the use of violence or the threat of violence against the victim or the victim's family members, as well as imprisonment and/or isolation; the use of debt bondage; for example, charging the victim for transport, food and lodging costs, as well as charging exorbitant interest on money allegedly owed to traffickers; and the use of religious or cultural beliefs, including witchcraft and voodoo, to maintain control over the victim.

(Christensen 2011)

Generally speaking, rape and sexual abuse during the journey are so commonplace that many of the interviewed women declared that they had taken contraceptive pills ahead of the journey to avoid pregnancies (Amnesty International 2016a). Sexual abuses, indeed, can lead to pregnancies, which represents a risk factor both for the woman and the child, since it is in conflicts or displacement emergencies that more than one third pregnancy-related deaths occur (Del Frate 2017).

Lack of access to routine care puts pregnant women and their babies at risk, but lack of emergency care can be life-threatening. Fleeing when pregnant can increase the risk of miscarriage, or pre-term delivery. Problems that could be otherwise managed—to control anemia or vaccinate for

³³ According to Christensen (2011) and ILO (2009), the profits of this illicit amount to \$32 billion a year, 67 per cent of which deriving from sex industry.

tetanus, for example—can take on grave proportions. Evidence shows that a mother’s death also affects the survival of her remaining children.

(Médecins Sans Frontières 2018)³⁴

Aware of the risk, many women reported to have also assumed hormones to inhibit the ovulation and, therefore, to minimize the risk of pregnancy (Chiarelli 2017). The NGO’s Médecins sans Frontières (2018) reminds that most of the women and girls on the move are of their reproductive age (15-45).

The means of transportation and the route taken also make a difference. For it is more dangerous to travel by foot than by truck, van or boat. However, often abuse and violence is the price to pay to access these means of transportation. On the other hand, the deadliest journey is the sea route, by the Mediterranean, even though it is estimated that only 10% of irregular migrants reach Europe by sea (Last & Spijkeboer, 2014; Pickering & Powell 2017). This is also the route where it is easiest to count the deaths. The highest mortality rate in the Mediterranean Sea was reached in April 2015, when nearly 1,250 migrants died, drowning while trying to reach Europe from the Libyan coast on approximate ships – the total amount of deaths among migrants crossing the Mediterranean that year shifts between 3,771 (IOM 2016) and 4,055 (IOM 2019). IOM also reveals that “Seventy-seven per cent of the deaths occurred in the Central Mediterranean route mostly used by smugglers operating from Libyan shores. This compares to 97 per cent of migrant deaths recorded along this route in 2014” (ibidem)³⁵. Also, from 2014 to 2019 died in the Mediterranean 18,960 migrants (IOM 2019).

Relevant in this sense is the story of Sina Habte, who left her country, Eritrea, due to political persecution, reported by Parekh (2020).

In 2015, Sina Habte’s limp, pregnant body floated off the coast of Greece. Already past her due date when she boarded a flimsy boat to cross the Mediterranean Sea, Sina, wanted nothing more than to deliver her baby somewhere safe. A chemical engineer and citizen of the small African country of Eritrea, she’d spent 6 months fleeing almost certain life-long imprisonment, if not torture or death, for violating one of Eritrea’s draconian rules. In her case, she wanted to live with her husband Dani instead of where the government assigned her. Eritrea is a country so repressive

³⁴ See <http://becauseimawoman.msf.org/en/>.

³⁵ Data available at: <https://www.iom.int/news/iom-counts-3771-migrant-fatalities-mediterranean-2015#:~:text=Greece%20%2D%20With%203%2C771%20deaths%2C%202015,5%2C350%20migrants%20ied%20in%202015.>

that it's considered the North Korea of Africa. After escaping Eritrea, sneaking across borders and living in the shadows of several different countries, she had nowhere else to go. If she returned home, she would be imprisoned, tortured or killed, and if she stayed in a refugee camp in Africa, it was likely that she would be found by Eritrean agents and returned home to the same punishment. So Sina, like tens of thousands of others like her, paid the last of her money to smugglers and boarded a small, overcrowded boat bound for Europe in the hope of claiming asylum.

(Parekh 2020, p. 1)

The point is that women often get the worst and most dangerous location on the boat (Gerard & Pickering 2014). Deaths during the journey to Europe do not only occur by sea, but also while trying to reach Europe by land, or in detention centers and refugee camps, for causes that go from violence to starvation, dehydration, sickness, because of adverse environmental conditions, and incidents (Pickering & Powell 2017). Pickering & Cochrane (2012) and Pickering & Powell (2017) focus their study precisely on mortality rates and causes during illegal border-crossing, and, also, the dangers encountered by women during the journey. They highlight that these occurrences have gendered dimensions. According to Pickering & Cochrane (2012), "Women are more likely to die crossing borders at the harsh physical frontiers of nation-states rather than at increasingly policed 'internal border' sites" (p. 27).

The conclusion is that:

What we are most certain of is that the above conclusions continue to be based on partial information and data on border-related deaths. The evidence remains that the majority of those who die crossing borders go unidentified. Moreover, most dead migrants do not have their sex identified. The invisibility of women within these partial accounts means we are still piecing together the ways in which the circumstances of border deaths are often gendered

(Pickering & Powell 2017, p. 120).

1.4 The arrival in the receiving countries, the asylum application, and the decision-making

The collective imagination sees women refugees and asylum seekers safe when they finally have touched the European ground: they will not face sexual violence, abuse and harassment anymore and they will be psychologically and physically cured for the SGBV experienced at home and during the journey. Although it seems indisputable that, once in

Europe, they actually are better off, they are yet not completely safe, neither from further abuse, nor from non-refoulement, which means facing the risk to be returned to the places left because of the gender-based persecution described above (Amnesty International 2016b; Botsi et al. 2018; Freedman 2016; Pelley et al. 2018; Pickering & Powell 2017).

European reception procedures originally were not organized to prevent the cases of gender-based violence or intervene in cases where it happened (UNHCR 2016). The result is twofold: on the one hand, asylum-seeking and refugee women are still not protected from discrimination, rape and abuse, and, on the other hand, they do not receive the necessary support for the previous and ongoing experiences of violence (Freedman & Jamal 2008; Freedman 2016; UNHCR 2016).³⁶ They may face other abuse and harassment, perpetrated in refugee camps and reception sites (where bathrooms and other facilities are mixed sex) by public and private agents: among them, male asylum seekers, the police, and humanitarian workers (Amnesty International 2016b; Botsi et al. 2018; Pelley et al. 2018). Going into details, Freedman & Jamal (2008) report that in Italy and France one of the major issues that refugee women face is domestic violence, which occurs because of unequal gender relations in society, which structure the domestic relationships, however with the peculiarity that this is aggravated by the political and legal context of refugeehood.³⁷ In particular, the authors highlight that the problem is linked to the issue of

Housing conditions for migrants and to immigration policies which place migrant women in a position of irregularity or dependence. In addition, several respondents pointed to the increasing trend in men bringing women to France through internet sites and other forms of “arranged” marriages which result in violence against the wife. (ibid. p. 31)

Often, those women have their documents and other legal paper ‘confiscated’ by their husbands, to impede them to escape from home. Moreover, according to the same report, the reception conditions in France lead asylum-seeking women in a situation of extreme vulnerability to new violence, due to the condition of the accommodations and the lack of

³⁶ MEPs call for gender-sensitivity in asylum policy (March 8th, 2016). Retrieved from: <http://www.europarl.europa.eu/news/en/press-room/20160303IPR16927/meps-call-for-gender-sensitivity-in-asylum-policy>

³⁷ “The pressures of living for a long time in relatively restricted accommodation, combined with the pressures of making an asylum claim, can push some couples into situations of conflict” (Ibid., p. 35).

material support: many of the women interviewed for the cited research reported to have been experiencing incidents of violence since they arrived in France. Those incidents of violence were experienced either within their family and, in the case of emergency accommodation, by hand of other refugees or public agents. Since, as UNHCR reports, in France there is no accommodation for everyone, priority is given to families and to women with children (Freedman 2019). Therefore, it happens that those unaccompanied women end up without accommodation and, thus, living in the street (Ibid.), which makes them vulnerable to rape, violence and prostitution networks.³⁸ Also, according to the authors, there is a general delay in expelling the violent partner from reception centers, and there is a lack of coordination between social and medical services. For example, the study by McKnight et al. (2019), which aims at synthesizing asylum-seeking and refugee women's experience in maternity care, reports that women face challenges in communication with healthcare providers, which in turn leads to presumed understanding and misinterpretation: "Many women experienced clinical decisions being made without their understanding" (p. 18). For example, "A midwife assumed, based on a woman's asylum status that she would want to terminate the pregnancy" (ibid. p. 20). Moreover, if we think at the CEAS directives,³⁹ it has emerged that despite the written guarantees, the border guards give no attention on the gender issue, and they may also be the source of violence against those women (Freedman 2016). Therefore, the main sources of violence in Europe are refugee camps and detention centers for irregular migrants, because their conditions are often not suitable for women. For example, according to Robbers et al. (2016), in Germany and Sweden the accommodation centers have failed to provide basic security measures, for example separated and lockable rooms and facilities. Reception centers are overcrowded, a factor that increases the risk of SGBV. Women and NGO's staff have reported episodes of sexual violence by other refugees and, also, by security guards and volunteers. Also, the language barriers contribute to a lack of information regarding these women's basic rights, services, and support (Ibid.). Humanitarian aid workers and security

³⁸ Freedman & Jamal (2008) highlight how Italy was one of the premier countries of destination for trafficked women within the EU. According to Refworld (2018), victims originate mainly from Nigeria and other African countries, but also from China and Eastern Europe.

³⁹ CEAS stands for Common European Asylum System. See https://frontex.europa.eu/assets/Publications/Training/Fundamental_Rights_Training_for_Border_Guards1.pdf

staff also try to build a particular type of feminine subjectivity through reprimands, suggestions, and binding advice on how to take care of themselves and their children (Capesciotti 2016). Women have also reported being scolded by their midwives for what they considered inappropriate feeding equipment (McKnight et al. 2019).

Many reports and studies argue that, when it comes to the asylum applications, women face a problem of credibility deficit (Ali et al. 2012; Amnesty International and Still Human Still Here 2013; Muggeridge and Maman 2011; Singer 2014). Singer (2014) argues that female asylum seekers are treated differently from men when it comes to take a decision regarding their claims. She highlights that, although UNHCR's guidelines suggest relevant and comforting questions, the hearings turn into prosecution questioning and women seeking international protection's applications are rejected because they are systematically not believed (Amnesty International and Still Human Still Here 2013; Muggeridge and Maman 2011; Singer 2014).⁴⁰ Lastly, the author notices that it is more difficult in women's cases than in men's to obtain documents regarding political activity or their identity, since male relatives may exercise control over them, and because their country of origin may not recognize full rights of citizenship (Singer 2014; UNHCR 2013).

Female asylum seekers' claims are more likely to get overturned on appeal due to negative credibility assessments at initial decision-making (Muggeridge and Maman 2011), and, in Europe, they often do not have female point persons in the role of interviewer or of operator in refugee camps and the claimant is not informed of her specific rights (Bonewit 2016). Going back of one step, the European Parliament recognizes how "In asylum cases, credibility is an essential issue because corroborative evidence is often unavailable" (Alti et al. 2012, p. 60). Therefore, the authors say, throughout the whole status of refugee determination process national authorities make credibility assessments, and if the credibility of an applicant is accepted, her account of the events are taken as proof and counted in the

⁴⁰ According to a study of the European Parliament (Ali et al. 2012), "In Italy even in the absence of a standardized burden of proof, the vulnerability of women seeking asylum in cases of gender-related violence is taken into account and may lower the standard of proof. Furthermore, in practice, if the Territorial Commission does not have sufficient evidence to grant refugee status or subsidiary protection, it will nonetheless tend to grant humanitarian protection to women, women with children, or women in a vulnerable condition" (p. 61). This was true until 2018, when the two Security Decrees canceled the Humanitarian protection option.

decision-making process. The credibility is even more crucial when it comes to gender-related persecution claims, since they are very difficult to prove, and the trauma and Post-Traumatic Disorder Symptoms often make impossible for women to produce coherent narratives about the violence faced. According to the authors of the European Parliament study, “The assessment of credibility is often at the core of asylum refusals in Belgium, France, Hungary, Italy, Malta, Romania, Spain, Sweden and the UK” (ibid., p. 61).

There is another and more normative aspect of the lack of protection of women in European receiving countries. For, often, threats of SGBV are not defined as an act of persecution nor considered a sufficient ground for obtaining asylum, and, moreover, being subjected to sexual violence outside countries of origin and throughout the journey it is not considered persecution, but just simple acts of violence and, thus, they do not represent grounds for international protection (Alam et al. 2019).

As Freedman (2016) effectively summarize the content of this subparagraph,

Theoretically, gender equality issues have been mainstreamed both into the Common European Asylum System (CEAS) and the Frontex operations. The CEAS directives which have recently been recast on paper oblige EU member states to take gender issues into consideration both in reception conditions for asylum seekers and refugees, and in the refugee status determination process. In practice, however, these Directives have so far had little impact in improving refugee women’s access to protection within national asylum systems in Europe and survivors of GBV still face both legal and practical obstacles when trying to access services, rights or protection (p. 20).

Once asylum-seeking women have obtained the international protection, they have a secure legal status. Even though they can now live without the anxiety of waiting for a response, are problems are waiting them, which relate to long term projects and their possibility of integrating in European society (Freedman 2019). In particular, there are specific issues that may be more difficult for female refugees because of their social status, their culture or their economic position, but also because of gender-based discrimination in host countries. If it was difficult to find complete and precise sex disaggregated data regarding asylum seekers, the job is far more complicated when we look at data on refugees. This is because not only women refugees are assimilated with male and refugee children, but “There is a tendency to assimilate their situation to that of all other women immigrants, and

to overlook any specificity relating to their status as refugees” (Freedman 2019, p. 49). Consequently, most of the data and studies available relate only to the general category of women immigrants and, thus, it is difficult to make general statements about refugee women.

There is a last aspect to consider when analyzing these women’s experiences, especially once they arrive in the host countries. Since the outbreak of the virus began, researchers, journalists and humanitarian workers have warned that asylum-seekers and displaced persons in general are at a high risk of contracting and spreading the virus. They often live in cramped quarters or in refugee camps, where they “Have limited access to health services, are not included in public information campaigns, work in the informal economy, and face restrictions on their movement” (Refugees International 2020). Even though these are significant challenges even without a pandemic, with the COVID-19 outbreak the health issue became even more severe.

Within already vulnerable displaced communities, women and girls are at even greater risk. Cultural norms, underrepresentation, and a host of other challenges further marginalize them socially, politically, and economically. As a result, forced displacement uniquely and disproportionately affects women and girls, as does this pandemic. (ibidem).

Thus, the pandemic exacerbates existing vulnerabilities among asylum-seeking, displaced and refugee women, who are among the groups at greater risk, since, as UN Women (2020b) stresses out referring to Rohingya communities, gender roles limit women’s access to information leaving them more vulnerable to contracting the virus.

In April 2020, at the height of the pandemic’s first wave, Gillian Triggs, the Assistant High Commissioner for protection at UNHCR warned that the COVID-19 is inducing protection risks for girls and women fleeing their homes and their countries. It is urgent that the UN Refugees Agency itself and the states all pay attention to the protection of refugee, displaced and stateless women and girls at the time of this pandemic: “They are among those most at-risk. Doors should not be left open for abusers and no help spared for women surviving abuse and violence”.⁴¹ Lockdowns, confinements, social distancing, restricted movement and the consequent limitation of social and community interactions, with the

⁴¹ See <https://www.unhcr.org/news/press/2020/4/5e998aca4/displaced-stateless-women-girls-heightened-risk-gender-based-violence-coronavirus.html>.

closure of services and the worsening of socio-economic consequences, have exacerbated intimate partner violence and, in general, domestic violence and have put on increasing burdens as caregivers (Oppenheim 2020; Savage 2020; Topping 2020; UNHCR 2020b; UN Women 2020a).⁴² This is true for all the women. However, the problem is even more pressing for refugee and asylum-seeking women: they may be trapped in shelters and refugee camps without the possibility of seeking in-person support whenever needed. Or, also, safety shelters and services may be temporarily closed (UNHCR 2020).

The Journal of Global Health also stresses out that the conditions for those who during the waves of the pandemic were closed in refugee camps are inhumane (Pilato *et al.* 2021). And it also highlights that the conditions for pregnant women may be dire. According to the authors, “Physiological changes throughout the course of pregnancy alter the coagulation cascade, as well as stress the respiratory and cardiovascular systems; these changes may make pregnant women more susceptible to the deleterious effects of any infection”⁴³. Moreover, they state, antenatal healthcare decreases during emergencies like the one the world has been living since 2020.

During the ongoing COVID-19 pandemic, it is well-documented that rates of intimate partner violence have surged: for many abused women, nation-wide lockdowns aggravated an already perilous situation. For refugee women, who are known to experience a varied multitude of gender-based violence at baseline, it may be inferred that the rapid spread of COVID-19 worsened similarly cruel circumstances.

(Pilato *et al.* 2021)

These women, indeed, may decide to go neither to public hospitals to check-ups, out of shame and fear of infections, nor to private clinics, due to prohibitive costs.

These paragraphs were intended to show why it makes sense to engender the asylum and refuge debate, policies, and normative thinking, though a description of the steps and experiences that women make throughout the refugeehood. In the next chapters, I will use

⁴² According to the EU Parliament, cases of domestic violence rose by a third in some EU countries following lockdowns, and women will be hit harder by the socio-economic crisis that is following the Coronavirus emergency. See: <https://www.europarl.europa.eu/news/it/press-room/20200406IPR76610/covid-19-stopping-the-rise-in-domestic-violence-during-lockdown>.

⁴³ See: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7914379/>.

the information collected so far to characterize asylum-seeking and refugee women as an intersectional group, to highlight their induced vulnerability and to conceptualize the injustices they suffer from.

CHAPTER 2.

Asylum-seeking and Refugee Women as a Socially Salient and Intersectional Group: At the Intersection of Gender and Refugeehood

In this second chapter, one main paradigm will be examined, which is the one of *intersectionality*. In the first part of the chapter, I will begin by explaining why it makes sense to refer to asylum-seeking and refugee women as a social group. I find this clarification important for the purposes of this research, because I fear that without a clear characterization of what makes these women a socially salient group⁴⁴, it would be hard to make claims of vulnerability and injustice that are valid for the whole group of refugee women.

Thus, I will explain why and how this group of women needs to be conceptualized within the paradigm of intersectionality, including a clarification about the concept of intersectionality itself and how it can be applied in this case. This means also discussing which role their gender, ethnic origin, race and culture play in the conceptualization of this group, together with their being socially situated in the refugeehood realm.⁴⁵ This is dealt with by a brief explanation of the concepts, with the help of some of the works by main theorists of the fields from sociological, juridical and philosophical areas, and then by showing why they are relevant to characterize this group of women. Contextually, I will linger also on discrimination, which intersectionality mainly and originally refers to. Lastly, I will explain how this research uses the concept of intersectionality moving forward the sole discrimination, extending it to vulnerability and the broader concept of injustice.

⁴⁴ “A group, perceived membership of which structures social interactions across a wide range of different context” (Lippert-Rasmussen 2018, p. 2).

⁴⁵ As it will be clarified again in the next chapter, the overwhelming great majority of refugees seeking protection in Europe currently come from the Global South (see: https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/statistics-migration-europe_en#RefugeesinEurope, last access: 17/02/2022), which makes relevant the discussion on culture, religion, and race. Obviously, not totality women seeking asylum in Europe fall under this characterization.

The idea, indeed, is to begin by providing an explanation of the concepts of intersectionality and discrimination, in order to expand intersectionality, moving forward discrimination to arrive at vulnerability and injustice. The next chapters will endorse in this attempt. Once, I have clarified what intersectionality means and what it means for asylum-seeking women to be discriminated on the basis of their gender, race, refugeehood context, I will conceptualized how this leads to vulnerability and injustice.

2.1 Asylum-seeking and refugee women as a group

Let me remind the definition of ‘particular social group’ given by the 1951 Geneva Convention of the Status of Refugees:

A particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identify, conscience or the exercise of one’s human rights. (UNHCR 2002)

Conceptually, women are acknowledged as constituting a social group by different authors who also give different interpretation and explanation for it, also based on the oppression and persecution they have been suffering (Haslanger 2000). Given that the issue is of central importance, I would like to move a step forward and argue that forcibly displaced women are to be recognized as a social group, and that we should rely on the already-mentioned definition of the 1951 Convention.

This statement needs to be addressed more deeply in two senses. On the one hand, as anticipated in the Introduction and Chapter 1 of this work, the issue of whether women constitute a PSG is highly debated in legal doctrine and literature.⁴⁶ It is claimed that the interpretation of PSG poses challenges to the protection of women (Querton 2022). The point is, in which sense women can be considered a PSG? Querton points out that higher courts’ judgments established two groups of interpretations. Namely, women constitute a social group because they share the innate characteristics of sex (the ‘protected characteristics

⁴⁶ See, also, Anker (1995, 2002, 2020); Edwards (2010); Foster (2014); Indra (1989; 2008); Marouf (2019); Musalo (2010; 2019, 2021); Querton (2012).

approach’), or because they share certain characteristics that marginalize them (the ‘social perception approach’). As it can be noticed by the above-mentioned definition given by the Convention, the UNHCR specifies that these two interpretations ought to be integrated. The points I would like to stress here are that first, I see the risk of essentializing that can come out of this definition and these courts’ interpretations. Nonetheless, even though acknowledging its flaws, as for now, the criterion of women as a PSG of the Geneva Convention is the only one that does so.⁴⁷ Moreover, the UNHCR importantly clarified that “persecution need not be by the State if the State is unable or unwilling to protect her” (Musalo 2019, p. 533). Second, even though the Convention’s indication is not always implemented in practice,⁴⁸ women and gender-based violence *should* be more effectively taken as a ground for refugee status.

On the other hand, I shall now try to understand whether asylum-seeking and refugee women then constitute another group of a different kind, or just a collection of individuals. Do those women remain only in the group of women or they also, or exclusively, belong to another kind of group? The aim of this paragraph is therefore to answer the following question: can female refugees and asylum seekers be properly classified as a social group, or are they a mere collection of people belonging to other social groups? I believe that this is a relevant question for the purpose of this research, because if asylum-seeking and refugee women are not to be considered a social group with some forms of shared characteristics, how do we make claims of injustice and vulnerability that are valid for all these women? In stating this issue, I follow up the claim of the Council of Europe, which in 2019 argued that migrant and refugee women and girls need to be recognized as a specific social group (Alam et al. 2019).

As effectively pointed out by Alasia Nuti (2019),

⁴⁷ Musalo (2019) reports the example of a woman from Togo, fleeing a forced marriage and FGM, whose claim has been denied in Philadelphia. The Board of Immigration Appeals reversed the judge’s decision on the base of the PSG ground and UNHCR advise.

⁴⁸ For example, in 2018 the US Attorney General Jeff Session decided to deny asylum to women at risk of domestic violence (27 I&N Dec. 316, A.G. 2018). Domestic violence suffered by a El Salvador woman was not recognized to constitute persecution, and therefore a ground for asylum. Moreover, he ordered immigration judges and asylum officers to deny asylum to all claims related to domestic violence (Anker 2020).

Defining women as a group is recognised as particularly challenging by feminist scholars [...] because any definition of women* may erase important differences and consequently significant power asymmetries (e.g. along lines of class, race, sexuality, ability) among women, it may be tempting to avoid defining women.

(Nutti 2019, p. 82)

However, I agree with the feminists who argue that feminist movements have reason to exist precisely because *women*, as a category, exist (Frye 1996; Haslanger 2000; Young 1997). So, there are many attempts to consider women as a group, as for instance Young's understanding of women as seriality (Young 1997) and Nutti's account of women (2019). Young's account is important for the purposes of this research because she considers women as a group that suffer from specific forms of structural injustice.⁴⁹ Young argues that women needs to be understood as a series, which is "a social collective whose members are unified passively by the objects their actions are originating around and/or by the objectified results of the material effects of the actions of the others" (ibid., p. 23). However, I agree with Nutti (2019) when she highlights that Young's account has some weaknesses. For the one that appears to me more significant in relation to this work is that this account essentialize women, since it "maintains that women qua women have a common social perspective, thereby essentializing them" (Nutti 2019, p. 90).

Thus, we need an account that avoids essentialization, for the reasons that will appear clearer in the next chapter (§3.4). What I argue, therefore, is that female refugees and asylum seekers constitute what Ritchie calls intersectional feature (social) group (2018). In order to argument, I now begin by presenting and examining two different views and typologies of characterization of social groups, namely Epstein's (2017) and Ritchie's (2012) classifications, in order to understand according to what view of groups refugee and asylum-seeking women can properly be considered as a social group, if this is the case. Secondly, indeed, I apply the various features of the social groups to female refugees and asylum seekers and conclude that they constitute an intersectional feature social group.

Thus, first, what are social groups? The first classification of social groups I examine is the one proposed by Katherine Ritchie (2012), who proposes a view of groups as realizations

⁴⁹ See: Chapter 4, §4.2, of this research.

of structures. As Gilbert (1989) and Young (1990) do, Ritchie does not want a theory that overgenerates groups, that is a theory that takes every arbitrary collection of individuals to be a social group. First, she sets a list of features that all groups seem to have in common and, in order to be considered as a group, it must have all of those features.

- a. Member-Times: Groups can have different members at different times.
- b. Member-Worlds: Groups can have different members in all different possible worlds.
- c. Existence-Times: Groups can exist at one time without existing at every time, because they are not eternal.
- d. Existence-Worlds: Groups are not necessary beings, in the sense that groups might exist in a world without existing in every possible world.
- e. Space: Groups can be located in space.
- f. Coincidence: There can be coincident groups of the same kind, without being identical.
- g. Member Intensions: Groups are made by person(s) who intend to form that groups and want to be part of them.

While the first five features can be shared also by other objects, the sixth and the seventh criterion seem to be part of what distinguishes objects of every kind from social groups.

Ritchie does not take as a requirement the feature according to which groups must necessarily have more than one member, even though they usually have more than one member. She also makes the following example, which will be useful for my argumentation later on.

Suppose that the United States is in turmoil. One senator resigns from office, then another and another until finally all but one senator has resigned. The Senate, if it exists at all, is a group made up of one member. A bit later, new elections are held, and new senators are elected. The Senate grows and is, seemingly again, a many-membered group. While one could argue that the Senate before the mass exodus is a distinct entity from the Senate after, it is quite natural to say that the Senate shrunk and then grew (ibid., p. 259).

There are various views of groups. (a) The first is the group as many, or non-singular pluralities, which argues that groups are the sum of their members, not joined together. So,

groups are nothing over individuals. (b) The second is the group as fusion: members of a group fuse and form a whole. (c) The third view is the one of groups as aggregates. (c) The fourth is the groups as sets view. (d) The last view of groups that Ritchie presents is the one she proposes and is the structuralist view of groups. It has the advantage, Ritchie claims, to satisfy all the features listed above. Moreover, it has the advantage to meet the Goldiloks Constraint: “An ontology of social groups should include social groups that are common sensical and that figure in explanations and should not overgenerate social groups” (Ritchie 2018, p. 2). The view of groups as realization of structures has two components. (I) The first component of a group is its structural organization. The structure can be represented, Ritchie writes, with nodes connected by edges, the function that capture the relations that hold between nodes. Given a structure *S*, each node is connected with every other node because all members of a group are related to some degree. Functional relations connect nodes and some of these relations can be hierarchical, and they capture the power relations between nodes. (II) The second component is that a group must be made up of things. Two conditions must be satisfied for a thing in order to occupy a node. The first condition for something to be occupying a node in a structure *S* is that every node in *S* is occupied. The second condition is that “the occupiers of a node, *n*, must stand in the relations required by *n* to the other things occupying nodes in *S*” (ibid., p. 269). What is important for this argumentation is the fact that one thing might occupy the role of more than one node, even if it is uncommon. I argue, together with Ritchie, that this characteristic is typical of intersectional groups. Ritchie consider particular kinds of group, which are the feature social groups, such as gender groups, economic classes, sexual orientation groups, intersectional groups, and so forth, which I will analyze in the forthcoming lines.

Brian Epstein argues against view that divide social groups into simple typologies and against Ritchie characterization of social groups (2017). He tries to answer to the question of what sort of entities social groups are and what they have in common, if anything, and he wants to challenge the people who think to draw simple line between social groups and mere collections of people. According to the author, social groups are extremely diverse, but we still can analyze them from a bottom-up perspective. There are so many kinds of social

groups, Epstein argues, that we should start to think that the label ‘social group’ is just a generic umbrella, since the real interest is in the details of social groups.

He argues that it is possible to characterize social groups by four complementary profiles.

- a. Its ‘construction’ profile: it characterizes how groups are built, how they persist over time, when they exist and how they can be identified across possible worlds. To treat this, Epstein centers the discussion on how ‘stages’ constitute groups at a given time and how they are related one another. “A stage of a group – he writes – is an instantaneous snapshot of that material that constitutes the group. That is, is a collection of people in a world at an instant time” (ibid., p. 13). I am not going into technical details, but what is important is that Epstein proposes four formulas to fill in for characterizing how groups are built: (I) coming to exist in a world, (II) continuing to exist, (III) constitution and (IV) identity.
- b. Its ‘extra-essentials’ profile: it characterizes other properties, as powers, rights, abilities, responsibilities, and norms. These are essential properties of groups of a given kind, but are treated separately from the construction profile. We anchor these ‘extra-essential’ to groups as wholes or even to individual members. Powers, abilities, norms and responsibilities can be distributed equally to all members or differentially (and even hierarchically). Such properties can promote justice or oppression as, for example, the powers and norms anchored for gender categories. Epstein claims that these properties can sometimes be included among the construction conditions: “It may be a condition for being a member of the group women that one is subject to certain oppressive norms” (Ibid., p. 27). However, there are many groups that do not have these ‘extra-essential’ properties.
- c. Its ‘anchor’ profile: the anchors are those facts that set up properties of groups of given kinds. This profile explains why a group of a give kind has the properties it has. This profile answer to the question regarding the metaphysical basis for the essential conditions of the construction profile: what makes them the conditions for membership? Why are they the conditions? Epstein’s response to these questions is not a causal but a constitutive explanation: “The anchor profile of a kind of group

is a list of facts that metaphysically put in place various properties of that group” (Ibid., p. 37). These properties are anchored in different ways.

- d. Its ‘accident’ profile: it gives accidental (and not essential) properties of groups of a given kind that give insights on how they actually work, which is still important to understand what social groups of a given kind are. Accidental properties can include causal properties, such as the cause why groups of a certain kind came to exist and why they continue to exist, and so forth. Or they can include properties as size and location, or historical properties, or no property at all.

These are the criteria according to which we can classify, or organize into taxonomies, social groups. Interesting for my research question and argumentation will be especially the classification of social groups based on their accidental properties, such as the classification according to whether, for instance, the anchors of a given social group are caused by historical injustice. Given that, is there anything we can say about the general nature of social groups according to Epstein? He proposes the following characterization, which makes groups a broad category: x is a social group iff x is an entity constituted by and only by people. Going back to the intentions, which, as clarified above, Ritchie puts among the features that a social group must have in order to be a group, Epstein argues that the identification of sociality with agency⁵⁰ is a too strong condition for most groups in real world.

Therefore, I now argue that women refugees and asylum seekers constitute a feature social group, as Ritchie (2018) calls them, and, in particular, an intersectional feature group. So, I take the structuralist view of social groups, and I partly reject Epstein’s characterization, in a way that will be clarified further below.

I assume that Epstein’s characterization of groups I reminded a few lines above (“ x is a social group iff x is an entity constituted by and only by people”) fits perfectly for women refugee and asylum seekers. What I reject of Epstein’s characterization of social groups is part of their construction profile, and, specifically, the formulas regarding the identity and

⁵⁰ That is to say that the only kinds of group that can be properly considered a social group are those that are group agents.

the continuance of existence in a world. In the first case, I argue that it is not a common identity that unify (women) refugees and asylum seekers, since they are a collection of people with very different cultures and that do not unify intentionally, as I will explain later, nor they unify due to a common identity. Rather, as Ritchie (2013; 2018) explains, are mostly recognized as a group by others. Moreover, the group of refugee and asylum seekers would hypothetically continue to exist even if there would be no individual in the world falling under this category. So, Epstein's metaphysical approach is not completely suitable for the group formed by (women) refugees and asylum seekers. I previously listed all the features that a group, in order to be a social group, must have according to Ritchie. For what regards the 'Member-Times' and 'Existence-Times' feature, it is undoubtedly true that the group of women refugees and asylum seekers can have different members at different times, and even that there could be a time in which there are no displaced women in the world, so this group is not eternal. It is also the case that the group of women refugees and asylum seekers can have different members in all possible worlds and that their existence is not necessary, therefore also the features 'Member-Worlds' and 'Existence-Worlds' are satisfied. Moreover, women refugees and asylum seekers are surely located in space(s).

It is less clear whether the group of female refugees and asylum seekers can satisfy the condition of 'Member intentionality' and 'Coincidence'. Regarding the intentionality, I agree with Epstein that considering the agency a requirement, or a necessary feature, for a group to be a group, is a too strong condition and that many groups in real world would not be social groups. For example, not only the case of the intersectional group of female refugees and asylum seekers, but also the group of refugees and those who seek international protection would not be considered a social group. For I assume that, by definition, individuals would not want to become asylum seekers and refugees, if they were not forced to (by the circumstances that I have explained in the previous part of the research). On the other hand, even though it cannot be considered a real matter or choice, some degree of agency or intentionality is present. For what concern the 'coincidence' feature, it very depends on what we mean by it. If we mean that there can be more non-identical intersectional groups at the same time, then the condition is fulfilled. On the other hand, if we mean that there are coincident but non-identical groups of women refugees and asylum seekers, then it is more

complicated. My answer would be that there is only one group of (women) refugees and asylum seekers, since, as I argued, they do not share a common identity. Therefore, the feature would not be fulfilled. A possible solution, however, is to group women refugees and asylum seekers according to their countries of origin.⁵¹

Returning to what I affirmed above, I agree with Ritchie (2013) also regarding the claim according to which it is not necessary for a group to be constituted by more than one member. For even if there will be only one refugee or asylum-seeking woman, the group of female refugees and asylum seekers would continue to exist. As I anticipated, I argue that refugee and asylum-seeking women constitute an intersectional feature group, as Ritchie defines them. So, first, it is useful to see what feature social groups are and the example Ritchie (2018) makes to show how her model works for the group of women. Feature groups are groups such as gender groups, economic classes, sexual orientation groups, racial groups, and other groups that share some features. Feature social groups involve some shared social positioning and also individuals that are recognized as a group by others due to their shared (real or supposed) features. Accordingly, these shared properties can be mind-independent or mind-dependent. Membership in a given group depends on being imagined or believed to share some particular feature or, alternatively, membership might depend on the presence of a shared way of acting and understanding the world, or a way of self-identification. Moreover, Ritchie writes, groups might be defined in terms of a loose cluster of features, which avoids essentialism about social groupings.⁵²

All groups that involve some shared features are feature social groups, which affect the way we give meaning to the world and how we are treated and what kind of expectations others have of us. Feature social groups are one important variety of social kinds, but the two do not coincide. In addition, Ritchie writes, “a person x being a member of a feature social group, G , can also figure in inductive inferences about additional features x has” (2018, p.

⁵¹ The group of women refugees and asylum seekers coming from Syria, the group of Iranian women seeking international protection, etc.

⁵² Essentialism is the view according to which there are some features that are, at the same time, necessary and sufficient to be a certain thing, for example a woman.

18). For example, from the information that one is a Norwegian citizen one might infer that she is tall with blond hair. This aspect might reinforce oppressive norms.

Returning to the structure of groups, feature social groups are particular types of social kind that are nodes in social structures. They then must be defined in terms of relations and other requirements on node-occupation. Ritchie takes the case of women as an example for explaining how feature social groups are characterized, and she uses Haslanger's definition of gender groups as groups that stand in a hierarchical position of subordination/submission (2000). She defines gender as a social class, where men dominate, and women are subordinate. What does it mean for a woman to be oppressed? Oppression, Haslanger (2000) and Young (2011) write, is a structural phenomenon that position certain groups as advantaged and certain others as disadvantaged, in relation to the other. Ritchie (2018) interprets Haslanger's view of the feature social group women as a particular node in a social structure. It means that the structures depend on social factors, social practices, agreements, and beliefs and so on. Without all of that, gender structure would not exist. However, feature social groups involve relation with other groups and other mind-dependent characteristics required for membership.

Ritchie's structuralist approach of feature social groups can take seriously into account the existence of intersectional groups, while, according to the author, a metaphysical approach cannot, because the node 'women' would need to be related to every racial group node. But, for instance, black women are not individuals related to people in a racial group. Rather they are individuals who happen to be in a gender, racial and intersectional racialized gendered group. Therefore, "to avoid the problem arising from positing separate structures that are combined through relations, it would be better to posit distinct structures that vary in their complexity" (Ritchie 2018, p. 22). Intersectional groups are components of more complex structures and not additions of single-axis structures. Recalling the *Goldilocks Constraint* already explained, it does not rule out intersectional groups.

Thus, now I analyze how women refugees and asylum seekers can be included in a characterization of groups. I argue that Ritchie is right in doubting whether a metaphysical approach could include properly intersectional groups. So, first and briefly, since there will be other chapters dedicated precisely to this, I need to explain why women refugees and

asylum seekers experience oppressions that are intersectional in character. Women refugee and asylum seekers can be considered as having an intersectional identity, because women's group and the group composed of refugees and asylum seekers overlap and create a case of intersectionality. The injustices they face, therefore, are very diverse from those who are experienced by individuals who belong either to the group of women and to the group of refugees and asylum seekers. They are discriminated on the basis of their races and, more generally, for their being displaced and foreigners, and, on the other hand, they are subjected to gender discrimination. Female refugees and asylum seekers experience racist and gender-based discrimination, which combine with political and structural condition of the international protection and refugee's area. So, their identity is something that goes further being women and refugees or asylum seekers, as something separated. Therefore, within Ritchie definition and characterization of feature social group, it is clear that refugee and asylum-seeking women are to be considered a social group, specifically an intersectional feature group.

2.2 The intersectionality paradigm and refugee women as an intersectional group

After the narration of their experiences and an ontological characterization of the group of asylum-seeking and refugee women, it should be clear enough why it makes sense to affirm that they constitute an intersectional group. Therefore, this research applies the paradigm of intersectionality. What is intersectionality though?

The idea of intersectionality emerged in the context of black feminist discourse. It is a term that

Refers to the fact that one and the same person can belong to several distinct groups, each of whose members are victimized by widespread discrimination. This overlapping membership can generate experiences of discrimination that are very different from those of persons who belong to just one, or the other, of the groups (Altman 2016)⁵³.

The term intersectionality was introduced for the first time by the legal scholar Kimberlé Crenshaw in 1991, who described it as an overlapping membership to distinct groups, each

⁵³ <https://plato.stanford.edu/entries/discrimination/#Int>.

of whose members are victimized by discrimination⁵⁴ (Altman, 2016; Crenshaw, 1989; McCall, 2005). Thereafter, Patricia Hill Collins (2016) transformed this discourse into a more specified theoretical analysis. Even though Crenshaw (1989, 1991) coined the term to refer to the discrimination suffered by women of color, she actually argues that intersectionality can be applied to any discriminated social group: “Discrimination is inflected in different ways depending on the particular combination of social groups to which those persons discriminated against belong” (Altman 2016).⁵⁵ In the course of the research, it will appear clear that discrimination is not the only theoretical framework to which intersectionality can be applied, but also to vulnerability and injustice.

More in depth, studies of intersectionality first appeared due to the acknowledgment of the impossibility, for feminism, to speak universally for all women and, since then, it has become a major subject (McCall 2005). There are many definitions of intersectionality. Crenshaw (1989; 1991) differentiates it in *structural*, *political*, and *representational*. The first stresses the qualitative difference between the discrimination experienced by white and black women: “The location of women of color at the intersection of race and gender makes our actual experience of domestic violence, rape, and remedial reform qualitatively different from that of white women” (Crenshaw 1991, p. 1245). Political intersectionality is meant to reveal how: “Women of color are situated within at least two subordinated groups that frequently pursue conflicting political agenda” (ibid., pp. 1251-1252). Indeed, both feminist and anti-racist theories have led to a further marginalization of women of color, precisely because of the conflicting agenda of these opposing groups. This is because women of color experience racism in ways often different as those experienced by men, on the one hand, and sexism in ways that are not always parallel to white women. As a consequence, the author highlights, antiracism and feminism are limited. Finally, the last category, representational intersectionality, is meant to analyze the cultural construction of intersectional groups: “Perhaps the devaluation of women of color [...] is linked to how women of color are represented in cultural imagery” (ibid. p. 1283).

⁵⁴ See § 1.3.4, “Discrimination”.

⁵⁵ <https://plato.stanford.edu/entries/discrimination/#Int>.

Chrenshaw's definition of intersectionality and distinction between the three types of intersectionality is useful to characterize asylum-seeking and refugee women. Indeed, I argue that this group of women fall under these three categories of intersectionality. In the first place, there seems to be a qualitative difference between what this group of women and their male counterparts experience, between the group of (non-displaced) women in general and this group of women, and, finally, between migrant and refugee women. Secondly, the feminism of equal treatment and the degendering movement (Bacchi 2009; Facchi 2012; Lorber 2000), which seeks a sort of gender neutrality and refuses protectionist rules and approaches, on the one hand, and the field of normative refugee studies, which does not address the issue of women refugees, or at least do not treat it as something worth to be studied specifically, have led to a sort of theoretical marginalization of them. For example, even the most recent works on refugeehood in normative political philosophy do not address the issue of gender in the refugee area.⁵⁶ This leads to the third aspect of intersectionality: asylum-seeking and refugee women are victims of a distorted visibility and representation within both the groups of refugees and of women. As Bello effectively highlights (2020),

The analysis of the vast literature about black people in the North American context, even outside studies that are 'explicitly' intersectional, highlights the existence of two phenomena that are often interrelated: the invisibility of subjects in the institutional space (in terms of their recognition) and, at the same time, their hypervisibility in the public space and in the repertoire of stereotyped representations concerning them.

(Bello 2020, p. 190, my translation)⁵⁷

According to Jennifer Nash (2008) intersectionality is “The notion that subjectivity is constituted by mutually reinforcing vectors of race, gender, class” (p. 2). She stresses the

⁵⁶ Few examples, which are not meant to be exhaustive, of those recent works are: Miller, D., & Straehle, C. (2019), *The Political Philosophy of Refuge*, Cambridge, Cambridge University Press; Miller, D. (2016), *The Political Philosophy of Immigration*, Harvard University Press; Owen, D. (2020), *What do we Owe to Refugees?*, Cambridge, Polity Press; Parekh, S. (2020), *No Refuge*, Oxford, Oxford University Press. This will be treated thoroughly in the last chapter, §5.2.1.

⁵⁷ Original text: “L’analisi della vasta letteratura a proposito delle persone nere nel contesto nordamericano, anche al di fuori degli studi ‘esplicitamente’ intersezionali, mette in luce l’esistenza di due fenomeni spesso correlati tra loro: l’invisibilità dei soggetti nello spazio istituzionale (in termini del loro riconoscimento) e, al tempo stesso, la loro ipervisibilità nello spazio pubblico e nel repertorio di rappresentazioni stereotipate che li riguardano”.

problem of a lack of clearly defined and unified methodology to treat intersectionality, which also highlights the fact that, whereas the concept of intersectionality aims at showing the inadequacy of cumulative approaches of discrimination or marginalized experiences, intersectional practices replicate this cumulative process. Moreover, Nash problematize the use of black women as the prototypical intersectional subject, which leads to the third unresolved issue, the ambiguity of the definition of intersectionality. Accordingly, the question is whether only those groups that are characterized by multiple marginalization can have an intersectional identity, or all identities can potentially be intersectional. This theoretical dispute “Makes it unclear whether intersectionality is a theory of marginalized subjectivity or a generalized theory of identity” (Nash 2008, p. 10).

Applying Nash’s definition to this research’s case study, asylum-seeking and refugee women’s subjectivity is constituted by mutually reinforcing vectors of race, gender, culture and the particular social context in which they are situated.⁵⁸ I also take seriously the ambiguities of the notion of intersectionality the author highlighted. For what this research means to do is exactly to avoid the cumulative process misconception, by conceptualizing the peculiar nature of this group of women and of their vulnerabilities and injustice. The point is precisely to concentrate on the qualitative aspects of the vulnerabilities and injustices that stay at the intersection of race, culture, refugeehood and gender, rather than to consider this group as a group super vulnerable because of aspects that simply add up.⁵⁹ Second, even though it is true that, as a matter of principle, all subjectivities can potentially be intersectional, I would suggest that, for the purposes of this research, it is more useful to consider what intersectionality *is* and *does* to uncover intersections of discrimination, oppression and injustice among marginalized groups.

Leslie McCall (2005) defines intersectionality as “The relationships among multiple dimensions and modalities of social relations and subject formations” (p. 1771), and highlights that there are three approaches to intersectionality which differ in terms of their viewpoint toward categories: the *anticategorical* complexity approach, the *intercategorical* complexity approach, and the *intracategorical* complexity approach. The first approach is so

⁵⁸ See §2.2.2.

⁵⁹ See Chapter 3, § 3.4.

called because its methodology deconstructs analytical categories: since social life is considered too irreducibly complex, to make fixed categories does anything but oversimplifying social fictions. This oversimplification produces other social differences. According to McCall, this approach is the most successful in satisfying the need for understanding the complexity of intersectionality. The methodology of the second approach requires to “Provisionally adopt existing analytical categories to document relationships of inequality among social groups and changing configurations of inequality along multiple and conflicting dimensions” (p. 1773). The last approach focuses on “People whose identity crosses the boundaries of traditionally constructed groups” (Dill & Zambrana 2009). It is the approach that inaugurated the studies on intersectionality (McCall 2005), and it focuses on particular social groups at neglected points of intersection “to reveal the complexity of lived experience within such groups” (ibid., p. 1774). This research precisely endorses this last approach and takes the intersectional identity of asylum-seeking women and girl as a starting point to reveal the complexity of the experiences of injustice of the group of women refugees.

An important contribution to the topic came from Collins & Bilge (2016), who describe intersectionality as

A way of understanding and analyzing the complexity in the world, in people, and in human experiences. The events and conditions of social and political life and the self can seldom be understood as shaped by one factor. They are generally shaped by many factors in diverse and mutually influencing ways. When it comes to social inequality, people's lives and the organization of power in a given society are better understood as being shaped not by a single axis of social division, be it race or gender or class, but by many axes that work together and influence each other. Intersectionality as an analytic tool gives people better access to the complexity of the world and of themselves. (p. 5).

The authors differentiate between intersectionality as *critical inquiry*⁶⁰ and intersectionality as *critical praxis*.⁶¹ Throughout the book, they consider intersectionality as an analytic tool and find more important to focus on what intersectionality *does*, rather than on what intersectionality *is*. Indeed, using intersectionality as an analytic tool highlights the

⁶⁰ It “Invokes a broad sense of using intersectional frameworks to study a range of social phenomena” (Collins & Bilge 2016, p. 36).

⁶¹ “Intersectionality as critical praxis does the same, but in ways that explicitly challenge the status quo and aim to transform power relations” (ibidem).

importance of social institutions in solving and shaping social problems. When people use intersectionality, they do it using some core ideas – social justice, relationality, power, inequality, complexity, and social context – that serve as guideposts for analyzing intersectionality. However, as also Crenshaw (1991) stresses out, intersectionality as critical inquiry and intersectionality as critical praxis do not oppose nor contradict each other. Quite the opposite, their relationship is synergetic: they are both essential in order to address and solve the problems of violence, oppression and injustice that intersectional groups experience. Thus, the point that intersectionality means to uncover is that non-intersectional thinking presents limitations: we will unlikely solve and address the mentioned problems of society if we address the issues of gender, race and class through singular lenses, since women are not a uniform group, and people of color do not constitute a homogenous mass. Neither we cannot represent uniformly women as victims and men as perpetrators of gender injustice, nor should we be focusing exclusively on state power relations or individuals as the sites of injustice (Collins & Bilge 2016).

The account of intersectionality this research is endorsing is perfectly coherent with the author's focus on intersectionality as critical inquiry as synergetic with intersectionality as critical praxis. I agree with them that the focus should be on what intersectionality *does*, even though I also believe that it would not be possible to study it without a clear account of what this concept *is*. As anticipated in the introduction, this work endorses a gender mainstreaming purpose.

The Council of Europe in 1988 defined *gender mainstreaming* as “The (re)organisation, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels at all stages, by the actors involved in policy-making” (Council of Europe 2016a, p. 3). The goal of this approach is to consider that men and women have different needs, circumstances and living conditions – according to country, social origin, age, religion, and also to unequal access to and control over human rights, institutions, power and resources, in order to solve these differences and enhance gender equality. Therefore, it recognizes the necessity for providing differences when designing, implementing, and evaluating policies, programs, and projects. What is distinctive about the gender mainstreaming approach is that it is a transformative strategy,

with a great potential of social change, that seeks to promote equality by embedding gender-sensitive practices and norms in the structures and processes of public policy (Caglar 2013; Council of Europe 2016a; Daly 2005). The point of gender mainstreaming is exactly to consider men's and women's different interests and concerns in order to design better policies.

Accordingly, this work has a normative purpose, that is to pave the way for gender-sensitive norms and policies in the refugeehood area. The first way to do it, is to recognize the importance of intersectionality as a *praxis*. Therefore, what this chapter has done so far has been investigating asylum-seeking and refugee women intersectional nature,⁶² with the hope that it will constitute an element that will facilitate both the theorization and the implementation of gender-sensitive international protection policies. With the very same purpose, the following chapters will be dedicated to show how their intersectional nature leads to peculiar forms of vulnerability and injustice. So, I now turn to unpack the intersectional feature of this group of women: their gender, race, culture, and the particular social context of refugeehood. Lastly, I treat gender discrimination in asylum, since discrimination is where the very notion of intersectionality came from, and, also, because it will help me in the theorization of different kinds of injustices suffered by this group of women, in Chapter 4 of this work. Moreover, discrimination is what introduced the debate of intersectionality within the European Union (Bello 2020).

2.2.1 Unpacking asylum-seeking and refugee women intersectionality: the intersection of gender, race, culture, and refugeehood

As I have been writing so far, asylum-seeking and refugee women represent an intersectional group because they are situated at the intersection of many factors: sex and gender, culture, race and being situated in the social position of refugeehood. Therefore, I now clarify the meaning of each of the mentioned factors and why I believe they matter for the purposes of this research.

⁶² For a more in-depth discussion on intersectionality, see: Bello, B. G. (2020), *Intersezionalità. Teorie e pratiche tra diritto e società*, Milano, FrancoAngeli.

Gender

Although ‘gender’ was commonly used until 1960s to indicate the masculine and feminine words, the gender terminology as we are used to today was first introduced by psychologists writing in transsexuality (Mikkola 2019), such as the psychoanalyst Robert Stoller in *Sex and gender; on the development of masculinity and femininity* (1968), who wanted to explain why some people feel ‘trapped’ in their own bodies. The way to do it was found by theoretically separating the sex and gender: he argues that even though in the large majority of the population sex and gender complement each other, in transsexual people the two do not match.

So, what is *gender*? Gender generally refers to “socially contingent divisions of roles between men and women, socially constructed notions of femininity and masculinity and resulting power disparities that implicate women's identities and status within societies” (Anker 2002, p. 138). I shall now clarify the dichotomy sex/gender. When we talk about ‘women’, we are referring to (at least) two different things. The first reference is to human females, that draws to a biological feature, which refers to anatomical peculiarities. The second reference is to the social and cultural meaning attached to being a woman. That is why, historically, feminists have posed the accent to the dichotomy between *sex*, when we refer to male and female humans, and *gender*, when we refer to men and women. The whole point of differentiating the two aspects is to enable to counter biological determinism⁶³ and to recognize that many differences between men and women are socially produced and, therefore, not immutable (Haslanger & Asta 2018; Mikkola 2019). Among the scholars and feminists that opposed to biological determinism, a particularly important space has had Simone de Beauvoir, to whom belongs the famous claim “One is not born, but rather

⁶³ Biological determinism is the view that argues that, for what regards the features that differentiate men and women, ‘biology is destiny’ (Mikkola 2019). The lead example of this way of thinking is the theory by Geddes & Thompson (1889), who argued that our metabolic state causes our main behavioral, social and psychological traits. They start from the consideration that men and women have biological differences (the authors refer to the way men and women conserve energy) and they argue that these differences also reflect their psychology, behavior, and social life. According to this view, women are not interested in politics, they are passive, conservative, and sluggish; while men are passionate, eager, energetic and interested in politics (Mikkola 2019). The consequences of this kind of theory are numerous: biologically, women are not suited to have political rights, nor they would be really interested in it.

becomes, a woman” (de Beauvoir 1997, p. 295). In other words, the gender of women, their womanhood, is not biologically determined, but a gradually acquired aspect of identity. The author also offers an explanation on how this aspect of identity is acquired: “The influence of others upon the child is a factor almost from the start, and thus she is indoctrinated with her vocation from the earliest years” (ibid., p. 296). Thus, gender is a process of socialization: female human become women through the learning of what feminine traits and behavior look or even should look like.

Nowadays, the biological determinism of the kind described in the footnote 12 is uncommon, in the sense that it is a generally discarded opinion. However, the idea that men’s and women’s psychology and behavior are different according to biological causes still resists (Mikkola 2019). From this belief gender roles and stereotypes are constructed. Historically, there has been no unique answer to counter this issue, and the terms ‘sex’ and ‘gender’ mean different things according to different theories. Thus, here I am going to illustrate only the line of thought I believe is the most relevant for this research, even though at its core presents some differentiations. It is the theory according to which ‘sex’ refers to *biological features* of male and female humans (i.e. genitals and hormones) and ‘gender’ refers to the *social meaning* attached to it. “Gender differences result from cultural practices and social expectation” (ibid., p. 3). Having learned the lesson by Simone de Beauvoir, the famous slogan embraced by the Sally Haslanger is *gender is the social meaning of sex* (Haslanger 2000; 2018). Following her words,

S is a woman if and only if

- i. *S* is regularly and for the most part observed or imagined to have certain bodily features presumed to be evidence of a female’s biological role in reproduction;
- ii. that *S* has these features marks *S* within the dominant ideology of *S*’s society as someone who ought to occupy certain kinds of social position that are in fact subordinate (and so motivates and justifies *S* occupying such a position); and
- iii. the fact that *S* satisfies (i) and (ii) plays a role in *S*’s systematic subordination, that is, along some dimension, *S*’s social position is oppressive, and *S*’s satisfying (i) and (ii) plays a role in that dimension of subordination. (Haslanger 2018).

Similarly, according to the scholar Laura J. Shepherd (2010), gender is the “social meaning attached to the shape of our bodies” (p. 4). If many differences in the identities of

men and women are not determined by biology and gender is therefore *socially constructed*, belonging to one gender or another has important consequences: “To be of a gender is to have a place in a hierarchical structure and genders are constituted by the hierarchical power relations” (Haslanger 2018, p. 7). The power relations see men on top of the hierarchy. Another important contribution to the topic – which differs sensibly to the idea of gender as a sex-role socialization – arrived in 1987, when West & Zimmerman published the famous article *Doing Gender*, where they stated that gender is not what we are, but what we do. Gender is an accomplishment – they state – and the attention is shifted from an interiorized status to an interactional and institutional arena.

In one sense, of course, it is individuals who "do" gender. But it is a situated doing, carried out in the virtual or real presence of others who are presumed to be oriented to its production. Rather than as a property of individuals, we conceive of gender as an emergent feature of social situations: both as an outcome of and a rationale for various social arrangements and as a means of legitimating one of the most fundamental divisions of society (p. 126).

‘Doing gender’, in West & Zimmerman’s (1987) account means to construct and then institutionalize differences between women and men, which are not essential, natural nor biological. Therefore, individuals cannot not do gender. They all can have different identities, but they always remain men or women: “Our identificatory displays will provide an ever-available resource for doing gender under an infinitely diverse set of circumstances” (ibid., p. 139). And they argue that it is not possible to avoid gender, because there are social consequences in sex membership, namely power and resources allocation in the political, economic, domestic and interpersonal domains: “In virtually any situation, one's sex category can be relevant, and one's performance as an incumbent of that category (i.e., gender) can be subjected to evaluation” (ibid., p. 145).

Summing up, generally, independently on the theory considered, gender and sex are no longer conceived as extensive terms. However, there is no consensus on what are the social practices that construct gender and what a social construction is, nor whether gender is really a social product.⁶⁴

⁶⁴ As an example of theories that do not consider gender as a social construction, Nancy Chodorow’s psychoanalytic theory (1999) criticizes as too simplistic the idea that sees gender as a social construction and

In any case, whether considered as a construction, or a cultural and social meaning, the importance of distinguishing the two terms relies on the social meaning that gender assumes, the creation of gender roles, that are put in place when “Social expectation are imposed upon someone on the base of their biological sex” (Collier 2007, p. 8), and the production of gender biases. Thus, gender roles are socially defined norms, created on the basis of the biological sex.⁶⁵

Violence against asylum-seeking women happens for both sex and gender-related issues. As I have explained throughout this chapter,⁶⁶ gender norms⁶⁷ are one a major cause of gender-based persecution of asylum-seeking women in their country of origin. For example, “Some women may be persecuted, for example, for not conforming to society’s roles and norms of acceptable behavior and for speaking out against traditional gender roles”.⁶⁸ Let me recall rape during wartime.⁶⁹ This is a violence that is perpetrated both for reasons related to sex, and for reasons related to gender. On the one hand, the motivation for massive rape during, for example, ethnic civil wars is to severely injure the women in order to affect their procreative abilities, or to spread sexual transmitted diseases among a community. This, I argue, can be seen as a sex-based motivation. On the other hand, another reason why rape is used as a weapon, as we have seen, is to humiliate a community, since women are considered honor keepers. This is a gender-based motivation, which relies on gender norms. Gender bias, on the other hand, are a kind of implicit bias, and are the reason why people act on the

as having cultural meaning. She uses Freud’s theory to propose that we develop our feminine and masculine traits and personalities in early infancy through introjecting parenting practices (Mikkola 2019): the key that create gender stereotypes is the relationship that male and female children develop with their parents (Chodorow 1999).

⁶⁵ Examples of gender roles: women are allowed to wear makeup, men should not; women should be focusing on maternity, men on their careers; women should be submissive, men assertive; women are allowed to be sensitive, men are expected not to show their emotions. Sometimes gender roles turn into actual norms: the impossibility for women to drive, to leave the house without male relatives, to vote because of their emotional nature are just few examples.

⁶⁶ See §1.1.

⁶⁷ By ‘gender norms’ I mean standards and expectations to which women and men do and should conform, “within a range that defines a particular society, culture and community at that point in time” (European Institute for Gender Equality). See: <https://eige.europa.eu/thesaurus/terms/1194> (Last access: 14/07/2021).

⁶⁸ See Istanbul Convention, 2014, retrievable at: <https://rm.coe.int/migrant-women-and-istanbul-convention/1680925865>.

⁶⁹ See §1.1.1, pp. 7-9.

basis of stereotypes and prejudices without formally intending to do so. Francesco Chiesa (2016) has defined *implicit bias* as “Those cases in which a stereotype on a group x is automatically projected by an agent y to single members of group x, influencing the attitude of y towards members of x without y being aware of that” (p. 25, my translation). Gender bias are implicit bias in which the stereotype projected by the agent on members a group is a stereotype based on the gender of the members of that group. An example that I have made is the one of healthcare providers that make clinical decisions regarding asylum-seeking and refugee women without informing properly them, clinical decisions based on erroneous interpretation of this women’s will.⁷⁰

Race, ethnicity, and culture

As fruitfully stated by Haslanger (2000), *race* is a biological fiction. Still, it is a socially significant term, and it is socially real: “It appears that race, like gender, could be fruitfully understood as a position within a broad social network” (p. 43). But what does it mean for race to be a social meaning? In this respect, the scholar makes a parallel with the term gender as ‘the social meaning of sex’: there is no unity on its significance. There is a way to solve this issue, both for gender and for race, that is to consider in which ways members of the racialized (or gendered) group are socially positioned, and what are the physical markers that serve as a supposed basis for such social position. Regarding race, those physical markers are skin color, physique, eye shape, hair type. Haslanger’s definition of race is the following:

A group is racialized iff its members are socially positioned as subordinate or privileged along some dimension (economic, political, legal, social, etc.), and the group is "marked" as a target for this treatment by observed or imagined bodily features presumed to be evidence of ancestral links to a certain geographical region. (ibid., p. 44).

In other words, race is a powerful social category, enacted through oppression, conquest, and slavery.

The concept of race is not to be confused with the notion of *ethnicity*, which means something different. It denotes groups that “Share a common identity-based ancestry,

⁷⁰ See §1.1.3, p. 19.

language, or culture” and “It is often based on religion, beliefs, and customs”.⁷¹ Max Weber, in his work *Economy and Society* (1968) was the first to give a clear (sociological) definition of ethnic groups, as “Those human groups that entertain a subjective belief in their common descent because of similarities of physical type or of custom or both, or because of memory of colonization and migration” (p. 389).⁷²

More than other concepts ever, the definition and meaning of the term *culture* has been contested (Yuval-Davis 2017). It derives from the Latin *colare*, meaning to honor and to care for. It is rare to find a clear definition of culture, because usually discussions usually assume a broad understanding of it (Matthes 2018). When it is defined, the definition often appears as purely descriptive list: culture as the product of human activity, referring, in particular, to socially transmitted things, including beliefs, practices, and objects. Benhabib (2002) considers cultures as “Complex human practices of signification and representation, of organization and attribution, which are internally riven by conflicting narratives. Cultures are formed through complex dialogues with other cultures” (p. ix). More importantly, culture seems to have become an identity marker and differentiator, a synonym for identity (Benhabib 2002). Herder considers culture as a unified and homogenous entity, and is described as a system of shared value, symbols, language, meanings (Denby 2005). According to Benhabib, however, cultures are not clearly delineable wholes, nor congruent with groups of populations: culture as a concept is controversial, and non-controversial descriptions of alleged cultures are not possible. A more compatible definition of culture that do not entail for it to represent a coherent and clearly defined whole is the one given by Geertz (1973), who rework Weber’s description: culture are webs of significance that men themselves have spun. The father of cultural studies, Raymond Williams, suggested three meaning for the term culture (2015): culture as civilization, high culture, and culture as a way of life. The first is culture as a general process of spiritual, aesthetic, and intellectual development; the second is culture as work and practice of artistic and intellectual activities; the third, the one embraced by the author (Giddens 1989; Yuval-Davis 2017), is a way of life

⁷¹ See: <https://genderinnovations.stanford.edu/terms/race.html>.

⁷² See Cornell & Hartmann (2007) for a discussion.

composed from the values and the norms of shared by the members of a given group, but also the material goods they produce.

The first way in which asylum-seeking and refugee women's race, ethnicity and culture play a role in the definition of their vulnerabilities and injustice is the more obvious: they generally flee from countries that are culturally more hostile to women than Western countries.⁷³ An example is the already treated practice of FGM,⁷⁴ which is culturally based. Another example is well described by Alam et al. (2019):

Violence against immigrant women or categorized as such, especially if it is to blame their own cultural traditions and "their men" is a subject for the media. Today, and especially since September 11, 2001, the "cultural tradition" is most often reduced to Islam, whose alleged victim is used to politicize the issue and place it in the framework of security". (p. 11)

The authors blame the tendency to reduce the SGBV that asylum-seeking women experience to a cultural problem and, on the one hand, to normalize it and, on the other hand, to instrumentalize it. Moreover, reducing violence against those women to cultural traditions risk to make people and, most importantly, policy makers failing to prevent violence in the European host countries. In this way, indeed, one fundamental aspect would be missing, which is precisely that these kinds of episodes of violence and gender discrimination happen also in host countries with different and more advanced social structures.

Situated intersectionality: refugeehood as a particular social context

So far, I analyzed the intersecting identities of female refugees and asylum-seekers. As women, they live gender-based experiences and encounter gender bias. As people of color or, in general, people with different ethnic and cultural origins, they experience racism. Yet, I also argue, if I want to unpack properly the intersectional features of this group, I also shall consider that this group is also absorbed in a peculiar social context, the one of refugeehood.

⁷³ This is a controversial claim. For the purposes of this work, I just take for granted that the countries where women come from (Nigeria, Syria, Afghanistan, Somalia, India, Pakistan etc.) are a step behind European countries in recognizing women's rights and gender equality.

⁷⁴ See §1.1.1, p. 10 (footnote no. 13).

Why is the social context important for intersectionality? It is well explained by the scholar Nira Yuval-Davis (2013; 2015; 2017), who has theorized the notion of *situated intersectionality*. This concept is

Highly sensitive to the geographical, social and temporal locations of the particular individual or collective social actors examined by it, contested, shifting and multiple as they usually are. Therefore, in the intersectionality approach presented here, we also need to highlight the central importance in the analysis of issues of translocality – i.e. the ways particular categories of social divisions have different meanings – and often different relative power – in the different spaces in which the analyzed social relations take place; of transculturality – i.e. the ways different social divisions have often different meanings and power when we examine them in small scale households and neighborhoods, in particular cities, states, regions and globally; and of transtemporality – i.e. how these meanings and power change historically and even in different points in people’s life cycle. (Yuval-Davis 2017, p. 5)

The author highlights how it is important, when adopting an intersectional approach, not take into account only the different identities that compose an intersectional group, but also the role that the social context plays in shaping those identities. Let me take an example based on two (stereo)typical and well-known cases. The first is the case of a young woman that has just finished high school and wants to take a sabbatical before going to university (or college). She will travel to London, or Australia, in order to find a job and learn English. The second case is a girl who flee from Nigeria to Europe because she knows it is time for her to go through FGM. Intuitively, to be a young girl that migrates from Italy to London or Australia in order to make a (either high or low-skilled) work experience it is different than being a Nigerian woman who escapes from FGM and tries to reach Europe through Libya. And it is different not only for the primary reason of migrating itself. Also, the context profoundly changes. The first woman will buy a flight, will have the economic and emotional support of her family, will rent a room or a flat for the months she intends to stay abroad. The second girl will go through a completely different migrating experience, the experience that I described throughout the paragraph and that is characterized by violence, fear, and constant threats for her life. Those gender-based violence, threat and fear are a global and structural feature of refugeehood, which becomes a defined (however blurred) social context.

2.3 Discrimination

As anticipated, the concept of intersectionality was born to give conceptual reason to forms of multiple discrimination. Other than conceptually, this tool has also been adopted at the level of the European legislation, soft law included. As explained by Bello (2020), some non-binding documents by the European Commission and the European Parliament show attention for forms of multiple and intersectional discrimination.⁷⁵ Moreover, Bello highlights that some European Parliament resolutions began adopting a terminology that explicitly refers to intersectionality, besides that to multiple discriminations, to speak of structures that generate discrimination and intersectional inequality.⁷⁶

Now, a conceptual focus on the concept of discrimination. What is discrimination? What is wrong with discrimination? When is discrimination wrong? These are among the most relevant questions, when dealing with this concept. I now try to answer these questions before turning to the last set of questions: What does this concept have to do with asylum-seeking and refugee women? Why, how and in virtue of what are they discriminated?

First, as stated by Lippert-Rasmussen (2018), discrimination is widely an important topic because it is key for understanding social inequalities. On the other hand, since “Many disadvantages and disrespectful forms of treatment endured by individuals result or amount to discrimination” (ibid., p. 1), it seems natural to investigate whether and how the subjects of this research experience discrimination. Lastly, the intersectionality framework was born around the concept and experience of discrimination (Crenshaw 1991; Stoljar 2018).

⁷⁵ See: *European Parliament Resolution on the Situation of Women from Minority Groups in the European Union* (2003/2109(INI)), https://www.europarl.europa.eu/doceo/document/A-5-2004-0102_EN.html (Last access: 17/02/2022); *Green Paper on Equality and Non-Discrimination in an Enlarged EU* (COM(2004) 379Ffinal), <https://op.europa.eu/it/publication-detail/-/publication/7ff1a3b1-e76a-43a3-b8f3-a9fcbe9edae7/language-en> (Last access: 17/02/2022); *European Parliament Resolution on the Situation of Roma Women in the European Union* (2005/2164(INI)), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52006IP0244> (Last access: 17/02/2022).

⁷⁶ See: *European Parliament Resolution on the Situation of Women with Disabilities* (2018/2685(RSP)), https://www.europarl.europa.eu/doceo/document/TA-8-2018-0484_EN.html (Last access: 17/02/2022); *European Parliament Resolution on the Situation of Fundamental Rights in the European Union in 2017* (2018/2103(INI)), https://www.europarl.europa.eu/doceo/document/TA-8-2019-0032_EN.html (Last access: 17/02/2022); *European Parliament Resolution on the Fundamental Rights of People of African Descent in Europe* (P8_TA(2019)0239), https://www.europarl.europa.eu/doceo/document/TA-8-2019-0239_EN.html (Last access: 17/02/2022).

Thus, I shall begin from the basic questions of what discrimination is and when it can be considered wrong. Indeed, as recognized by Larry Alexander (1992), “All of us well-socialized Westerns know that discrimination against other human beings is wrong. Yet we also realize, if we think about it at all, that we discriminate against others routinely and inevitably” (p. 151). As Hellman (2008) effectively shows, discrimination is a *descriptive* and *moralized* concept. Descriptively, to discriminate means to draw distinctions among people. In this sense, we discriminate all the time, and some discrimination, meant as differential treatment, seems perfectly legit. I give two examples of not-wrongful types of discrimination, in the public sphere of labor market, and in the private sphere of the choice of a partner. First, deciding that blind people are not allowed to drive neither private nor public means of transportation is considered common sense, and not an example of a wrongful discrimination policy. In the same way, sexual orientation is not wrongful discrimination against those genders one is not attracted to⁷⁷ (Thomsen 2018). Discrimination used in a moralized way means to wrongfully discriminate among people based on some characteristics or traits. Therefore, “Discrimination in the relevant and more specific sense is differential treatment plus something else” (Lippert-Rasmussen 2018, p. 2). There are many theories on what this ‘something else’ would consist in⁷⁸, but a common feature seems to be differential treatment based on the membership of a socially salient group⁷⁹ (Lippert-Rasmussen 2018, 2013). In this chapter, I have already specified why and how asylum-

⁷⁷ That is, if a woman, let me name her Camilla, is a cis-gender woman sexually and romantically attracted to women, we would not consider her legitimate choice of whom to have sexual intercourse with as wrongfully discriminating men.

⁷⁸ For instance, Andrea Sangiovanni (2014), as it will be treated in-depth in Chapter 4 of this work, believes that discrimination is wrongful when it involves social cruelty.

⁷⁹ There are some arguments against this view. The main one regards the fact that not all the forms of discrimination relate to socially salient groups, such as the one that involves transgender people. For they are targeted precisely because they *do not conform to* socially salient groups – that are men and women (Lippert-Rasmussen 2018; Mikkola 2018). Relevantly for this work, others argue that this narrative of socially salient groups does not apply to intersectional groups, because intersectionality itself may be incompatible with the idea of a social group, if we define a social group as a group where social identities are shared (Stoljar 2018). As explained in the very first part of this chapter, I do not agree with this view, and I assert that the idea of social group can be accompanied with an anti-essentialist view of those groups.

seeking and refugee women can be considered a socially salient group⁸⁰, and, therefore, they can experience discrimination.

At this point, it is worth lingering on an important distinction, which as Lippert-Rasmussen (2018) teaches, is taken to be exhaustive. This distinction is the one of *direct* and *indirect* discrimination. According to Thomsen (2018, pp. 24-26), direct discrimination occurs when an agent

- a. Treats persons with property P (P-persons) differently than she treats or would have treated others (non-P-persons);
- b. The treatment of P-persons is worse for P-persons with respect to good G than the treatment of non-P-persons is or would be for non-P-persons;
- c. The difference in treatment is explainable by P-persons possessing or the agent believing that they possess P and non-P-persons not possessing P;
- d. P is a property that is socially salient in the circumstances of the differential treatment;
- e. The differential treatment is at least *prima facie* morally wrong.

In this definition there is everything that there has been written so far in this paragraph. First, there is differential treatment: a person treats another person or group with a particular property (race, gender, sexual orientation, social position etc.) in a way that would not treat another person without this property. For example, a man having rude, demeaning and paternalistic attitudes towards women, or a white girl being verbally/physically violent only with non-Western migrants.

Getting closer to the subject of this research, asylum-seeking women are directly discriminated *as women*, therefore suffering from paternalistic and demeaning attitudes, and *as migrant*. Within this big picture, asylum-seeking women are discriminated also due to their ethnicity, religion, cultural background.⁸¹ Second, the social saliency of a group. As already stressed out, I consider asylum-seeking and refugee women a socially salient group, in the terms I specified in the first paragraph of this second chapter. Third, the fact that the treatment is *worse* for the discriminated person than for non-discriminated groups. The

⁸⁰ See §2.1 of this chapter.

⁸¹ See also Chapter 3, § 3.5 of this work.

balance of disadvantage points heavily to the discriminated person. To understand what this ‘worse’ means and what ‘disadvantage’ would involve, we should look not only at “Where the treatment leaves the discriminatee, but [also] at how it affects her” (ibid., p. 23). According to the scholar, the combination of the two elements – the evaluation on how it affects the discriminatees and the comparison with how this different treatment affects non-discriminatees – is the key.

Fourth and last, and moving toward another great question about discrimination, why is this differential treatment wrong. As anticipated few lines above, there are many theories that try to explain why and when discrimination is wrong. Among the scholars that tried to answer this question (Alexander 1992; Arneson 2018; Hellman 2008, 2018; Lippert-Rasmussen 2013, 2018; Moles 2018; Moreau 2010, 2018; Sangiovanni 2014), there are some main lines of thought, but I will not analyze them all, because it is beyond the scope of this paragraph and research. I therefore report the one that I believe more in line with the subject of this work. The point is that, as the definition above suggests, discrimination in the relevant sense is *morally* wrong. But why is that? In the first place, an answer is that discrimination is wrong when it is *demeaning* towards certain groups (Hellman 2008; Sangiovanni 2014).

I provide two formulations of demeaning, by Hellman (2008; p. 35):

- A) “To demean is to treat another as not fully human or not of equal moral worth”.
- B) “To demean is to put down – to debase or degrade”.

In addition, the scholar specifies that, in order to demean another, one has to have a certain degree of status or power: this person has to be in a position to subordinate the other. Moreover, it is context and conventions that determine whether any particular action is demeaning (intended as disrespect) or not. Thus, if we distinguish people on racial or gender grounds we do not (generally) merely refer to differences in appearance (sexual traits, the color of the skin, etc.), but “classification on the basis of these traits carries with it baggage of social signification, or association with other traits that are deeply derogatory” (ibid., p. 40). In line with this, Sangiovanni (2014) believes that to demean, that is to treat another as

not fully human, involves *social cruelty* and it is, for this reason, wrong. I will return to this theory later on to analyze it more in-depth⁸².

Asylum-seeking and refugee women encounter discrimination in a range of areas, and especially in the labor market (Duran 2018; Lombardi 2017). In analyzing the experience of Syrian refugee women in Turkey and Europe, Duran (2018) points out that they face ‘dual discrimination’ in almost every aspect of their lives in the context of asylum and refugeehood. Nonetheless, in the labor market context, they are even more deeply disadvantaged, because of other characteristics that are typical to their situation. The scholar also highlights how difficult it is to make research on the access of refugee women in the labor market, since there is no gender-disaggregated data on this issue. Moreover, existing studies concentrate more on the private aspect of these women lives, due to the perception of refugee women as being inactive. Similarly, research on refugee women’s employment status is absorbed in the research of migrant women in general, without differentiating between statuses (Duran 2018; Sansonetti 2016).

Duran (2018) also observes that even if there are differences across Member States in the women employment rate, the gap between refugee women and men persists: “Refugee women may encounter gender-specific barriers in attending relevant training, which in turn may hinder their chances of improving their position in the labor market” (ibid., p. 58). Other forms of direct discrimination against asylum-seeking and refugee women are the ones described in the previous chapter and paragraph of this work, and they include SGBV, abuse, trafficking, and racial and cultural discrimination (Alam *et al.* 2019; Amnesty International 2001; Carpenter 2004; Collier 2007; Criado-Perez 2019; Guterres *et al.* 2014; Lombardi 2017; Querton 2014; Yuval-Davis 2017).

Indirect discrimination, on the other hand, is more subtle.

[It] Involves an apparently neutral practice or policy which puts members of a protected group (say, women) at a disproportionate disadvantage compared with members of a cognate group (say, men), and which fails to satisfy a means-end justification test. [...] indirect discrimination is structurally comparative, in the sense that it involves the disadvantaging of certain groups of persons *in relation* to others.

⁸² See Chapter 4, §4.3.

(Khaitan 2018, pp. 31-32)

Therefore, indirect discrimination involves practices and measures that are not *prima facie* built to put group A at such disproportionate disadvantage in respect to group B, but that it does so anyway. We can look at indirect discrimination focusing on the *motives* for these measures, or on its *effects* (Doyle 2007). That is, we can discern between the option that this alleged measure is originally put in place with discriminatory purposes against the group A, or the option that this was not its original intention, but it has anyway discriminatory outcomes towards group A. Under this second model, for this measure to be indirectly discriminatory, it needs to impact more harshly one group in respect to the other. I give two examples in which asylum-seeking and refugee women experience indirect discrimination. The first example regards the cancellation of the Humanitarian Protection in the Italian legislation on refugee reception, with the two Security Decrees (2018⁸³, 2019⁸⁴) enacted by the then Interior Minister Matteo Salvini. According to Giovannetti (2018), the Humanitarian protection was, before the Security Decree of 2018, the main protection tool benefitted by asylum-seeking women. Precisely, in 2017 29% of asylum-seeking women in Italy obtained the humanitarian protection, 25% the refugee status, and 6% the subsidiary protection. 37% were denied international protection. On the other hand, asylum-seeking men obtained the humanitarian protection in the 24% of cases⁸⁵. If we consider the number of Nigerian women arrived in Italy, UNHCR indicates a similar percentage of asylum-seeking women obtaining the humanitarian protection. This percentage is 28%. As a comment to this set of data, the jurist Ilaria Boiano, states that

Their experience of persecution is reduced to a consequence of their alleged inherent gender-based vulnerability, mostly worthy of humanitarian protection. At the same time, the reasons for this persecution are neglected nor the political value subtended their rebellions to these persecutions is acknowledged.⁸⁶

⁸³ <https://www.gazzettaufficiale.it/eli/gu/2018/10/04/231/sg/pdf> (Last access: 26/07/2021).

⁸⁴ https://images.go.wolterskluwer.com/Web/WoltersKluwer/%7B97ec704f-1881-4aa7-9327-53646f683c4b%7D_decreto-legge-53-2019.pdf (Last access: 26/07/2021).

⁸⁵ See: https://www.questionegiustizia.it/rivista/articolo/riconosciuti-e-diniepati-dietro-i-numeri-le-persone_533.php (Last access: 28/07/2021).

⁸⁶ “La loro [delle donne] esperienza di persecuzione rimane ridotta a conseguenza di vulnerabilità individuale connotata dal genere, per lo più meritevole di protezione umanitaria, mentre si trascurano le ragioni della

(UNHCR 2017, my translation)

If this is true, then asylum-seeking women were more impacted by the abrogation of the humanitarian protection.

The second example is more theoretical and regards the way the general discussion over the refugee crisis and, also, the asylum policies are constructed. As I argued previously⁸⁷, public policies on reception, academic literature, and, also, media, treat the refugee crisis as a gender-neutral phenomenon, also due to a lack of gender-disaggregated data. This puts asylum-seeking and refugee women at a disproportioned disadvantage, because their experiences are not theoretically analyzed and, therefore, their gender-specific and intersectional experience is not recognized. Without this recognition and acknowledgment, no needed specific measure is put in place. This, in the asylum area, disadvantage women more than men. Pittaway and Bartolomei (2001, p. 22) explain this phenomenon:

At the preparatory committee for the World Conference against Racism held in Geneva in May 2000, a paper titled “Racism, Refugees, and Multi-Ethnic States” was presented. Prepared by five invited experts on refugee issues, at least four of whom were men, the paper details the many links between refugee issues and racism. [...] Not once in the twenty-seven-page document is gender mentioned. Not once is the well-documented difference in refugee experience between men and women acknowledged or addressed.

From 2001, the year this paper was written, there has been growing attention to gender issues in migration, asylum and refugeehood. However, as specified in the previous chapter⁸⁸, this attention has not yet translated in normative analysis and implementation of gender-sensitive policies (Duran 2018). Sansonetti (2016) too criticizes the gender-neutral approach to labor market policies in the context of refugeehood, since this disadvantage women inasmuch it does not acknowledge their primary responsibility for the family care, and therefore it does not solve the issue of their unemployment rate.

persecuzione stessa né si riconosce il valore politico della ribellione delle donne sottesa a ogni forma di persecuzione da loro subita”, see: <https://www.unhcr.org/it/risorse/carta-di-roma/fact-checking/donne-rifugiate-la-violenza-molte-facce/> (Last access: 28/07/2021).

⁸⁷ For references and a deeper discussion on this, see Introduction and Chapter 1, §1.1.

⁸⁸ Again, see Introduction and Chapter 1, §1.1.

CHAPTER 3.

Asylum-seeking and Refugee Women as Vulnerable Subjects: Intersectional Layers and Loops of Vulnerability

In the previous chapter, a word had been used frequently without being clarified. This word is ‘vulnerable’, which appeared – according to *The Oxford English Dictionary* (Simpson & Weiner 1989) – for the first time in 1808.¹ In the abovementioned chapter, I often referred to particular cultural customs and traditions that make asylum-seeking and refugee women and girls *vulnerable* to threat and harm, to particular routes to Europe that make these women *vulnerable* to sexual violence, as well as European hosting countries’ policies that may *exacerbate* this vulnerability. Thus, I shall now define, analyze, and problematize this term, which refers to a complicated notion, both from a conceptual and juridical point of view.

As it has been observed,

Vulnerability is a versatile concept that passes through different areas of knowledge and disciplines, allowing the description and diagnosis of a wide variety of situations or categories of subjects at risk. Although the uses of the word vulnerable could seem peaceful, such appearance is broken by the plurality of meanings that are attributed or associated by substitution.²

(La Spina 2020, p. 23, my translation)

Moreover, as Giolo & Pastore (2018) claim, the concept of vulnerability

Can represent a useful tool, on the one hand to give an account of the precarities, fragilities, insecurities, threat, and risks that characterize the contemporary age and that affect the actual life of individuals; on the other hand, [it is also useful tool,] to face a series of relevant problems on the side of the guarantees of the people’s rights and of the role of the law and of the institutions.³

(Giolo & Pastore 2018, p. 12, my translation)

¹ The term ‘vulnerability’ corresponds to the Latin word *vulnerabilis*, which indicates a predisposition to physical harm (Maragno 2018).

² Original text: “La vulnerabilidad es un concepto versátil que transita por diferentes áreas de conocimiento y disciplinas permitiendo describir y diagnosticar una amplia variedad de situaciones o categorías de sujetos en riesgo. Si bien los usos del vocablo vulnerable podrían parecer pacíficos, tal apariencia se rompe ante la pluralidad de significados que se le atribuyen o se asocian por sustitución”.

³ Original text: “Può rappresentare uno strumento utile, da un lato, a dar conto delle precarietà, fragilità, insicurezze, minacce e dei rischi che caratterizzano l’epoca contemporanea e che incidono sulla vita concreta degli individui; dall’altro, ad affrontare una serie di problemi rilevanti sul versante delle garanzie dei diritti delle persone e del ruolo del diritto e delle istituzioni”.

In recent years there has been a proliferation of literature on vulnerability in different contexts, but especially in philosophical, bioethical and juridical debates, due to an increased interest on the topic of vulnerability in general (Fineman 2016; Fineman & Grear 2016; Giolo & Pastore 2018; Furia & Zullo 2020; La Spina 2020; Luna 2018; Mackenzie *et al.* 2014; Rigo 2020; Zanetti 2019) and more specifically on vulnerability with regards to asylum seekers and refugees, in the practice of the right of asylum, also with a gender perspective (Freedman 2018; Rigo 2019; Spada 2020). Vulnerability is a relational concept: “Vulnerability is a consequence of our being in relation to and dependent on others” (Tommasi 2018, p. 101), and “It implies that some agents [...] can cause or prevent this harm” (Zuccarelli 2020, p. 11). This means that the duty to protect the vulnerable arises when there is a harm, or the risk of harm which can be avoided precisely because it depends on other agents’ choices. As others have highlighted, this descriptive concept can turn into a normative one, if used to make moral statements on what we owe to individuals (Cloud 2016; Straehle 2019).

The aim of the chapter is not to give an ultimate definition of the term. Rather, it is to stress the importance of the focus on vulnerability as a paradigm for constructing an account of the injustice experienced by asylum-seeking and refugee women. As La Spina (2020) notices, there is an intrinsic relation between the notion of vulnerability and migration, especially when it comes to refugeehood since refugees are usually considered a vulnerable group, due to their dependence on the receiving states (Freedman 2018, 2019; La Spina 2020; Mouzourakis *et al.* 2017; Rigo 2019; Spada 2020; Zanetti 2019). On the other hand, vulnerability has also been put at the center of theorization within gender studies, where scholars (Gilson 2016; Hollander 2001, 2002; Levine *et al.* 2010; Luna 2009, 2018; Mascini & van Boschove 2009; Strahele 2019) tend to stress the dangers of this term, which can lead to stereotyping and lack of autonomy of the vulnerable subjects (in this case, the women).

In this chapter I argue that the concept of vulnerability plays a central role in conceptualizing experiences of injustice of asylum-seeking and refugee women, and that an analysis of their experiences cannot be complete without conceptualizing their vulnerabilities and the sources of their vulnerability. It will be structured in the following way. After an

overview of the main accounts of vulnerability and an explanation of why this concept is so important for the purposes of this study, I will treat more specifically the two approaches that seem to me better suited for conceptualizing asylum-seeking and refugee women experience – the notions of *layers* and *cascade* vulnerability, and the one of vulnerability *loops*. In order to introduce the dangers that the concept of vulnerability brings with it, I will treat how this paradigm has permeated in the European asylum procedures with the same ambiguities that are constitutive of the concept. I will also describe how European policies on asylum exacerbate these women’s vulnerability, with a focus on some specific Member States’ policies. After that, I will ponder the potential side-effects of adopting this paradigm for characterizing asylum-seeking and refugee women experiences, which can favor processes of stereotyping and therefore exacerbate their vulnerability. Finally, I will endorse an intersectional approach to vulnerability which I argue to be a way of constituting a fair solution to the objections raised concerning the use of this concept, as well as a useful tool for building policies that reduce vulnerability.

3.1 Paradigms of vulnerability: Universal vs. Contextual

As it has been noticed above, *vulnerability* is a vague and ambiguous term, and here I explain why it is so. As human beings, we can all be considered vulnerable. Hobbes (Hobbes 2017; Whitney 2011) first, and then other scholars like Hart (1994) stress the importance of human corporeal vulnerability to the affirmation of a normative political order and of rights. According to Hobbes, all human beings are equally corporeally vulnerable and, at the same time, are apt to destroy one another (Hobbes 2017). Therefore, this vulnerability is a danger, and the remedy to this threat is to come out the state of nature and endorse in a political order where human beings no more have the opportunity to wound others without penalty. Hart (1994) goes in the same direction, stating that “If men were to lose their vulnerability to each other there would vanish one obvious reason for the most characteristic provision of law and morals” (pp. 194-195). Therefore, in a society where human beings are equally vulnerable, it is necessary to provide ways of regulating human conduct through law and morality.

However, the problem is whether, and based on what criteria, we can measure this vulnerability: quantitatively or qualitatively⁴ (Casadei 2018). Does this concept refer to human beings' emotional, corporal, and relational nature in a broad sense, or to conditions of different forms of marginalization, exploitation, and oppression, which depend on the different context that determine it (Furia & Zullo 2020)?

Therefore, I shall now move forward to what I consider more relevant to stress in relation to this research, that is the tension between the two main paradigms of vulnerability – namely the universal, or ontological vulnerability and the contextual, or particular vulnerability.⁵ At the core of this tension there is a disagreement on whether we need to emphasize vulnerability as a human characteristic, therefore shared universally by all human beings, or whether it is better to look at this concept as something that certain groups experience more than others. The point at the core of this analysis of the dispute is either to understand what it is that grounds the need of protection of the vulnerable – for what regards this research, asylum-seeking and refugee women – from a normative standpoint, and to make steps forward the understanding of what it is that characterize their experiences in order to understand the situation of injustice they live in.

Some philosophers are skeptical that anything morally relevant can be achieved by focusing on the ontological dimension of vulnerability. A particular worry is that focusing on the ontological dimension of vulnerability distracts from a thorough investigation of the circumstances in which some subjects become particularly vulnerable.

(Bagnoli 2019, p. 14)

Although the purposes of the present research are far from being the construction of a theory of justice for asylum-seeking and refugee women, or of a set of norms to eliminate the injustices these women suffer from, as I stressed earlier⁶, I believe that this research can make full sense if it is considered to be the first important step to find new ways to protect

⁴ Quantitatively, vulnerability can be used as a synonym of *inequality* (Fineman 2008); qualitatively, vulnerability is used to refer to insecurity, perception of the risk to harm and threat (Casadei 2017).

⁵ There are different ways to refer to these two broad approaches: universal and ontological vulnerability on the one hand, and contextual, particular, contingent, situated, or ethical vulnerability on the other hand. For the sake of simplicity of language, in this chapter I will refer to these two paradigms as universal and contextual.

⁶ See the references to Gender mainstreaming in *Introduction* and *Chapter 1*.

those women. In this sense, I agree with Straehle (2019) that vulnerability ought to be considered an *action-guiding principle* in many areas of ethics, moral and political philosophy.

The universal vulnerability is a paradigm embraced by many moral, political, and legal philosophers (Bagnoli 2019; Butler 2004, 2009, 2016; Fineman 2008, 2010, 2016; Grear 2016; Jonas 1984; MacIntyre 1999; Nussbaum 2006; Schildrick 2002; Straehle 2010, 2016, 2019; Turner 2006). In this sense, when philosophers refer to vulnerability, they mean to “Highlight human fragility, the embodiment we experience everyday as biological organisms, or the intrinsic dependency on others and on our bodies that marks human experiences” (Straehle 2019, p. 1). In other words, vulnerability constitutes a “Universal, inevitable, enduring aspect of the human condition” (Fineman 2008, p. 8). Precisely because we are human beings, we all are vulnerable. In this sense, vulnerability is a potentiality and is constitutive of human beings’ corporeality (Guaraldo 2018): “The Human being is vulnerable insomuch [it is a] singular body open to injury [...] The potentiality of an always-imminent and contingent injury” (Cavarero 2007, p. 42). Why is the ontological condition of vulnerability so important for these scholars? Precisely the fact that it poses the basis for care relationships, it is foundational of justice (Butler 2009; Cavarero 2007; Guaraldo 2018).

The body that exists in its exposure and proximity to others, to external force, to all that might subjugate and subdue it, is vulnerable to injury; injury is the exploitation of that vulnerability. But this does not mean that vulnerability can be reduced to injurability [...] If this precarious status can become the condition of suffering, it also serves the condition of responsiveness, of a formulation of affect, understood as a radical act of interpretation in the face of unwilled subjugation [...] The very fact of being bound up with others establishes the possibility of being subjugated and exploited-though in no way does it determine what political form that will take. But it also establishes the possibility of being relieved of suffering, of knowing justice and even love.

(Butler 2009, p. 61)

Important to Butler’s analysis (Butler 2009; Casadei 2018) is the concept of life-long ‘precariousness’: human lives are precarious by definition and the cause is primarily the human beings’ corporeality. We all are vulnerable because we can all be subjected to harm and violence (Cavarero 2007).

However, we are not all subjected to harm and violence *in the same way* in every context. There can be certain politically, socially, and institutionally induced vulnerability, a situated precarity (Zanetti 2020). That is why contextual vulnerability, on the other hand, “focuses on the contingent susceptibility of particular persons or groups to specific kinds of harm or threat by others” (Mackenzie 2014, p. 6). Among the scholars that criticize the universality of vulnerability and rather prefer to focus on this concept as picking out the specific condition of particular groups are Goodin (1985), Levin *et al.* (2010), Luna (2009), Schroeder & Gefenas (2009). The point of contextual vulnerability is not so much contesting that all human beings are vulnerable but pointing out that they are vulnerable in different ways and that there are some groups that are more vulnerable to harm and violence than others (Giolo & Pastore 2018).

When we say ‘specific vulnerabilities’ we mean, with a somewhat specialized term, ‘situated’ vulnerabilities, or vulnerabilities that are constituted by complex constellations of historical and institutional factors, which properly determine a regulatory horizon within which a given category, a given ‘understanding group’ is in fact disadvantaged.⁷

(Zanetti 2020, p. 9, my translation)

This notion of situated, contextual or particular vulnerability is hostile to any attempt at reducing the concept to its ontological setting: if what we want to achieve is the comprehension of reality and facts, we need to begin from the specificity of every single case (ibid.). Bagnoli (2019) highlights that the debates focusing especially on discrimination and oppression naturally favor the contextual approach to vulnerability, “which aims to identify some categories of agents as especially subjected to harm because of some disfavoring conditions, or else because they are target of social and political discrimination” (p. 14). Moreover, contextual vulnerability is also useful in providing characterization of subjects or groups that are particularly at risk of harm: ethnical and cultural minorities, children, women, members of the LGBTQ+ community, migrants are among the most disadvantaged groups (ibid.). The relational nature of vulnerability is central even in this contextual approach. In

⁷ Original text: “Quando si dice vulnerabilità specifiche si intende, con un termine un po’ specialistico, vulnerabilità ‘sitate’, ovvero vulnerabilità che non sono costituite da costellazioni complesse di fattori storici e istituzionali, i quali propriamente determinano un orizzonte normativo entro il quale una data categoria, un dato ‘gruppo comprensivo’, è di fatto svantaggiato”.

Goodin's (1985) view, indeed, we have special responsibility of protection toward those whom are particularly vulnerable to us, to our choices and actions. In these terms, vulnerability is a relational, and object and agent-specific concept: one is vulnerable as a member of a class of persons to particular types of threats and to particular agents.

When dealing with finding a suitable approach of vulnerability for asylum-seeking and refugee women, this formulation is not entirely appropriate. The debate often presents the contextual and universal vulnerability as a dichotomy that is too sharp. On the one hand, it seems natural to argue that, even though it is true that all human beings are in one way or another vulnerable, the approach that would better suit the case is the contextual one. The group of asylum-seeking and refugee women has specific sources of vulnerability⁸ that do not apply to the universal group of human beings. This point is, I would say, trivial. However, it is not so trivial to further specify why women represent a context of vulnerability within the universality of asylum seekers. Thus, if it is obvious to state that asylum seekers are a vulnerable group because the context in which they are inserted makes them vulnerable, to argue that asylum-seeking women are vulnerable in more specific ways certainly needs a more accurate explanation. Why it is not enough to say that all asylum seekers are vulnerable? Again, the purpose here is not to argue that asylum-seeking and refugee women are more vulnerable than men, but that as a group they suffer from specific forms of vulnerability. In fact, rather than a quantitative issue, this is a qualitative consideration. Thus, saying that, within the universality of asylum seekers, a more particular reflection on vulnerability discloses gender specificities in the asylum and refugee areas, tells us very little about the sources of these vulnerabilities and the possible solutions for them. This is because, as argued in the first chapter,⁹ asylum-seeking and refugee women constitute an intersectional group, with characteristics that require an in-depth reflection that this sharp distinction between universal vs. contextual vulnerability cannot grab.

⁸ The entity of these sources will be clarified in the next paragraphs.

⁹ See Chapter 1, §1.2 and §1.3.

Bagnoli (2019) suggests new categories, namely *constitutive*¹⁰ and *circumstantial*¹¹ vulnerability, that work together and are not alternative to one another. The second vulnerability presupposes the first. On the other hand, Grear (2016) adds, “vulnerability is them, as universal as human corporeality itself, yet remains (like human corporeality) simultaneously and radically *particular* and fully responsive to its social, environmental and structural locations and mediations” (p. 50). I argue that Bagnoli’s categories can be reformulated to make sense of this internal subgroups’ vulnerability.

Asylum-seeking and refugee women suffer from circumstantial and constitutive vulnerabilities. Some vulnerabilities are shared with asylum-seeking and refugee men, because they are constitutive of refugeehood and area of asylum. An instance of a constitutive vulnerability for asylum seekers is the impossibility to choose as the place where to claim for asylum a different European country than the one of first entry and registration, or the one that it is chosen for them due to different inter-states agreements. They represent example of constitutive vulnerability because European regulations of refugeehood are designed in this way. Moreover, they suffer from vulnerabilities that are also constitutive of their intersectional group, that is their membership to the groups of women and asylum-seekers¹². Asylum-seeking and refugee women, for example, may have difficulties in accessing reproductive and sexual healthcare during the journey and in the host countries. This is a constitutive vulnerability because of their being women on the move. They also suffer from circumstantial vulnerabilities, in the sense that other mechanisms enter the game, such as other intersections and sources of vulnerability. For example, the intersections of the groups of asylum seekers, women, and sexual orientation; or women, asylum seekers and racialized groups. The same example above can be useful in these terms. If we think of the difficulty in accessing sexual and reproductive healthcare of the women on the move, we also need to consider that some women on the move may experience this vulnerability more than others.

¹⁰ Vulnerability is a constitutive feature of all human beings.

¹¹ Vulnerability is contingent “to specific kinds of wrongs and inflicted harms due to discrimination, such as loss of status, lack of recognition, oppression and deprivation” (ibid., p. 15).

¹² The fact that these vulnerabilities are constitutive of being women on the move does not entail that these vulnerabilities cannot also be considered *induced*.

For example, Muslim women with a traditionalist background may encounter more difficulties in this sense because of a lack of possibility to choose female physicians.

However, there are substantial attempts to go beyond and further the universal/contextual uses of vulnerability, which are illustrated in the next section.

3.2 Alternative approaches to vulnerability

The first approach to vulnerability I find important to analyze is the concept of layers of vulnerability, or *cascade vulnerability*, stressed by Florencia Luna (2009; 2018). The author describes the concept of vulnerability with the metaphor of the layers: this concept does not represent a whole and it is not unified, rather “there may be multiple and different strata and they may be acquired, as well as removed, one by one” (Luna 2018, p. 88). There are different kinds of vulnerability and different strata, which may also overlap. These layers of vulnerability can be related to socioeconomic circumstances, gender, problems with informed consent, violation of human rights, or personal and behavioral characteristic of the person involved. The scholar offers the following example that helps in understanding her theory and in its application to the subjects of this research. For this reason, I report here the entire passage of Luna’s example.

A woman living in a country that does not recognize or is intolerant of reproductive rights acquires a layer of vulnerability (that a woman living in other countries that respect such rights does not necessarily have). In turn, an educated and resourceful woman in that same country can overcome some of the consequences of the intolerance of reproductive rights. Yet, a poor woman living in a country that is intolerant of reproductive rights acquires another layer of vulnerability. (She may not have access, for example, to emergency contraceptives and hence will be more susceptible to unwanted pregnancies.) Moreover, an illiterate poor woman in a country that is intolerant of reproductive rights acquires still another layer. And if she is a migrant and does not have her documents in order or if she belongs to the indigenous people, she will acquire increasingly more layers of vulnerabilities. She will suffer under these overlapping layers. This concept of vulnerability is a contextual one. I understand it in the sense that the person may no longer be considered vulnerable if the situation changes. For example, a French working woman of reproductive age with middle-to-low income may not be vulnerable in a research protocol if she unwillingly gets pregnant (because in her country she has access to emergency contraception or an abortion at the public hospital if she wants). Whereas, if she is in El Salvador (where legal abortion is not allowed for any reason), that same French woman in that same protocol may acquire a layer of vulnerability.

(Luna 2018, p. 88)

Following the author, the assumption of mainstream theories of contextual vulnerability is that their model is based on an opposition between standard, idealized and simplified subjects (for example, autonomous, secure, well-educated, and self-supporting individuals) and the vulnerable persons – as opposed to the standard of non-vulnerable individuals. On the contrary, the layer-based paradigm, Luna and others state (Luna 2009, 2018; Luna & Vanderpoel 2013), has the advantage of not considering vulnerability as an intrinsic feature, or an essential property of certain individuals (or groups). Moreover, the layers of vulnerability are deeply context-related and there are multiple sources of vulnerability so that no standard and idealized subjects exist.

Although generally scholars have welcomed this idea, they object that this approach works well in theory, but misses something on the practical sphere (Mackenzie *et al.* 2014; Mackline 2012; Rogers *et al.* 2013). An alternative proposed by Catriona Mackenzie, Wendy Rogers and Susan Dodds goes in this direction and is a taxonomy of vulnerability that

Acknowledges the ontological vulnerability that is inherent in the human condition while at the same time enabling the identification of context-specific forms of vulnerability. In turn, this helps to identify responsibilities owed to the “more than ordinarily vulnerable” and potential interventions to mitigate the effects of various forms of vulnerability.

(Mackenzie *et al.* 2014, p. 7).

The authors (Mackenzie *et al.* 2014; Rogers *et al.* 2012) classify vulnerability by identifying three sources – *inherent*, *situational*, and *pathogenic* – and two different states – *dispositional* and *occurrent*. The first two sources can be considered to correspond, with some differences, to universal and contextual vulnerability. *Inherent* sources of vulnerability are the ones that are intrinsic to the human conditions: our corporeality, our social nature, and our dependence on others. All human beings are inherently vulnerable to hunger, physical and psychological harm, thirst, sleep deprivation. Although being inherent to human condition, these vulnerabilities also depend on some factors, like gender, disability, age and general health status, but also to each individual’s resilience. *Situational* sources of vulnerability are context-specific and are variable in duration. They can be short-term, enduring or intermittent and they may be caused by a range of economic, social, cultural, political, and personal situations. These two sources are not completely distinct, the authors

specify. On the one hand, indeed, “Inherent sources of vulnerability reflect to a greater or lesser extent features of the environment in which individuals are born and raised and live”, whereas, on the other hand, “Situational causes of vulnerability will have greater or lesser effect depending on individuals’ resilience, itself a product of genetic, social, and environmental influences” (Mackenzie *et al.* 2014, p. 8). The importance of identifying these two different sources relies into the possibility of understanding the context-specificity and the variety of vulnerability, therefore the different duties towards the vulnerable persons.

The authors stress how these two sources of vulnerability – inherent and situational – can be seen as reflecting a lower potentiality for vulnerability to become actual harm and the situations in which the probability of harm is high. More precisely, according to the original terminology, there are two states of vulnerability: *dispositional* and *occurrent*. The first refers to a lower probability for vulnerability to occur, and the second to actual and immediate risk of harm: “The dispositional–occurrent distinction serves to distinguish vulnerabilities that are not yet or not likely to become sources of harm from those that require immediate action to limit harm” (ibidem). We have moral obligations to provide assistance and support those of who are occurrently vulnerable and we ought also to reduce the risk of those of who are dispositionally vulnerable to become occurrently vulnerable. We also ought – I would add – to eliminate as far as practicable the circumstances that actually make certain individuals and groups vulnerable.

Finally, *pathogenic* vulnerability is a subset of situational vulnerability.

These may be generated by a variety of sources, including morally dysfunctional or abusive interpersonal and social relationships and sociopolitical oppression or injustice. Pathogenic vulnerabilities may also arise when a response intended to ameliorate vulnerability has the paradoxical effect of exacerbating existing vulnerabilities or generating new ones. [...] Likewise, pathogenic vulnerability may result when social policy interventions aimed to ameliorate inherent or situational vulnerability have the contradictory effect of increasing vulnerability. A key feature of pathogenic vulnerability is the way that it undermines autonomy or exacerbates the sense of powerlessness engendered by vulnerability in general.

(Mackenzie *et al.* 2014, p. 9)

Pathogenic vulnerability may arise from interpersonal relationships and institutional structures.

3.2.1 Layers of vulnerability

Luna (2018) frowns on the attempt to go beyond her approach through the creation of a taxonomy, since this would mean to regress to rigid models, and I agree with her, especially having in mind the group of asylum-seeking and refugee women. This is, indeed, a vulnerable group within another vulnerable group, the one of asylum seekers. Taxonomies like the one created by Mackenzie, Rogers and Odds (2014) – the author highlights – can be misleading. The point is that it is difficult to give a clear classification of the concept of vulnerability, precisely because of its intrinsic ambiguity, which is not solved if we try to simplify the structure of the concept. Far from simplifying the process, the risk is to leave it incomplete. Thus, what happens if we look at asylum-seeking women through the lens of this taxonomy? This group is characterized by the vulnerability suffered by every other human being (inherent vulnerability), plus we need to add the ones that derive from their being socially situated in the asylum and refugee areas, their being women, often from ethnicities, religions and cultures that are different from the ones of the host countries (situational vulnerability). Moreover, they suffer from pathogenic vulnerability in a way that will be explained better later on in this chapter. For right now I just say that they suffer from oppression and injustice also due to abusive social relations (Al-Natour *et al.* 2019; Menjívar & Salcido 2002; Phillimore *et al.* 2019), and that some policies and actions that are intended to help those women by eliminating or minimizing their vulnerabilities have the contrary effect to exacerbate them. For instance, as it will be stressed in the next paragraphs, the adoption of a mere group approach to vulnerability in European migration and refugee law, without considering intersectional factors, may increase their vulnerability because “it ignores the impact of external factors which can create a situation of vulnerability even in absence of pre-existing personal factors of vulnerability” (Gionco & LeVoy 2021).

So far, there are no problems with this account, and it seems to take into consideration very well intersectional realities, like this group of women. First, there are sources of vulnerability that are inherent to their status as asylum seekers and as women. For example, the risk of pregnancy during the journey is somehow inherent to being a woman and on the move. Pregnancy is an inherent possibility of being a woman and being on the move is

inherently a condition of vulnerability for a pregnant woman. On the other hand, however, this risk is also situational (and induced) because the context in which these women live in exacerbates this vulnerability. They are forced to take illegal routes – since there are not enough corridors – and, as we have already seen, illegal routes are fraught with perils (sexual violence, trafficking and sexual exchanges with smugglers) that exacerbate the risk of pregnancy, which combines with non-existent healthcare. So, the same vulnerability can be understood as inherent and situational, and therefore I believe that this taxonomy represents an excessive simplification of the reality of these women's experiences.

The most fundamental point of the injustice that the group of asylum-seeking women suffer from is that they live with a systematic potentiality for harm to occur. Its systematic possibility grounds the need for action, even more than the actuality of it. Both dispositional and occurrent vulnerability require immediate actions to eliminate the harm and the possibility of harm. Otherwise, the issue is not solved. To illustrate this point, consider that facing occurrent vulnerability would require moving a woman out from a refugee camp because she has been victim of sexual violence from other asylum seekers, or humanitarian workers (Amnesty International 2016b; Botsi *et al.* 2018; Freedman 2016; Pickering & Powell 2017). Facing dispositional vulnerability would require evaluating whether this woman should be hosted in this specific refugee camp, on the basis of, for example, previous episodes of violence against women. Going beyond this dichotomy, I add, means to recognize that the system of refugee camp itself create the possibility for women to be raped. Therefore, in this respect, Luna's account is more accurate, even though Mackenzie *et al.*'s taxonomy can be useful in this framework.

Luna (2018) insists that instead of creating taxonomies, there are two steps that ought to be followed. The first step consists in the identification of the different layers of vulnerability, which are related to various factors: socioeconomic status, physical problems, oppression, exploitation, consent, dependency. This precisely consists in identifying the content of each layer and in controlling whether each layer generates other layers. Applying this approach to asylum-seeking and refugee women, the different layers of vulnerability might be understood in the following terms. A female individual who flees her home country is being hosted in a

European country that fails to protect her from FGM practices¹³ - and therefore is subjected to it even in Western countries where it is forbidden – acquires a layer of vulnerability that asylum-seeking men do not have. If this individual is an adult educated woman, she can overcome this lack of protection better than a teenage (or even younger) girl who is also poorly educated and accompanied by her traditionalist family.¹⁴ This young girl then acquires another layer of vulnerability. If, in turn, this teenage girl also happens to be part of the LGBTQ+ group, she acquires even more layers of vulnerabilities, since she is exposed to violence within her family and to homophobic discrimination by members of the hosting society.

These layers have two main features. The first regards the *dispositional nature* of the layers. The point is that saying that an individual suffers from a layer of vulnerability simply means that that individual *might be* oppressed, abused, mistreated, or discriminated (in the sense that this individual is inclined to be vulnerable) under certain circumstances. Thus, in order to be considered vulnerable, it is not required for this individual to be oppressed, abused, mistreated, or discriminated *hic et nunc*. What is relevant is the *possibility*. This is because, I argue, being systemically vulnerable to harm is to suffer from injustice.¹⁵ The second feature of layers of vulnerability is the *cascade effect* that these layers may have. Fineman (2008) also explains how vulnerabilities in some realms can exacerbate other forms of vulnerability. Luna (2018) refers to “a chained series of events that lead to harmful consequences [...] a replication or consecutive deployment of harmful effects” (p. 92). It is

¹³ The European Parliament estimates that “About 600,000 women living in Europe have been subjected to FGM and a further 180,000 girls are at a high risk in 13 European countries alone”. See: <https://www.europarl.europa.eu/news/en/headlines/society/20200206STO72031/female-genital-mutilation-where-why-and-consequences#:~:text=Although%20it%20is%20illegal%20in,in%2013%20European%20countries%20alone> (Last access: 23/03/2021).

¹⁴ “Around the world, 129 million girls are out of school, including 32 million of primary school age, 30 million of lower-secondary school age, and 67 million of upper-secondary school age. In countries affected by conflict, girls are more than twice as likely to be out of school than girls living in non-affected countries” highlights Unicef. See: <https://www.unicef.org/education/girls-education> (Last access: 19/07/2021).

¹⁵ This is the reason why I disagree with the author when she states that once a person has been abused/mistreated/discriminated/oppressed she is not vulnerable to that anymore (Luna 2018). On the contrary, this person is even more vulnerable to oppression, mistreatment, discrimination, oppression. In fact, this statement is contradictory with the second feature of layers of vulnerability, the *cascade effect*.

similar to a domino effect. Imagine the case of a woman travelling alone to seek international protection in Europe, who has been raped in Libya by the smugglers that allowed her journey on the boat to the European costs. Imagine also that once in EU she does not tell this story out of shame and fear of being judged and of being repatriated for this reason. She is then hosted in a center where the great majority of the guests are men. Imagine that she suffers again of sexual and psychological abuse by the other asylum-seeking men present in the camp. In order to protect her, the camp's volunteers and employers begins to address her in a paternalistic way, thereby reducing her autonomy and decision-making power. The trauma caused by the rape(s) and the abuses sums up with her reduced sense of self caused by lack of autonomy.¹⁶ This, in turn, affects her credibility in front of the territorial commissions during the hearings for assessing her claim for asylum. This means that her application is rejected and, after a second rejection in appeal, if not returned to her home country she becomes an irregular migrant. Irregularity exposes to several layers of vulnerability, such as difficulty in the access of housing, healthcare, education, work.

What Mackenzie, Rogers, and Odds (2014) call pathogenic vulnerability, that I have treated above, is just an example of this effect. Moreover, I agree with Luna (2018) that the most relevant feature of the effects of this cascade layers of vulnerability is its normative force, that is the capacity to exacerbate or even generate brand new vulnerabilities - as the example just provided shows clearly.

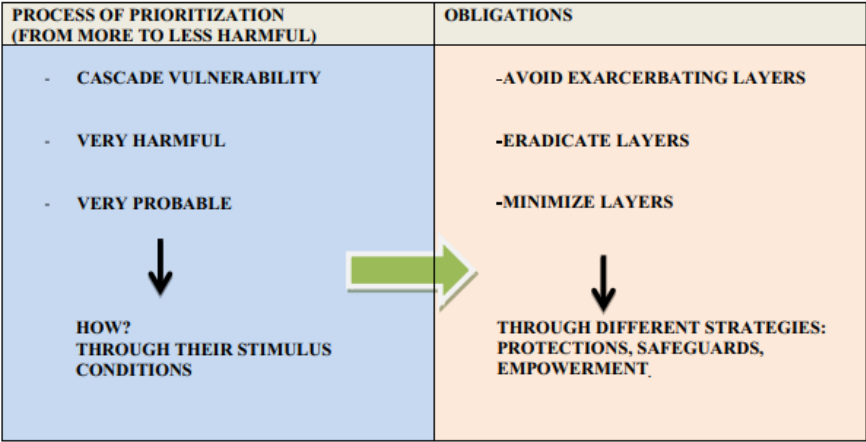
According to the author, the second step consists in evaluating, ranking, and prioritizing these different layers. Each layer needs to be assessed, beginning from the most harmful ones and the ones with a cascade feature. We also need to consider the probability that these harmful and cascade effects occur. Secondly, we need to try to avoid the harmful effects through the analysis of the *stimulus conditions* that relate the layers to the context. According to the probability of the stimulus conditions to occur, we label these layers with different priorities. The scholar calls 'stimulus conditions' all those conditions that makes it possible for the dispositional vulnerability to occur, that trigger a layer of vulnerability. This also means that a stimulus condition is necessary for a determined layer of vulnerability to be

¹⁶ According to Chemin & Nagel (2020), "The continuous control and paternalistic treatment of refugees may lead to a state of apathy, resignation and depression" (p. 66).

actualized. Luna (2018) makes the example of the sugar: “A classic example of a disposition is the property of being soluble. A sugar lump has the disposition to solubility. That is, it is soluble if placed in water or a liquid. [...] The stimulus condition will be the event of introducing the solid lump of sugar into any liquid” (p. 91). In a similar way, some male individuals have a disposition to force women into non-consensual sex, and female individuals can be harmed if – for example – they are actually forced into non-consensual sex. The stimulus condition then will be the event of a male individual with a disposition to force women into non-consensual sex being alone with a woman.

For example, the stimulus condition for a woman to be raped inside a refugee camp is situating her in unprotected proximity to men disposed to non-consensual sex. This stimulus condition is more likely to occur if the woman is host in a refugee camp that does not separate facilities by sex, rather than in a refugee camp that takes these spaces separated.¹⁷ Therefore, the women living in refugee camps with mixed-sex facilities will be labelled with a higher priority than those women living in female-only refugee camp.¹⁸

Figure 1: Process of assessment of layers of vulnerability



Source: Luna 2018, p. 93.

¹⁷ Numerous reports highlight the importance of separating facilities by sex to prevent gender-based and sexual violence (Bonewit 2016; Botsy *et al.* 2018; See also: <https://www.who.int/reproductivehealth/displaced-refugee-women-violence-risk/en/>).

¹⁸ Obviously, I am aware that this is a very simple example, since there are many other variables to consider: the presence of female pinpoint persons, the quality of the vigilance, the presence of other female asylum seekers is the same refugee camp and in what numbers, precedent episodes of violence perpetrated by third-sector workers and so forth.

The table sums up quite effectively the process described above. The author acknowledges that this ranking should be used as a preliminary guidepost, and it cannot be viewed as showing a rigid procedure. Sometimes, indeed, in fact, it is not feasible to follow the layers according to the established order. During the ranking of the layers and the identification of the stimulus conditions we must pay attention to not worsen the existing vulnerabilities, and we need to eliminate as many layers of vulnerability as possible (ideally, all of them). Whenever and for whatever reason this latter action is not possible, the correct plan to follow is to try to minimize the effects of these layers.

3.2.2 Vulnerability loops

Vulnerabilities that come in layers not only can often cause a domino effect (cascade vulnerability) but may also form *vulnerability loops*. Vulnerability loops work as causal loops. A causal loop is

A sequence of events e_1, \dots, e_n , each element of which is one of the causes of the next event, and whose last event e_n is one of the causes of the first event e_1 . The events that make up a loop need not be complete causes of one another, nor do they need to be complete effects of one another. In a causal loop, the arrows of causation go around in a circle, but there might be additional arrows that lead into the circle, or arrows that lead out of it. If there are no such branches, then the loop is said to be causally isolated.

(Meyer 2012, p. 259)

Lewis (1986) defines causal loops as “closed causal chains in which some of the causal links are normal in direction and others are reversed” (p. 7). A very simple example of a causal loops is the following: event E_1 causes event E_2 , which causes event E_1 . Causal loops are studied in relation to time-travel by physicist and philosopher, in relativist and quantum theories. However, I argue, the same concept can be applied to the experience of asylum-seeking and refugee women. Evidently, the purpose in introducing this concept and applying it to this group of women does not serve the purpose of time-travelling, nor it aims at studying backwards causation¹⁹ to avoid these women’s vulnerability or harm that have already taken

¹⁹ Just a curiosity: the expression ‘backwards causation’ refers to a shift of our normal understanding of causation. As noticed by Hume (2008), our common understanding of causation requires that causes precede effects in time. On the other hand, the notion of backward causation “stands for the idea that the temporal order

place. If we set aside the notions of time-travel, cyclical time, and backwards causation, causal loops are still an interesting concept in a more abstract sense.

What is interesting of this phenomenon is that a vulnerability can cause another, which can be also the cause for the first vulnerability. This can go on as a spiral finitely or indefinitely. I therefore reformulate Lewis' (1986) and Meyer's (2012) definition:

A Vulnerability Loop (VL₁) presents itself as follows:

Vulnerability layer VL₁ causes Vulnerability layer VL₂, which, in turn, may cause Vulnerability layer VL₁. Vulnerability layer VL₂ causes Vulnerability layer VL₃, which may also be the cause for VL₂ and VL₁. Vulnerability layer VL₃ causes Vulnerability layer VL₄ and VL₂, which in turn causes VL₃, VL₄, and VL₁...

Obviously, I am not arguing that events in a loop recur in the exact same way. When saying that VL₁ → VL₂ → VL₁, the first and the second VL₁ are not considered to be the same recurring event, as it would be in causal loops explaining time-travel, but the same (or similar) type of vulnerability.

Vulnerability loops have therefore the following characteristics:

- (a) Each vulnerability loop is *composed, reproduced, and reinforced* by different layers of vulnerability. I use Luna's (2018) concept of layers of vulnerability because I believe it to be the one that most suits the mechanism in which these loops work. For each layer of vulnerability represents a component of the causal loop in question, which causes and exacerbate the following/preceding loop. Every layer of vulnerability can be cause and effect of every other layer of the loop (causation in this case is understood as transitive).
- (b) They can be *causally isolated* or *non-causally isolated*. As Meyer (2012) puts it, "the arrows in causation go around in a circle, but there might be additional arrows that lead into the circle, or arrows that lead out of it" (p. 259). If there are such branches,

of cause and effect is a mere contingent feature and that there may be cases where the cause is causally prior to its effect but where the temporal order of the cause and effect is reversed with respect to normal causation, i.e., there may be cases where the effect temporally, but not causally, precedes its cause" (Faye 2021).

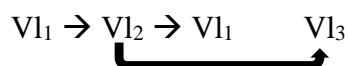
then the loop is non-causally isolated; if no branches are present, then the loops is called causally isolated.

- (c) Vulnerability loops can be *infinite* or *closed*. For each vulnerability loop may have an end or continue infinitely. The first definition of a loop (event E_1 causes event E_2 , which causes event E_1) is a classic example of closed causal loops. So, translated into vulnerability, V_{l1} causes V_{l2} , which causes V_{l1} . An infinite vulnerability loop may look like a Hegelian *Aufhebung* (Hegel 2010).
- (d) Each layer of vulnerability may create more than one loop, each of those loops may or may not be *connected* with each another.
- (e) Vulnerability loops maybe connected one another to create *cascades* of vulnerability loops. For more vulnerability groups can be connected and cause a domino effect of loops of vulnerability. These cascades of vulnerability loops can also be closed of infinite.

The point of vulnerability loops is that different layers of vulnerability interact with each other causing, creating, and reinforcing other layers of vulnerability.

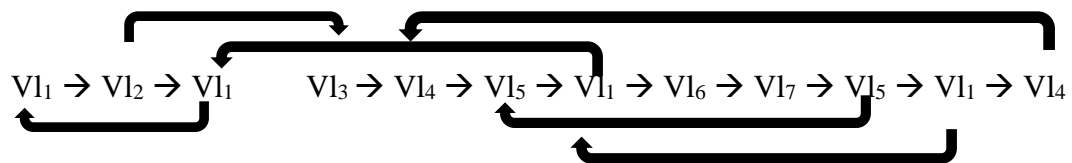
I shall now give some examples of how these vulnerability loops work.

- A. First, a very simple, closed and causally isolated loop. Imagine an Afghani woman being at risk of SGBV (V_{l1}) by the hand of Taliban, because they might discover she is an activist for women's rights. Imagine also that, given the Western country military and diplomatic forces' departure from the country, she is forced to flee her country taking illegal routes to Europe (V_{l2}). During the journey, she falls into the hands of traffickers and smugglers, which exposes her again to the risk of SGBV (V_{l1}).
- B. Second, a non-causally isolated loop. Let us use the same example but adding a further layer of vulnerability (V_{l3}): the fact that the woman is forced to flee her country is already considerable a vulnerability whether or not she takes illegal routes. For imagine it is very costly for her to leave her country for material and spiritual reasons. In this case, the loop is not closed nor causally isolated, because V_{l3} is a branch that adds to the others without closing.



C. Third, a loop which is infinite, non-causally isolated, and connected with other loops. Vulnerability Loop VL₁: VL₁ stands for risk of SGBV in her country of origin; VL₂ stands for fleeing the country; VL₃ for taking illegal routes; VL₁ means that she is at risk of SGBV again.

Vulnerability Loop VL₂: VL₄ stands for difficult integration in the new environment due to the obligation to flee to another country; VL₅ indicates that due to this difficulty in integration this woman might experience poverty and maybe homelessness; VL₁ means that this condition may expose her to the risk of SGBV again; VL₆ means that because of this SGBV risk and homelessness she could be exposed to trauma; VL₇ refers to the fact that this could easily lead to lack of autonomy; VL₅-VL₁-VL₄ means that at this point this woman is vulnerable to further vulnerability of poverty and homelessness, she is fearful of the possibility of other experiences of SGBV, and, finally, further difficulties in integration.



What I have been doing so far was to introduce the concept of vulnerability and to find the approach that best suited the subject of this study. I started with the attempt to go beyond the too sharp distinction between universal and contextual vulnerability by arguing in favor of Luna's (2018) approach of layers of vulnerability, which can easily turn into cascades, and by introducing the concept of vulnerability loops, which are composed by layers of vulnerability that reinforces each other in vicious cycles. These two approaches can address more thoroughly the above-mentioned distinction between inherent and situational vulnerability. In order to eliminate as many layers of vulnerability as possible, we need to acknowledge whether the layers represent an inherent or a situational vulnerability. Obviously, situational vulnerabilities are more easily eliminated, for it is sufficient to change the situations in which these women travel. To address inherent vulnerability, on the other

hand, may rather require changing the institution of asylum and, also, the status of refugee. In the light of what we have seen so far, the most fundamental layer of situational vulnerability that ought to be eliminated seems the layer that regards the journey. Changing the way in which these women are forced to reach Europe may stop the cascade and looping effect, since many of the vulnerabilities that they suffer from are caused by the undertake of illegal routes, which exposes them to SGBV, trafficking, trauma, unwanted pregnancies, etc. At the same time, as already stated elsewhere, illegalism is so embedded in the asylum system and refugeehood that this layer may somehow be considered as a constitutive or inherent vulnerability. My aim here is not to provide a solution to this ambiguity, but only to show how the approaches of layers, cascade, and loops can help in identifying the layers that may give rise to domino and looping effects.

I now turn into treating the way in which vulnerability is introduced in the European law on the matter of refugees and asylum seekers, with the aim to begin a reflection on the sort of problems that this concept may bring. I will conclude that the same ambiguities that are constitutive of the concept (universal vs. contextual, groups vs. individuals) also reflects in the way vulnerability is conceptualized in the European norms and asylum procedures, which contributes to giving rise to the sort of problems treated later, such as the risk of labelling, stereotyping, essentializing asylum-seeking and refugee women.

3.3 Vulnerability in European norms and asylum procedures

Timmer (2016) argues that “A revolution is quietly taking place in the case law of the European Court of Human Rights [...] The Court is increasingly relying on vulnerability reasoning” (p. 147). However, vulnerability is not a unitary a problem-free concept even in the European law system, but it is rather a variable and elusive category.

As explained by Virgilio (2018), the term vulnerability makes its entry into the European positive law in the late nineties, precisely in 1998 with *The Barcelona Declaration on Policy Proposals to the European Commission on Basic Ethical Principles in Bioethics and Biolaw*. After that Declaration, the concept of vulnerability was also incorporated into the legal order of the different Member States.

The Barcelona Declaration defines vulnerability as follows.

Vulnerability expresses two basic ideas. (a) It expresses the finitude and fragility of life which, in those capable of autonomy, grounds the possibility and necessity for all morality. (b) Vulnerability is the object of a moral principle requiring care for the vulnerable. The vulnerable are those whose autonomy or dignity or integrity are capable of being threatened. As such all beings who have dignity are protected by this principle. But the principle also specifically requires not merely non-interference with the autonomy, dignity or integrity of beings, but also that they receive assistance to enable them to realize their potential. From this premise it follows that there are positive rights to integrity and autonomy which grounds the ideas of solidarity, non-discrimination and community.²⁰

Later on, in the UN *Report on the World Social Situation* of 2001, vulnerability was defined as “a state of high exposure to certain risks, combined with a reduced ability to protect or defend oneself against those risks and cope with their negative consequences” (p. 14).²¹ Importantly, in this document vulnerability is understood as a dynamic concept, characterized by its shifts of meaning over time and space. In other words, its contingency and contextuality is deeply recognized, as well as its individual dimension. As observed by Spada (2020), this individual dimension is lost at the European level, which prefer a group dimension,²² as enshrined in The Stockholm Program of 2010, which states that “The Europe of rights must be an area in which [...] the most vulnerable groups of people (children, minorities such as Roma, victims of violence, etc.) are protected”.²³ The same document also makes explicit reference to asylum seekers’ vulnerability, stating that “access must be guaranteed to those in need of international protection and to vulnerable groups of people”.²⁴ On the other hand, apparently contradicting itself (Spada 2020), the European Commission states that “Vulnerability is not a static state of affairs attached only to particular groups, but fluctuates with situations and contexts” (Mustaniemi-Laakso *et al.* 2016, p. III).²⁵ Consequently, there is the possibility that some applicants (individually considered) ought to

²⁰ See the complete document at these two links: <http://hrlibrary.umn.edu/instreet/barcelona.html> and file:///C:/Users/LENOVO/Downloads/04_Kemp.pdf.

²¹ See: <https://undocs.org/E/2001/104> (Last access: 01/03/2021).

²² As it will be also stressed later on in this chapter, the concept of vulnerability in the international and European law, suffers from the structural ambiguity caused by the tension between the group and individual dimensions (Spada 2020).

²³ See: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:jl0034&from=IT> (Last access: 01/03/2021).

²⁴ See the abovementioned link (footnote 15).

²⁵ See: <http://www.fp7-frame.eu/wp-content/uploads/2016/08/Deliverable-11.3.pdf> (Last access: 02/03/2021).

be considered vulnerable even if they do not belong to those groups traditionally and normatively recognized as vulnerable.

3.3.1 Vulnerability in European asylum procedures

In relation to the group of asylum seekers in general, Aida²⁶ considers that their “vulnerability and special needs have become a prominent distinguishing feature in the asylum process in Europe in recent years” (Mouzourakis *et al.* 2017, p. 9). That being said, it is also true that it seems impossible to define a coherent picture of vulnerability in European policies, legal texts, and institutional bodies recommendations, due to the way in which the different rationalities and principles conflict (Spada 2020). This is a central issue, because the concept of vulnerability is fundamental “both for the recognition of some form of legal status that allows a legal stay in the territory, and for the trajectories and reception conditions consequently activated” (*ibid.*, p. 73).

However, as Spada (2020) argues, the legal categorization of the concept of vulnerability in specific regulations makes it harder than foreseen to identify the applicants as vulnerable, and this difficulty is principally related to the intrinsic ambiguity of meaning of the vulnerability concept that was treated at the beginning of this chapter and, also, in this paragraph. Because of this ambiguity, the recognition of refugees and asylum seekers as vulnerable is an obstacle course, which comes with the risk that they will be labelled and categorized in a way that does not comprehend the complexity of refugeehood (Spada 2020; Zetter 2007). The consequence is that “reflecting on who and how the law considers - and consequently recognizes - as a ‘vulnerable subject’ in need of protection does not extinguish the intrinsic ambiguity of the concept of vulnerability, but exasperates it instead” (Spada 2020, p. 67, my translation). The same scholar problematizes also the function of the concept of vulnerability within the dichotomy of the so-called false and true forced migrants – a dichotomy that has been reinforced by the public discourse and migration policies themselves. On the one hand, there are no conceptual difficulties in considering individuals fleeing from conflicts and persecutions as forced migrants; on the other it is harder to state

²⁶ Aida is the acronym for Asylum Information Database, the European portal of data concerning asylum in Europe.

the same when referring to people fleeing their countries due to extreme poverty and lack of access to fundamental rights. Moreover, I would also add to Spada's reflection (2020), it is not immediately intuitive to consider as forced migrants the women fleeing violence and gender inequality.²⁷ This is to say that

Starting from the assumption that the recognition of vulnerability involves the implementation of positive actions to achieve a substantial and equitable protection of fundamental rights, the very concept of vulnerability - if taken 'seriously' - therefore makes it difficult, if not impossible, to draw a clear boundary between "true" and "false" forced migration.²⁸

(ibid., p. 68, my translation)

Why is that? The answer is twofold. First, European border-securitization processes – as stated also by Pickering (2011), Freedman *et al.* (2017), Gerard & Pickering (2014), Zettel (2009), Ambrosini (2014), Caritas Ambrosiana (2021) – contributed to considerably increasing migrant's vulnerability by the creation of restrictive and excluding policies,²⁹ which in turn produce a widespread illegalism (Spada 2020). As recognized by the author, "to reflect on the link between vulnerability and international protection becomes fundamental" (ibid., p. 72, my translation).

European jurisprudence has recognized asylum seekers as a vulnerable category and has incorporated a definition of vulnerable persons and established legal obligations on Member States to implement specific measures to identify them and identify their needs as part of the asylum procedures (Frame 2016; Mouzourakis *et al.* 2017).

²⁷ Especially as long as there are no other elements to exacerbate the 'normal' violence, like wars, forced marriages, FGM, etc.

²⁸ "Partendo dal presupposto che il riconoscimento della vulnerabilità comporti la realizzazione di azioni positive per giungere a una tutela sostanziale ed equa dei diritti fondamentali, lo stesso concetto di vulnerabilità – se preso "sul serio" – rende quindi arduo, se non impossibile, tracciare un netto confine tra "vera" e "falsa" migrazione forzata".

²⁹ Among these policies, the Dublin Regulation (see: https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants_en), the Italian migration deal with Libya (see: <https://www.amnesty.org/en/latest/news/2020/01/libya-renewal-of-migration-deal-confirms-italys-complicity-in-torture-of-migrants-and-refugees/>) and the European one with Turkey (see: <https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-eu-turkey-statement-action-plan> and also <https://download.caritasambrosiana.it/wp-content/uploads/2021/03/Leuropa-sie%CC%80-fermata-a-Lipa-1.pdf>).

As I will stress, it is important to differentiate between the notion of asylum seekers as a vulnerable group and the one of the particular vulnerabilities of certain subgroups within the group of asylum seekers. The first assessment was firstly proclaimed in 2011 by the judgement of the ECtHR (European Court of Human Rights) *M. S. S. v. Belgium and Greece*.³⁰ This case was about the transfer of an Afghan asylum seeker according to the Dublin system, which concluded with the obligation to provide him accommodation and decent material conditions, *precisely because of his status as an asylum seeker (asylum seekers = vulnerable)*³¹. Indeed, the Court “attaches considerable importance to the applicant’s status as an asylum-seeker and, as such, a member of a particularly underprivileged and vulnerable population group in need of special protection” (ibid., §251). This vulnerability “arises from everything he had been through during his migration and the traumatic experiences he was likely to have endured previously” (ibid. §232). Moreover, this is ingrained in their disadvantaged legal position when compared to nationals or other groups (Mouzourakis *et al.* 2017). The Court further confirmed its position on the vulnerability of asylum seekers in other occasions, such as *Tarakhel v. Switzerland*³² and *A.S. v. Switzerland*.³³ The ECtHR also stressed the importance of assessing the particular state of vulnerability of certain categories of asylum seekers, in particular in *Tarakhel v. Switzerland*, where it considered the case of children. Here, the Court has indeed assessed that “this requirement of ‘special protection’ of asylum seekers is particularly important when the persons concerned are children, in view of their specific needs and their extreme vulnerability” (ibid., §119). This extreme vulnerability is due to their age (as minors) and their legal status (as asylum seekers). As it should be clear by now, in the European law we

³⁰ ECtHR, *M. S. S. v Belgium and Greece* [GC], Application No 30696/09, Judgment of 21 January 2011. Available at: <https://www.asylumlawdatabase.eu/en/content/ecthr-mss-v-belgium-and-greece-gc-application-no-3069609>.

³¹ “The Court must take into account that the applicant, being an asylum seeker, was particularly vulnerable because of everything he had been through during his migration and the traumatic experiences he was likely to have endured previously” (ECtHR, *M. S. S. v Belgium and Greece* [GC], Application No 30696/09, Judgment of 21 January 2011, §232, p. 47).

³² ECtHR, *Tarakhel v. Switzerland* [GC], Application No 29217/12, Judgment of 4 November 2014. Available at: <https://www.asylumlawdatabase.eu/en/content/ecthr-tarakhel-v-switzerland-application-no-2921712>.

³³ ECtHR, *A.S. v. Switzerland* [GC], Application No 39350/13, Judgment of 30 June 2015. Available at: <https://www.asylumlawdatabase.eu/en/content/ecthr-v-switzerland-application-no-3935013-30-june-2015>.

can find the same tension and ambiguities we found in the earlier discussion about contextual vs. universal vulnerability, to which we need to add the other great ambiguity, which is the one of whether vulnerability refers to groups or individuals.

As the Asylum Information Database (Mouzourakis *et al.* 2017) notices,

The abovementioned developments in the ECtHR's jurisprudence relating to vulnerability in the asylum context are only partly reflected in the EU asylum *acquis*. In fact, it is the Court's recognition of the particular vulnerability of certain applicants for international protection rather than the intrinsic vulnerability of asylum seekers as a vulnerable group *per se*, which has been translated into EU and national legislation.

(*ibid.*, p. 12)

According to the same source, although the recognition of the vulnerability of some asylum seekers was early acknowledged by the legislative instruments under the CEAS, this recognition has had a significant evolution in the EU legislation. This evolution has not meant though the inclusion of a definition of vulnerability in the context of asylum. The 2003 Reception Condition Directive³⁴ offers in Article 21 a (non-exhaustive) list of asylum seekers to be considered vulnerable and to be adopted by each Member States' legislative order while implementing these Directive. This vulnerable asylum seekers are disabled and elderly people, pregnant women, minors, unaccompanied minors, single parents with minor children, victims of human trafficking, victims of torture, rape, or other forms of psychological, sexual or physical violence (it includes FGM), seriously ill people, people with mental disorders. This Directive was further limited to those who – only among these vulnerable ones (Article 22) and after an individual evaluation – are found having special reception needs. However, a clear definition of those special reception needs would represent a specification of what this individual evaluation would consist in has never been given. This lack of clarity caused a deficiency in the adoption of this Directive by many EU Member States (Mouzourakis *et al.* 2017). Consequently, the first-generation EU legislation regarding asylum did not extensively regulate vulnerability. In fact, the Dublin II Regulation³⁵ and the 2005 Asylum

³⁴ See: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0033&from=EN>.

³⁵ See: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:l33153&from=EN>.

Procedures Directives³⁶ “contained no specific provisions on the procedural consequences of an applicant’s identification of special needs” (Mouzourakis *et al.* 2017, p. 13).

3.3.2 New challenges and the inconsistency between European norms and Member States’ internal regulations

From the form of the 2003 and 2005 Directives, the asylum system needed to adapt to new challenges. Throughout the years, in fact, there have been major changes in the dynamics of the migration to Europe (via Mediterranean and via land) and in the subjects of this migration. For example, among the individuals that arrive to Europe there are now more unaccompanied minors and more rape and torture survivors. Moreover, the securitization of the borders has caused the creation of hazardous travel modes, such as sea crossing and other highly risky land routes (Mouzourakis *et al.* 2017; Pickering 2011). According to Aida’s report, indeed, “In many cases the journey to safety itself is traumatizing and adds to the atrocities refugees have experienced in their country of origin” (Mouzourakis *et al.* 2017, p. 13), because they are exposed to severe human rights violations and exploitation. According to Aida’s report, all of this was recognized by the EU and it involved a process of legislative harmonization ended in 2013,³⁷ when the concept of vulnerability of particular applicants, rather than the one of the entire group of asylum seekers’ vulnerability, was strengthened. The same report also highlights though how these legislations together have not led to a consistent and coherent notion of vulnerability in the asylum process. They have rather led to a proliferation in the European law of vague and ambiguous concepts that sometimes refer to asylum seekers as ‘vulnerable’, but some other times also as ‘in need of special procedural guarantees’ and ‘with special reception needs’. This happens without aligning the definitions of these different expressions. It will appear clear that AIDA (Mouzourakis *et al.* 2017) is right in highlighting the inconsistency and fragmentation of the category of vulnerability of (certain) asylum seekers adopted by the European law, which translates in difficulty to operate in practice.

³⁶ See: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>.

³⁷ See: <https://www.easo.europa.eu/sites/default/files/public/Dve-2013-32-Asylum-Procedures.pdf>.

For what regards the ‘special procedural guarantees’ concept, as Mouzourakis *et al.* (2017) observe, the 2013 recast Asylum Procedures Directive does not make an ultimate definition of these guarantees, but it does list some conditions that would entail them: age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence (§29 of the recast). The 2013 recast does not mention ‘vulnerability’ as a concept, but it refers to it as a further condition for granting the special procedural guarantees. It appears clear, though, that the lists of vulnerable people and of the people in need of special procedural guarantees are similar. Though, there are differences, that regard for example the gender issue, which is not considered a condition of vulnerability, but it is a good enough reason to need special procedural guarantees.

Figure 2. Lists of “vulnerable” – “in need of procedural guarantees” – “with special reception needs”

Lists of protected categories in Directives 2013/32/EU and 2013/33/EU		
Category / Factor	“In need of procedural guarantees”	“Vulnerable” / “with special reception needs”
Children	√	√
Unaccompanied children	x	√
Disability	√	√
Elderly	√	√
Gender	√	x
Pregnancy	√	√
Single parents with minor children	x	√
Human trafficking	x	√
Serious illness	√	√
Mental disorders	√	√
Torture	√	√
Rape	√	√
Other serious forms of psychological, physical or sexual violence	√	√
Female genital mutilation	x	√
Sexual orientation or gender identity	√	x

Source: Mouzourakis *et al.* (2017), *The Concept of Vulnerability in European Asylum Procedures*, Aida.

As Aida reports,

A strict reading of the two lists could imply, for instance, that persons fleeing their country of origin for reason relating to sexual orientation or gender identity may require special attention in

the asylum procedure but do not straightforwardly present vulnerability factors that require special attention as regards their special conditions. As both lists concern non-exhaustive enumerations of categories, this should not create a conceptual problem *per se*.

(Mouzourakis *et al.* 2017, p. 16)

However, Aida’s report effectively shows that this inconsistency between vulnerable people, that are the people with special reception guarantees, and the people in need of special procedural guarantees is problematic, since it translates into ambiguity when it comes to implementation in Member States’ legal orders. Indeed, “European countries do not seem to have taken a consistent approach to the procedural and reception guarantees required by vulnerable groups when transposing the Directives into national law” (*ibidem*). Therefore, there is a condition of disparities in the category of applicants considered vulnerable in European countries, as showed by the table that follows.

Table 1: Categories of vulnerable asylum seekers in national laws

Category / Factor	Countries recognizing as vulnerable persons
Children	BE, BG, CY, ES, GR, HR, HU, IE, IT, MT, PL, SR
Unaccompanied children	BE, BG, CY, ES, FR, GR, HR, HU, IE, IT, MT, NL, PL, SR
Disability	BE, BG, CY, ES, FR, GR, HR, HU, IT, MT, PL, SR
Elderly	BE, CY, ES, FR, HR, HU, IE, IT, MT, PL, SR
Pregnancy	BE, BG, CY, ES, FR, HR, HU, IE, IT, MT, PL, SR
Single parents with minor children	BE, BG, CY, ES, HR, HU, IE, IT, MT, PL, SR

Human trafficking	BE, CY, ES, FR, GR, IT, MT, PL
Serious illness	CY, GR, IT, MT, PL
Mental disorders	CY, HR, IT, MT, PL
Lack of legal capacity	HR, SR
PTSD,³⁸ in certain survivors and relatives of victims of shipwrecks	GR
Torture	BE, CY, ES, FR, GR, HR, HU, IE, IT, MT, PL, SR
Rape	BE, CY, ES, FR, GR, HR, HU, IE, IT, MT, SR
Other serious forms of psychological, physical, or sexual violence	BE, BG, CY, ES, FR, GR, HR, HU, IE, IT, MT, PL, SR
FGM	CY, HR, IT, MT

Source: Mouzourakis et al. (2017), *The Concept of Vulnerability in European Asylum Procedures*, Aida.

Intending to solve the issue, a further concept – ‘*specific* reception needs’, instead of ‘*special* reception needs’ – has been suggested by the European Parliament in the 2016 *Report on the proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)*³⁹. Aida’s Report also proposes to wider the list of asylum seekers with specific reception needs, including also individuals suffering from PTSD, LGBTQ+ persons, religious minorities, non-believers and apostates. These new inclusions would guarantee a better balance between the

³⁸ It stands for Post-Traumatic Stress Disorders.

³⁹ See: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0465&from=FI>.

provision of reception and procedural support by domestic authorities (Mouzourakis *et al.* 2017).

Not everyone agrees with these new linguistic turns. For example, the UNHCR, through Elena Fiddian-Qasmiyeh's words,⁴⁰ in the 2017 *Dialogue on Protection Challenges* argued that

For many reasons, we need to highlight the specific experiences and needs of particular groups on an operational level. Today, for instance, we still need to redress refugee women's and girls' earlier invisibility in mainstream studies and policies by purposefully tracing the specific and diverse experiences of women, children, LGBTQI refugees, older people, and people with disabilities, amongst others. However, there is a major danger of presenting (in advocacy, campaigning, policies) certain groups as having 'specific needs' – it fuels popular and populist narratives that the groups which aren't listed as having 'specific needs' are not vulnerable, are less worthy of assistance protection, and, by extrapolation, that the people who don't have those specific needs aren't bona fide refugees.⁴¹

It should now appear clear that “The effective identification of vulnerabilities and the necessary adaptation of asylum procedures to cater for the special needs of the individuals concerned remain a thorny challenge across Europe” (ibid., p. 20).

3.3.3 Member States' implementation of EU regulations and the individual/group vulnerability tension

Now I shall turn to analyze how the legal mechanism of the recognition of the vulnerability of individuals and of those in need of special procedural guarantees-identification is implemented among EU countries. This implementation is in fact mandatory for Member States. Nonetheless, only few of them actually possess formal identification mechanisms, and when they do, they differ in the form. Among these countries, France, Sweden, Belgium, and the Netherlands have precise identification mechanisms. In Germany, up to 2017, no identification mechanism had been implemented, but the concept of vulnerability and of special needs was available in internal guidelines of the Federal Ministry of the Interior, which drafted a *concept for the identification of vulnerable groups* in 2015. Since it does not

⁴⁰ At the time, codirector the UCL Migration Research Unit to the UNHCR High Commissioner's Dialogue on Protection Challenges.

⁴¹ See: <https://www.unhcr.org/5a745f4f7.pdf> (Last access: 02/03/2021).

properly take into account (nor mentions) the instructions on the protection of vulnerable individuals of the recast Asylum Procedures Directive, the German Asylum Act⁴² fails to provide adequate support to vulnerable (or in-need-of-special-procedural-guarantees) applicants. Among the countries with more informal identification mechanisms to identify vulnerable asylum seekers, there are Austria,⁴³ Croatia, Hungary, Italy, Spain and Serbia. In some cases, such as Austria, “There is no effective system in place to identify asylum seekers in need of special procedural guarantees” (Knapp 2019, p. 54). An official may classify the applicant as a trafficked person, if something that makes him suspicious comes up during the interview, and applicants themselves are asked to raise special needs upon arrival, but these special needs mostly relate to health issues to be declared by the applicant. In some other cases, like Greece,⁴⁴ before the IPA (International Protection Act) entered into force in January 2020,⁴⁵ it was the NGOs that identified the applicants’ vulnerability and referred it to the national authorities (Mouzourakis *et al.* 2020). These were the people considered as members of vulnerable groups: unaccompanied minors; persons who have a disability or suffering from an incurable or serious illness; the elderly; women in pregnancy or having recently given birth; single parents with minor children; victims of torture, rape or other serious forms of psychological, physical or sexual violence or exploitation; persons with a post-traumatic disorder, in particularly survivors and relatives of victims of ship-wrecks; victims of human trafficking.

For what concerns Greece, the IPA made significant amendments to the definition of vulnerable groups and individuals in need of special procedures guarantees (*ibid.*). The following groups are now considered as vulnerable groups: children; unaccompanied children; direct relatives of victims of shipwrecks (parents and siblings); disabled persons; elderly; pregnant women; single parents with minor children; victims of trafficking; persons

⁴² See: https://www.gesetze-im-internet.de/englisch_asylvfg/englisch_asylvfg.pdf.

⁴³ With the exception of unaccompanied minors. See: https://asylumineurope.org/wp-content/uploads/2019/05/report-download_aida_at_2018update.pdf.

⁴⁴ See: https://asylumineurope.org/wp-content/uploads/2020/07/report-download_aida_gr_2019update.pdf.

⁴⁵ IPA is the acronym for International Police Association. It is a NGO, and its aims are to create and strengthen bonds of friendship between members of the police service, promote international cooperation in various fields, encourage peaceful co-existence between peoples and preservation of world peace, and aims at enhancing its recognition by international bodies.

with serious illness; persons with cognitive or mental disability and victims of torture, rape or other serious forms of psychological, physical or sexual violence such as victims of female genital mutilation. Persons with a post-traumatic stress disorder have been deleted as category of persons belonging to vulnerable groups (Konstantinou *et al.* 2020, p. 106).

For what regards Spain, its legal system does have mechanisms for special reception needs in place, but it also relies on NGOs, like Greece (Queipo de Llano & Zuppiroli 2020). These needs vary depending on the sex, age, nationality, existence of family networks, households, etc. There is a monitored case-by-case assessment between the OAR (Office for Asylum and Refuge) and the NGO that oversees the reception center “and, after assessing the availability of reception spaces and the individual characteristics of the applicant, the person is placed in the place that responds to his or her needs” (*ibid.*, p. 84). Moreover, it is foreseen an extension of the reception for the most vulnerable individuals and groups (24 months, compared to the normal 18-month period).

Lastly, Italy does not have a specific identification mechanism in place to systematically identify vulnerable asylum seekers (Bove 2020). However, there are guidelines for assistance, treatment and rehabilitation for psychological trauma given by the Ministry of Health, intended for those beneficiaries of international protection victims of torture, rape or other serious forms of psychological, physical, or sexual violence. Also, “The identification of victims of torture or extreme violence may occur at any stage of the asylum procedure by lawyers, competent authorities, professional staff working in reception centres and specialised NGOs” (*ibid.*, p. 73). Even though its lack of specific mechanisms to identify vulnerable individuals, Italy does provide special procedural arrangements/guarantees for vulnerable people.

Article 17 of reception decree (142/2015) has a list of “vulnerable people” such as minors, unaccompanied minors, the disabled, the elderly, pregnant women, single parents with minor children, victims of trafficking in human beings, persons suffering from serious illnesses or mental disorders, persons found to have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence or violence related to sexual orientation or gender identity, victims of genital mutilation.

(*Ibid.*, p. 76)

The 2015 Italian Procedure Decree⁴⁶ also provides to vulnerable applicants the possibility to be assisted during the interview by supporting personnel, and to be accompanied to the interview by psychologists, doctors, social workers and volunteers. Vulnerable applicants also acquire priority in the procedure (Bove 2020).

I shall now take few lines to reflect on the list of individuals or groups considered vulnerable by the abovementioned 2003, 2005 and 2013 European Directives and on the tension between individual and group dimensions of vulnerability, as already mentioned by Aida's report on vulnerability in the context of asylum (idib.). The scholar Stefania Spada (2020) interestingly stresses that

The different forms of violence refer not to predetermined fixed groups of subjects or to their intrinsic characteristics but may open to consideration of the material conditions of existence of individuals. At the same time, however, the reference to vulnerability in its group dimension exclusively with respect to reception standards [...] indirectly refers its emergence - and consequently treatment - to the qualitative standards of the services offered, that is to a question of "treatment" rather than of "recognition", failing to comply with the recommendations of the European Asylum Support Office (EASO), active since 2011.⁴⁷

(Spada 2020, p. 74, my translation)

Other than the abovementioned *M. S. S. v. Belgium and Greece*, another document that shows the tendency of the European norms to adopt a group dimension of vulnerability, which is the guide *Identification of Person with Special Needs*.⁴⁸ Here, the EASO consider asylum seekers in general as a vulnerable group, due to the uncertainty of their status, but also due to the experiences lived in their country of origin and during the journey to and through Europe.⁴⁹ Again noticed by Spada (2020), in 2015 the *European Agenda on Migration* settled the hotspot system, which is understood as a sorting tool – between

⁴⁶ See: <https://asylumineurope.org/reports/country/italy/asylum-procedure/procedures/regular-procedure/> (Last access: 24/03/2021).

⁴⁷ "Le diverse forme di violenza rimandino non a gruppi fissi predeterminabili di soggetti o a caratteristiche intrinseche degli stessi, ma possano aprire alla considerazione delle condizioni materiali di esistenza dei singoli. Al contempo, però, il richiamo alla vulnerabilità nella sua dimensione gruppale esclusivamente rispetto agli standard di accoglienza [...] rimanda indirettamente la sua emersione – e conseguentemente trattamento – agli standard qualitativi dei servizi offerti, e cioè a una questione di "trattamento" piuttosto che di "riconoscimento", venendo meno alle raccomandazioni dello stesso European Asylum Support Office (EASO) attivo dal 2011"

⁴⁸ See: <https://easo.europa.eu/sites/default/files/guidance-on-receptionconditions-IT.pdf>.

⁴⁹ See chapter one of this work.

vulnerable and non-vulnerable groups – that have authorized restrictive measures in the recognition of vulnerable groups and subjects by Member States. This has emphasized the group/individual vulnerability dualism and its significance. Indeed, on the one hand, the vulnerability certification is based on physical and psychological condition of single applicants, but on the other the initial screening between predetermined vulnerable and non-vulnerable groups endangers the possibility of a careful assessment of individual and subjective circumstances (ibid.).

Focusing on the Italian case, the author defines the two Salvini Security Decrees (2018)⁵⁰ as ‘vulnerability blind’ and ‘vulnerability multiplier’. The reason is that its newly introduced procedures make nearly impossible the recognition of individual vulnerabilities that do not immediately appear, and the ones caused by the journey. The issue of the dichotomy was recognized by the European Court of Human Rights (ECtHR), which in 2011 – as already reported – declared that asylum seekers are “a particularly underprivileged and vulnerable population group in need of special protection”.⁵¹

3.3.4 Thematization of ECtHR’s vulnerable asylum seekers

Nonetheless, are asylum seekers underprivileged and vulnerable in the same way? Of course not, and the ECtHR’s attempt is precisely to take into consideration also individuals *and* groups that have further specificities. Timmer (2016) made the great effort of thematization of what the ECtHR considers vulnerable. I will use this thematization in order to show that asylum-seeking and refugee women are placed at the intersection of different groups that the ECtHR considers vulnerable, although not always consistently.

- a) *Children and persons with mental disabilities*: The Court recognizes these two groups as inherently vulnerable, which means that they are vulnerable per se and constantly. The reason is “Their dependency upon the care of others, and their difficulty or inability to complain of abuse or of their treatment more generally” (Timmer 2016, p.

⁵⁰ See: <https://www.altalex.com/documents/leggi/2018/09/25/decreto-salvini-sicurezza-e-immigrazione> (Last access: 24/03/2021).

⁵¹ See ECtHR, *M. S. S. v Belgium and Greece* [GC], Application No 30696/09, Judgment of 21 January 2011, Article 3. Available at: <https://www.asylumlawdatabase.eu/en/content/ecthr-mss-v-belgium-and-greece-gc-application-no-3069609> (Last access: 02/03/2021).

153). In the case of these two groups, the ECtHR has so far developed an effective vulnerability-oriented jurisprudence that obliges states to pay attention to their peculiarities.⁵²

- b) *Detained persons*: The Court recognizes as vulnerable those individuals that cannot protect themselves from the power of the state. “It is firmly established in the Court’s case law on Articles 2, 3 and 5⁵³ that people who are deprived of their liberty by the state are in a vulnerable position”, Timmer recognizes (2016, p. 154).
- c) *Vulnerability due to gender*: According to Timmer (2016), the Court has adopted the vulnerability approach also in cases concerning domestic violence and precarious reproductive health situations. For what regards the domestic violence, the scholar also highlights that this is a form of *ex-post* vulnerability, meaning that a person becomes vulnerable only *after* and *because* she has suffered from domestic violence.⁵⁴ On the other hand, the cases regarding women’s reproductive health,⁵⁵ Timmer (2016) observes that their vulnerability arises from the combination of their physical condition, the psychological distress regarding their own and their fetus’s health, and the fact that they were extremely dependent upon their doctors, who had the power to favor/limit access to abortion and to provide them with accurate and timely information.
- d) *Legal power imbalance*: The Court observes that accused persons often find themselves in a particularly vulnerable position in criminal proceeding, especially during the investigative stage.⁵⁶ In particular, accused people are vulnerable of accusing themselves.

⁵² See: *C.A.S. and C.S. v. Romania*, App. No. 26692/05, 20 March 2012, and *Stanev v. Bulgaria*, App. No. 36760/06, 17 January 2012.

⁵³ See: *Kurt v. Turkey* (Com.), App. No. 24276/94, 5 December 1996, § 201, and *Salman v. Turkey* (CG), App. No. 32704/93, 27 June 2000, (2002) 34 E.H.R.R. 17, §99.

⁵⁴ See: *Opuz v. Turkey*, App. No. 33401/02, 9 June 2009, (2010) 50 E.H.R.R. 28; *Bevacqua and S. v. Bulgaria*, App. No. 71127/01, 12 June 2008; *Hajduová v. Slovakia*, App. No. 2660/03, 30 November 2010.

⁵⁵ See: *Tysiac v. Poland*, App. No. 5410/03, 20 March 2007, (2007) 45 E.H.R.R. 42; *R.R. v. Poland*, App. No. 27617/04, 26 May 2011, (2011) 53 E.H.R.R. 31; *P. and S. v. Poland*, App. No. 57375/08, 30 October 2012.

⁵⁶ See: *Salduz v. Turkey* (GC), App. No. 67545/09, 27 November 2008, (2009) 49 E.H.R.R. 19.

- e) *Journalists and demonstrators*: According to Timmer (2016), the ECtHR finds vulnerable these two categories as they espouse unpopular opinions and views.⁵⁷ They are vulnerable because they are “People who are isolated from the mainstream” and these cases “All concern human rights defenders” (ibid., p. 158).
- f) *Vulnerability in migration, concerning the detention and expulsion of asylum-seekers*: Timmer emphasizes the problematic relationship between the ECtHR’s vulnerability reasoning and asylum seekers and irregular migrants. Indeed, the Court struggles in formulating an adequate response to the vulnerability of these groups of migrants. According to the scholar though, the Court is moving forward to the recognition of real lived vulnerability.⁵⁸ The cases concern the detention and the principle of non-refoulement: “Both these types of cases are litigated under the prohibition of inhuman and degrading treatment (Article 3)” (Timmer 2016, p. 158).
- g) *Group-membership*: “These cases concern discrimination on account of group-membership” (ibid., p. 160), and are particularly directed to Roma, persons with impaired health (HIV and mental disorders) and asylum seekers.⁵⁹
- h) *Compounded vulnerability*: According to Timmer (2016), this includes the complaints to be considered vulnerable due to a combination of the abovementioned reasons. “In such situations, the Court sometimes speaks of ‘extreme vulnerability’, ‘double vulnerability’, or ‘great vulnerability’” and “it appears that when the Court is of the opinion that an applicant is vulnerable on multiple grounds, the Court is inclined to attach great importance to this fact” (ibid., p. 161).⁶⁰

This last theme of vulnerability is the one that comes closest to the case of asylum-seeking and refugee women. Being an intersectional group, indeed, suffers from the combination of

⁵⁷ See: *Baczowski and Others v. Poland*, App. No. 1543/06, 3 May 2007, (2009) 48 E.H.R.R. 19; *Alekseyev v. Russia*, App. Nos., 4916/07, 25924/08 and 14599/09, 21 October 2010.

⁵⁸ See the abovementioned *M.S.S. v. Belgium and Greece*.

⁵⁹ See: *D.H. and Others v. the Czech Republic (GC)*, App. No. 57325/00, 47 Eur. H.R. Rep. 3 (2007); *V.C. v. Slovakia*, App. No. 18968/07, 8 November 2011; *Alajos Kiss v. Hungary*, App. No. 38832/06, 20 May 2010; *Z.H. v. Hungary*, App. No. 28973/11, 8 November 2012; *Kiyutin v. Russia*, App. No. 2700/10, 10 March 2011, (2011), Eur.H.R. Rep. 26.

⁶⁰ *M.B. v. Romania*, App. No. 43982/06, 3 November 2011; *G. v. France*, App. No. 27244/09, 23 February 2012; *M.S. v. United Kingdom*, App. No. 24527/08, 3 May 2012; *De Donder en De Clippel v. Belgium*, App. No. 8595/06, 6 December 2011.

different types and cases of vulnerability. What I find not in line with my reasoning is the appeal to an ‘extreme’, double’ or ‘great’ vulnerability. As it will be treated later on in this chapter,⁶¹ the point of recognizing the particularity of asylum-seeking and refugee women vulnerability is to acknowledge that there may be specific way to address their need, rather than creating more-than-necessary groups of vulnerable and ‘super-vulnerable’ individuals. What Timmer (2016) calls ‘compounded vulnerability’ does not solve the dichotomy between group and individual vulnerability that creates ambiguity in the European legal asylum system. Moreover, according to Costello & Hancox (2013), the Court seems to be particularly sensitive to the fact that asylum seekers’ vulnerability depends to the state, rather than to a shared set of common characteristics.

3.4 Vulnerability: a backlash?

Now it should be clear: the concept of vulnerability really is fraught with perils, conceptually and practically. Not only it is an ambiguous term and a thick notion, but it might also have nasty side effects. As many scholars have pointed out (La Spina 2020; Levine *et al.* 2014; Luna 2008, 2018; Rigo 2019; Spada 2020; Strahele 2019), the abuse of this notion could lead to stereotyping, labelling, and further marginalizing the subjects considered vulnerable, besides normatively considering them as poorly autonomous in their actions and choices.

Vulnerability is a descriptive and normative notion. It is descriptive in the sense that tells how an individual or a group is vulnerable and what the sources of these vulnerabilities are. It is also – and more substantially – normative, since this recognition gives rise to moral, ethical, political and legal obligations. Therefore, it is not a neutral term and there is the risk of artificially constructing upon it processes of exclusive and excluding identity-making that further marginalize those subjects (La Spina 2020; O’Higgins 2012; Oliviero 2018). Moreover, it is also true that the vulnerability label tends to undergo to processes of crystallization and normalization of certain characteristics typical of stereotypes. In turn, stereotypes affect the credibility of the stereotyped ones. Therefore, an approach that is born

⁶¹ See: §2.4.

to protect people turns into a discriminatory tool (Freedman 2019; Gilson 2016; La Spina 2020; Luna 2009-2018; Levine *et al.* 2014; Oliviero 2018).

First, shall I treat the label issue. The tendency to ‘label’ some groups as vulnerable it is indeed problematic. Labelling certain subpopulations as vulnerable “suggests a simplistic answer to a complicated problem”, since “a person or a group of persons may experience different kinds of vulnerabilities, and this complexity is ignored if we simply refer to a group of persons as vulnerable” (Luna 2018, p. 87). Second, the stereotyping issue, which is strictly connected with labelling. In fact, stereotyping means attributing a characteristic – a label – to groups of individuals and then take it for granted, making it hard for this label to be removed (Cusack 2014; Gilson 2016; La Spina 2020; Luna 2009, 2018). As reminded by the writer Chimamanda Ngozi Adichie in her famous TED talk given in 2018, the problems arise when we tell one single story as the story valid universally for a determined group: “The single story creates stereotypes. And the problem with stereotypes is not that they are untrue, but that they are incomplete. They make one story become the only story”.⁶²

Similarly, vulnerability becomes the single story for groups that are considered vulnerable. The wrongness of stereotyping relies in the fact that this operation is not neutral, but normative and with potentially harming and damaging the persons involved. According to Luna (2009, 2018) the reason relies in the strong dichotomous feature of this approach: either a group (or an individual) is vulnerable, or it is not. There are no grey areas, no levels of vulnerability nor flexibility. In this way, it is observed (Cook & Cusack 2010; Luna 2020), the subject “is made invisible as an autonomous individual situated in a context, with her choices and specificities, and certain characteristics are attributed to her, without a reasoned or proven analysis of the specific situation” (La Spina 2020, p. 37). Getting closer to the field of this study, Crawley & Skleparis (2017) believe that the use of vulnerability in the refugee and asylum areas is another aspect of the “categorical fetishism” that characterizes these areas. This “fetishism” is to divide into “real” asylum seekers (or “good” refugees) and “not deserving” (or “bad”) ones, who in the collective imagination try to abuse the European States’ protection without having true needs. The benchmark is whether these refugees show

⁶² See: https://www.ted.com/talks/chimamanda_ngozi_adichie_the_danger_of_a_single_story?language=it (Last access: 10/03/2021).

and/or present some kinds of vulnerability. Moreover, other than reproducing this “fetishism”, as Freedman (2019) observes: “Being labelled as ‘vulnerable’ can also act as an impediment to full autonomy and agency as the ‘vulnerable’ person is reduced to a dependent or childlike status” (p. 2). In the refugee area, but not limited to it, it happens more substantially with women seeking international protection. This paternalistic attitude is pervasive in the entire structure of the reception system, allegedly perpetrated by social workers and volunteers. Chemin & Nagel (2020) reported the testimony of a woman from Cameroon seeking protection in Germany:

I cannot explain too well but it is like a prison, you cannot do anything, you’re supposed to do everything they tell you. Like parents who can tell you: go this way and go that way, do that and do this, you know, and they don’t give you any chance to... for me... maybe they let other people. But for me... for us, ... I can say I didn’t go more to school, so perhaps I can do nothing about that but people who did that, who are educated, who have more experience than me, I mean people from Africa when they come here they have no chance to develop. You are always being told what you can do and what you cannot do.

(Chemin & Nagel 2020, p. 41)

There are many works that highlight the dangerousness of indiscriminately referring to asylum-seeking and refugee women as vulnerable. The risk is of labelling, stereotyping, and victimizing them, taking away their autonomy and independence (Flegar & Iedema 2019; Freedman 2019; Gilson 2016; Mascini & van Boschove 2009). Jane Freedman (2019) warns of the dangers of the application of the vulnerability approach for this specific group, especially because of the way vulnerability has been defined in European asylum and refugee laws.⁶³ The problem, the scholar also states, is that women are categorized as vulnerable a priori, without taking into consideration the specific and contextual circumstances. On the one hand, the scholar recognizes, considering asylum seeking and refugee women as vulnerable can increase their chances of protection in European countries, but, on the other, it can reduce agency and autonomy. Freedman argues that vulnerability as a concept “[i]s often linked to gendered constructions and norms which portray women as intrinsically weaker and thus more physically exposed to danger than men, and thus more in need of

⁶³ See §2.2 of this chapter.

protection” (Freedman 2019, p. 2). Therefore, the vulnerability category may also reinforce already existing essentialist gendered representations, such as femininity = vulnerability and weakness, and masculinity = strength and dangerousness (Flegar & Iedema 2019; Freedman 2019; Hollander 2001). Moreover, Freedman (2019) notices, the equation women = vulnerable advantages also traffickers and smugglers. They know that women are perceived as vulnerable, and they take advantage of it. As an example, they place them in the front of the boats, guessing that the boat would be more likely rescued by European coastguards if they see women on it. The result is that women are put in even more danger. Moreover, women seeking international protection are denied their voices in asserting their needs and projects, since they are viewed as passive subjects who only wait for protection from others. In turn, this translates into a diminishment and lack of respect by officials, humanitarian workers and other people, who treated them as they were “inferior”.⁶⁴

Even well-meaning charitable or humanitarian interventions tend to classify them as vulnerable victims, objects of pity, targeted for interventions in ways that foreclose their agency. These representations of women (and particularly Muslim women), as «vulnerable» or «victims» devoid of agency, combine a racialized and gendered discourse which reduced their ability to express and make heard their own needs, wishes and opinions.

(Freedman 2019, p. 10)

The scholar, indeed, defines this use of vulnerability to refer to asylum-seeking and refugee women as “symbolic violence”, which is more often experienced by intersectional groups seeking asylum, such as – as she exemplified in the quotation above – Muslim women.

Finally, other scholars warn us of other dangers of the adoption of this concept in the asylum and refugee areas. According to Coyle (2013), vulnerability is a concept at a high risk of being instrumentalized by whatever political ideology. A clear example of that is the way women’s vulnerability is instrumentalized by both left-wing and right-wing parties. On the right-wing side, the alleged asylum-seeking women’s vulnerability is taken as the perfectly exemplified reason why it is wrong to have a policy of open borders. Their objectification works something like this: “Look what these peoples do to their women, why

⁶⁴ Freedman (2019) took this information from some of the 45 women who had reached Europe that she interviewed for her study.

should we open our country to them and let them do the same with our women?”. On the left side, women’s vulnerability has been used as the frontpage of the refugee crisis, to arouse sorrow and compassion, and finally get support and votes against the right-wing parties.

The stereotyping and labelling, the stigmatizing, the symbolic violence suggested by Freedman (2019) and the risk of instrumentalization are perfect examples of what has been treated at the beginning of this chapter, that is what Mackenzie *et al.* (2014) call ‘pathogenic vulnerability’ and Luna (2018) calls ‘cascade effect’. The point is precisely that sometimes a well-meaning political action – that is the reference to vulnerability as a mean to reduce the protection gap and to lead to a more inclusive set of policies – have a damaging potential. In the next paragraph, I propose a way to keep the vulnerability approach and, at the same time, to reduce the risks related with it.

3.5 A third way? Intersectional layers of vulnerability

It is a matter of fact that asylum-seeking and refugee women suffer from intersecting vulnerabilities. These vulnerabilities are contextual and derived from being at the intersection of two different macrosystems of social subordination due to their being part of two vulnerable groups – the one of the women and the one of asylum seekers. Following La Spina’s (2020) argument: “If this perspective is adopted, it is possible to bring out the particular condition of discrimination and/or exclusion to which subjects belonging to vulnerable groups are exposed” (p. 39).

As it has been noticed (Bernardini 2018; Crock *et al.* 2013, 2017; La Spina 2020; Spada 2020) the normative and conceptual categories of vulnerability used to address and face the issue of (female) asylum seekers are incomplete if the issue of intersectionality is not included. These categories result in having limitations precisely because it is inevitable to derive further heterogeneity of classes or situations of vulnerability from the ones that are already listed in the norms, since each person has her own fragility (La Spina 2020). This is to say that potentially there is an exponential number of categories. If we take the gender example, we have, among others, pregnant women, female children, women with disabilities, LGBT+ women, elderly women, victims of FGM, and women victims of trafficking. These cases show an intersection between different conditions of vulnerabilities, that only take into

account the ‘gender’ macro-identity. If the ‘race’ or the ‘culture’ categories are added, the exponentiality issue is better caught. Therefore, importantly,

The specificity of these situations acquires consistency by intercepting the intersection between the various axes of discrimination, thus favoring the visibility of those individuals who would be absent not only from general reflection, but also within critical perspectives.⁶⁵

(La Spina 2020, p. 111, my translation)

As Elena Fiddian-Qasmiyeh⁶⁶ argues: “What we need is an intersectional approach which aims to ensure people’s dignity and safety without creating or reproducing hierarchies of vulnerability and worth which have dangerous, and at times deadly, outcomes for refugees”.⁶⁷ In complete agreement with the UNHCR’s *Dialogue on Protection Challenges* (2017),⁶⁸ analysing refugeehood and asylum through the lenses of intersectionality⁶⁹ means considering how the experience of displacement is framed by overlapping identity markers – among which gender, ethnicity and culture, sexual orientation, age – and power structures – such as patriarchy, homophobia, xenophobia. What is also important to consider is that

The relative significance of these identity markers and related power structures shift across time and space, including in processes of displacement. This can help us understand – perhaps even predict – that individuals and social groups may be vulnerable to, or at risk of, different forms of violence throughout different stages of their journeys to secure international protection.

(ibidem)

Accordingly, the same document advances a few recommendations in addressing applicants’ and refugees’ vulnerabilities. I here report the two that have more to do with this research:

- a) An important part of creating and evaluating policies to address asylum seekers’ and refugees’ vulnerability, as well as managing operational and emergency situations, is

⁶⁵ “La especificidad de tale situaciones adquiere consistencia al interceptar la interseccion entre los diversos ejes de discriminacion favoreciendo así la visibilidad de aquellos individuos que estarían ausentes no solo de la reflexión general, sino tambien dentro de las perspectiva criticas”.

⁶⁶ Co-Director of the UCL Migration Research Unit to the UNHCR High Commissioner’s Dialogue on Protection Challenges.

⁶⁷ See: <https://www.unhcr.org/5a745f4f7.pdf>.

⁶⁸ See: <https://disasterdisplacement.org/wp-content/uploads/2017/12/5a2168ce7-1.pdf> (Last access: 25/03/2021).

⁶⁹ For a definition of *intersectionality*, see Chapter 1, paragraphs §1.2 and §1.3 of this work.

the assessment of the basic needs of these individuals. Though, these basic needs are not ultimately definable since they are not the same for everyone. Thus, it is necessary to understand the priorities of these people “[w]ith sensitivity to (inter alia) gendered, cultural and religious/spiritual needs and rights, when determining even what a ‘basic need’ is on a case-by-case basis” (ibidem). It should be clear that this means that what basic needs are is determined not by the point of view of the humanitarian workers or the policy makers (at least not exclusively so), but by the very persons involved.

- b) The intersectional lens through which we ought to look at the vulnerabilities of those people has also the goal of strengthening the institutional capacity to recognize that women *and* men experience different forms of GBV and that (and to what extent) women have gender-specific protection needs. This is achieved by gender-sensitive vulnerability screenings and reception procedures.

The two tables illustrated below and inspired by La Spina’s work (2020) are intended to clarify what having intersecting layers of vulnerability means, when we refer to asylum-seeking and refugee women. Although the existence of an intersection of different variants, or layers, there are always one or more categories that prevail to the others. Lastly, the sum of one or more variants of vulnerability does not give rise to a ‘super-vulnerable’ subject, but it is indicative of a condition of pathogenic vulnerability (Mackenzie *et al.* 2014) or cascade effect (Luna 2018). Moreover, it constitutes “a sum of subcategories [that] acts as a reinforcement of the special protection” (p. 112). In reinterpreting the author’s table, I use the intersecting categories abovementioned, and I combine them with one to three variants, or layers. Of course, the following table is not meant to be exhaustive, since the choice to go up to three variants is purely arbitrary. As it will not have escaped, this approach looks at Luna’s theory of layers of vulnerability (2009, 2018) and Mackenzie *et al.*’s (2014) intuition of the new categorization of pathogenic vulnerability through the lenses of intersectionality.

Table 2. Intersectional layers of vulnerability (a)

Gender and Refugeehood as the	1 Variant	2 Variants	3 Variants
	Elderly women	Elderly women + disabilities	Elderly women + disabilities + victims of sexual violence

prevailing categories	Victims of trafficking	Victims of trafficking + psychological issues	Victims of trafficking + psychological issues + victims of FGM
	Victims of FGM	Victims of FGM + minors	Victims of FGM + minors + trafficked
	Female minors	Female minors + unaccompanied	Female minors + unaccompanied + psychological issues
	Trans women (M to F)	Trans + minors	Trans + minors + trafficked
	Pregnant women	Pregnant + victim of SGBV	Pregnant + victim of SGBV and + LGBTQ+

Table 3. Intersectional layers of vulnerability (b)

	1 Variant	2 Variants	3 Variants
Gender, Refugeehood, Race and Culture as the prevailing categories	Elderly of color women	Elderly women of color + trans	Elderly women of color + trans + PTSD
	Female minors of color	Female minors of color + Muslim	Female minors of color + Muslim + STD(s) ⁷⁰
	Pregnant women of color	Pregnant women of color + unaccompanied	Pregnant women of color + unaccompanied + FGM
	LGBTQ+ women of color	LGBTQ+ women of color + FGM	LGBTQ+ women of color + FGM + victim of SGBV

⁷⁰ Acronym for Sexually Transmitted Disease.

	Trans (M to F) women of color	Trans (M to F) women of color + Muslim	Trans (M to F) women of color + Muslim + victim of trafficking
	Black victims of trafficking	Black victims of trafficking + psychological issues	Black victims of trafficking + psychological issues + STD(s)

As was being said, this are non-exhaustive tables with a non-exhaustive list of possible categories of vulnerability that intersect with the following categories: ‘gender’, ‘refugeehood’, ‘culture’, ‘race’. As observed by La Spina (2020), it is indeed possible to broaden the table and dissect sub-categories. We can, for example, distinguish between internal and external vulnerabilities,⁷¹ and recognize the once that do not respond to these two parameters. This is the reason of the jurisprudential containment of vulnerability and, also, of the soon-further-argued necessity of non-overmultiplying vulnerability.

A clarification ought to be given. There are many differences within the same group of asylum-seeking and refugee women. As already clarified at the beginning of this work, what I have in mind when treating the intersectional vulnerability of this group of women is the European refugee crisis that sees flows which are characterized by the overwhelming vast majority of people travelling from the Global South to reach sanctuary in the Global North. These refugees are, therefore, mainly non-white, and present differences in culture in respect of the European host countries. So, to the intersection of the categories ‘asylum seeker’ and ‘woman’, we often should also add other identity markers as ‘culture’, ‘religion’, and ‘non-white’. Moreover, also the criminalization of the journey and of the border-crossing has a huge influence on the vulnerability of these women.⁷² I am nonetheless aware of the fact that there are refugee women in a completely different position⁷³.

⁷¹ The difference between internal and external vulnerability relies on its source. For example, being a child is an internal vulnerability, while being trafficked is a contextual and externally induced vulnerability.

⁷² The risk of sexual trafficking, of rape in exchange of travel options, etc. See: Chapter 1.

⁷³ For instance, I am thinking of the Russian journalist Elena Maglevannaia, who in 2009 asked for asylum in Finland because she was persecuted in their country of origin for reporting tortures on prisoners in Chechen’s prisons. See: https://www.corriere.it/esteri/09_maggio_30/asilo_giornalista_russa_46672c1e-4cf4-11de-82fb-00144f02aabc.shtml (Last access: 19/10/2021).

If we want to address vulnerability in asylum and refugeehood in a gender-sensitive way, that also helps in theorizing and implementing policies in favor of minimizing this vulnerability, we need to make few steps forward. (a) We need to overcome the ambiguity of the individual/group vulnerability dichotomy, thereby adopting the concept of intersectionality. (b) We ought to consider intersectionality (or layers of intersectional vulnerabilities) without the risk of exceedingly multiplying vulnerabilities. (c) It is necessary that we make sure that we are aware of the risk of labelling, stereotyping, and attributing lack of autonomy to this group of women. The acknowledgment of these risks allows us to build theories, policies and law models that avoid them as far as possible. An intersectional approach comes in aid for those three goals.

(a) I argue that an intersectional approach to vulnerability helps in overcoming the difficulties created by the individual/group ambiguity present in the Directives and other juridical corps abovementioned. As stated by the author,

The intersectional approach avoids categorical and even essentialist vulnerability that is also implicit in the normative framework under the de jure presumption ‘every asylum seeker is inherently vulnerable, or some categories are necessarily more vulnerable than others’ because it necessarily requires an individualized analysis of each subject according to its context, whether or not it belongs to a group with similar characteristics and an empirical verification.⁷⁴

(La Spina 2020, p. 39, my translation)

Thus, an intersectional lens may come to the assistance in overcoming this ambiguity between individual and group-based approaches to vulnerability. First, intersectionality, by definition, mainly refers to group dynamics and to group experiences. An individual with intersectional features is such precisely because her experiences are situated at the intersection of two or more group features experiences. For example, a woman of color is considered intersectional because her experiences of discrimination, vulnerability and injustice are placed at the intersection of the discriminations and injustices suffered as a woman and as black. This means that the groups of women and people of color are subjected

⁷⁴ “El enfoque interseccional rehùye la vulnerabilidad categorial e incluso la esencialista que también queda implícita en el marco normativo bajo la presunción de jure “todo solicitante de asilo es inherentemente vulnerable o algunas categorías son necesariamente más vulnerables que otras” porque requiere forzosamente un análisis individualizado de cada sujeto en función de su contexto, su pertenencia o no a un grupo con características afines y una constatación empírica” (My translation).

to discrimination precisely for being part of a racial minority and of the gender that have been oppressed historically, as a group. Though, I argue that combining the intersectional approach with Luna's approach of layers of vulnerability helps in overcoming the ambiguity. If, on the one hand, the group of asylum-seeking and refugee woman can be considered vulnerable precisely because it is as an intersectional group, the acknowledgment of the existence of possible layers of vulnerability leaves space for individual assessments. In doing so, we avoid the risks of levelling and labelling all asylum-seeking women at the same level of vulnerability, thereby trivializing their different experiences and characteristics. But, also, we avoid the dangers connected to not seeing the group dimension of vulnerability and to consider vulnerability only at the individual level. In fact, actions and policies that refer to asylum-seeking women forgetting that they are an intersectional group – characterized by intersectional vulnerabilities – jeopardize the possibility of really catching their needs, which will be on some level related to their membership to that group.

(b) What is certainly not desirable is an approach that over-creates groups of vulnerable people within a macro-group of vulnerable people. This recalls what already stated in §2.3 regarding the ECtHR's cases of compounded vulnerability. There, I argued indeed that this approach exacerbates the risk of over-multiplying vulnerabilities. In fact, the logic behind the selection of vulnerabilities to take into consideration appears to me too arbitrary. On the contrary, this double level of vulnerability – the intersectional vulnerable categories and the layers of vulnerability – allows us to avoid the risk of infinitely multiplying of vulnerable groups, on the one hand, and to create 'super-vulnerable' individuals, on the other. Indeed, if we take a deeper look at Table 2 and Table 3, the intent is not to consider every single combination between intersectional categories and variants as new vulnerable groups. And, a fortiori, groups of individuals that suffer from the combination of many variants and layers of vulnerability are not to be considered 'super-vulnerable' subjects. In fact, this approach would serve precisely in view of avoiding this. Once we have identified an intersectional group – asylum-seeking and refugee women – and unpacked the vulnerabilities that are placed at the intersection – race, gender, culture, refugeehood – we can also deepen the individual cases to discover further layers of vulnerability. Due care, however, that the

individual cases assessments are implemented having in mind the fact that those individuals are part of the same intersectional group.

(c) Lastly, this approach does help in reducing the risk of labelling and stereotyping. As La Spina (2020) already observed in the passage overmentioned, an intersectional lens on these women's layers of vulnerability avoids essentialist view of vulnerability. In fact, this approach allows us to recognize that even within the same group considered vulnerable, asylum-seeking and refugee women, there are individual differences. This is fundamental to avoid the label and the process of stereotyping. The analysis of the experiences of asylum-seeking women does not tell a single story that can be applied to every asylum-seeking and refugee woman but tells many stories that may more or less differ one another. Thus, not all the women are vulnerable in the same way, nor they make the same experiences out of this vulnerability. With an intersectional approach to vulnerability, the process of stereotyping and labelling loses ground.

3.6 In conclusion: what to keep, what to let go, and where vulnerability leads to

This chapter was all about vulnerability, and how and why asylum-seeking and refugee women ought to be considered a vulnerable group. This is true at the conceptual level, but also serves as a warning to the ECtHR and policymakers to assess cases and implement policies that take this vulnerability into account. However, this chapter recognized some difficulties within the concept of vulnerability, again purely conceptually and within the European legal system, such as its inherent ambiguity, the group/individual dichotomy, the problem of identifying the right paradigm and the dangers that labelling a group as 'vulnerable' may entail. At the end of the chapter, a more substantive attempt to understand how to overcome these difficulties thereby applying to this group of women the paradigms of intersectional vulnerability and of layers of vulnerability.

Ça va sans dire, this proposal does not completely solve all the ambiguities of the concept of vulnerability, nor totally avoids the risk of stereotyping. The problem, indeed, remains at the practical level, to the extent that the public opinion⁷⁵ and the European asylum legal

⁷⁵ As highlighted by Shepard (1990), it is almost impossible to give a clear definition of Public Opinion. However, here I use this term to indicate the opinions of individuals taken together. More precisely, Public

system do not recognize this paradigm of intersectional layers of vulnerability. One thing is to theorize a solution, another is to make it work. In other words, what it should be done does not automatically coincide with what is done. Therefore, the next chapters will take into account the problems of stereotyping and labelling, the risks that those women's agency and autonomy is reduced by adopting a vulnerability approach, the ways in which the ambiguities caused by the unsolved individual/group dualism affect this group of women.

Thus, I resist the option of casting aside this paradigm. It is for sure problematic and difficult to use without risking damaging the group involved. And, on the other hand, this aspect serves me as a further example of the injustice suffered by the subjects of this research. Nonetheless, I argue that it is fundamental to consider asylum-seeking and refugee women as a vulnerable group. Otherwise, we lack an important basis to ground their need of protection and to theorize the injustice they suffer. What is at the foundation of injustice here is precisely the systemic way in which they are vulnerable subjects. As I said earlier, the point is not only that they *actually* suffer from violence, oppression, and discrimination *hic et nunc*, but that they are systemically vulnerable to it. This means that they are systemically at risk of harm. These possibility and potentiality are what ground the injustices they suffer. The point is precisely that the fact that these women are vulnerable of this kind of harm is not the result of chance. Rather, it is due to how the system of asylum and refugeehood is designed and it is also the result of structural vulnerabilities of the intersectional vectors that compose this group. This means that the vulnerabilities that asylum-seeking and refugee women suffer are the result of the intersection between the structural vulnerabilities of women – gender discrimination and inequality – and asylum seekers – for how the asylum system is designed. To this, as I explained, we may also add vulnerabilities due to intersectional markers as race, culture, religion, sexual orientation, disability, etc. Therefore, injustice is grounded in the structurality, systematicity, and in the capacity to create loops and cascades of these vulnerabilities, which make them always a potentiality in these

Opinion is an “Opinion to which the members of a public agree, not in a merely accidental fashion, but in full cognizance that this opinion constitutes a bond of union between the individuals holding it” (Shepard 1990, p. 35). And, also, “The term public opinion is used to describe both the sentiments and desires as well as the opinions proper which prevail among the individuals of a public” (ibid., p. 38).

women's experience of refugeehood. In conclusion, structural and systematic vulnerability is unjust. Is vulnerability a specific form of injustice in this case then? Yes, it is also a specific form of injustice, in the sense that structural vulnerability – intended as *structural potentiality to harm* – which is not reduced but even exacerbated by the European legal framework of asylum is unjust. Injustice occurs because the system is not designed to intervene at the precise point where the looping and cascade effects can be blocked, which, as we have seen and we will see more in detail in the next chapters, is the layer of the journey. Rather it allows the loops and cascades of vulnerability by encouraging⁷⁶ refugees to take illegal routes.

⁷⁶ By 'encouraging' I mean that the system of asylum and refugeehood, and, also, the process of securitization of the borders, does not give other real options to reach Europe but to take illegal routes.

CHAPTER 4.

Identifying Injustice for Asylum-seeking and Refugee Women: Three Paradigms

This chapter aims at identifying possible notions of injustice that are apt to describe the experiences of asylum-seeking and refugee women. The experience of injustice of this group of women is fundamentally linked to the intersectional nature of this group and of their vulnerabilities, I argued in the previous chapter. The systematicity in which they are vulnerable to typical kinds of harm is itself an injustice, and, at the same time, is part of the reason why they experience the other forms of injustice that this chapter analyzes. Being intersectionally vulnerable to different kinds of harm and discriminated in the way that I have treated in the last chapters sets the ground and explains the injustice they face as individuals and as a group.

What I will do in this chapter is, first, to propose some categories of injustice that can be applied to these women's reality of asylum and refugeehood and, second, to link these injustices together and show how they end up combining in vicious cycles. After briefly going back to the notions of *discrimination* and *vulnerability*, which have already been treated elsewhere in this dissertation¹, I then turn to the one of oppression, domination,² and epistemic silencing.³

I therefore preliminarily define injustice for asylum-seeking and refugee women

All the acts perpetrated by public or private agents, institutional structures, policies, measurements, and epistemic practices that create, reinforce, or exacerbate the

¹ For the discussion on *discrimination*, see Chapter 2, §2.3 of this work; for what regards the concept of *vulnerability*, return to Chapter 3 of this work.

² In particular, on Iris Marion Young's account of oppression and domination, which also allows me to commence with the discussion of the three theories on injustice I am willing to analyze in the light of asylum-seeking and refugee women experience.

³ Starting from Miranda Fricker's formulation.

*situation of vulnerability, oppression, discrimination, and epistemic silencing of this group of women*⁴.

To make sense of the definition I just gave, I consider three paradigms of injustice that, I argue, fit the experiences of this group of women:

- a) Andrea Sangiovanni's account of discrimination and the five modes of inferiorizing treatments, developed in *Humanity without Dignity: Moral Equality, Respect, and Human Rights* (2014).
- b) Iris Marion Young's paradigm of oppression (and domination), conceptualized in *Justice and the Politics of Difference* (2011).
- c) The line of thought of Epistemic Injustice, developed by Miranda Fricker in her book *Epistemic Injustice: Power and the Ethics of Knowing* (2007).

I will begin by resuming the earlier discussion on discrimination, thereby treating the recent discussion on it advanced by Sangiovanni. For his account works very well for explaining why individuals are particularly vulnerable to some kinds of inferiorizing treatment. However, this approach is not intended to explain how and why these practices apply in different ways to different groups. In order to make sense of this systematic vulnerability of some groups, we need the additional resources offered by Young's account of structural oppression. Finally, I will move on to epistemic injustice in its different declinations – testimonial injustice, hermeneutical injustice, and epistemologies of ignorance, which are caused and reinforced by vulnerability, discrimination, and oppression in the same mechanisms of loops highlighted in the last chapter when treating vulnerability

Before analyzing different theories of injustice and attempting to apply them to the subject of this study, at this point I shall more generally define injustice. Precisely, I shall indicate what is the definition of injustice that suits this research and better describes asylum-seeking and refugee women's lived experience. To say that this study endorses with a Negative conception of injustice and a bottom-up methodology, as explained in the Methodological Statement of this dissertation, seems not sufficient at this stage. Two elements must be

⁴ As it will turn out at the end of this chapter, this will not be the ultimate definition of injustice for asylum-seeking and refugee women. For another concept will come in help in making sense of this group of women's experiences – the one of effacement.

clarified. First, as it should be clear by now, this is not an account of distributive justice (or injustice). For fair or unfair distributions of goods and rights say little about their experiences. Second, injustice is here understood in a wide way. I understand injustice as a concept that includes the notions of oppression, discrimination, vulnerability, and epistemic silencing.⁵ For I believe that, for what regards the subject of this research, focusing on just one of these concepts would be reductive. Thus, when I speak about injustice for asylum-seeking and refugee women what I have in mind is a comprehensive notion powered by all these concepts.

4.1 Discrimination as a *demeaning and inferiorizing* treatment

I here begin to analyze the elements of the definition of injustice for asylum-seeking and refugee women given at the beginning of this chapter, starting from the concept of previously treated *discrimination*⁶, taking up a recent discussion on this topic. Sangiovanni focuses on the concept of morally wrongful discrimination, construed as objectionable discriminatory acts that “Express attitudes that are demeaning or disrespectful, in the sense that they undermine the equal moral status of those disadvantaged by them” (ibid., p. 114). In *Humanity without Dignity* (2017), Andrea Sangiovanni intends to explain why and in what cases it is wrong to treat others as inferiors, and to wrongly discriminate against others. His account of moral equality is grounded in the rejection of inequality, and, for this reason, as the scholar points out, it is a *Negative Conception* of moral equality.

The author gives “Paradigmatic instances of treating another as an inferior in a way that violates equal moral status or treating another as an inferior [...] *in the relevant sense*” (Sangiovanni 2017, p. 5⁷). With the use of italics, the scholar highlights the fact that it is important to identify the reasons that ground the wrongness of some particular actions. So, his Expressive Harm Account applies a Negative Conception of justice to five modes of inferiorizing treatments that are involved in racial and sexual – direct and indirect –

⁵ I consider the notions oppression, domination, vulnerability, discrimination, and epistemic silencing as sufficient for an account of injustice for asylum-seeking and refugee women. The point is precisely that these five concepts seem to embrace the experiences of the subject of this research, as I am going to explain in the next pages.

⁶ See: Chapter 2, §2.3.

⁷ Italics present in the text.

discrimination⁸. These five paradigmatic inferiorizing modes of treatment are: *stigmatization*, *dehumanization*, *infantilization*, *instrumentalization*, and *objectification*. They are not wrong as such. It is not always wrong to dehumanize, or instrumentalize others.⁹ These forms of inferiorizing treatments are morally wrong when and because they each embody a particular type of social cruelty¹⁰. When we fight cruelty, Sangiovanni argues, we display the virtue of *humanity*,¹¹ which is indeed the opposite of cruelty. Thus, the wrongness of these paradigmatic cases is grounded in the social cruelty¹² they entail. Social cruelty is defined by Sangiovanni in these terms:

The unauthorized, harmful, and wrongful¹³ use of another's vulnerability to attack or obliterate their capacity to develop and maintain an integral sense of self. It is a rejection of this type of cruelty, I will argue, that stands at the center of our rejection of treating as inferior in the relevant sense.

(Sangiovanni 2017, p. 76).

In order to properly understand Sangiovanni's argument, it is important to unpack and analyze a concept that emerges from this quotation, which is the one of *integral sense of self*. First, *self*, according to the scholar, is the conception of qualities, values, commitments, relationships, roles, and concerns that are at the center of one's life. It is whatever makes one the person what this person is. Second, *sense of self* is understood as a functional role of the subjects and means either "The point of view of oneself as a creator and enactor and the point of view of oneself as what has been created and enacted", which means that "By acting, deciding and pursuing, we shape the kinds of people we are [...] and by reflecting on who

⁸ See Chapter 2, §2.3 of this work.

⁹ Sangiovanni gives really good examples for this. On the one hand, he notices, when you peek on someone else's watch to check the time. Yes, you are treating the other like an object and an instrument (precisely, a clock), but this action is hardly conceivable as morally wrong in the strong sense. On the other hand, a police officer that has a shift at the stadium, can herd people out of it without regard to fans' alleged self-control.

¹⁰ Regarding the notion of *cruelty*, Sangiovanni refers to Judith Shklar's interpretation of this concept (1985). Accordingly, cruelty is the worst vice of all, since vigorously flourish in political and social life, and demolish the humanity of the perpetrators and the victims.

¹¹ Acting with humanity, following the scholar's words, is "When we respond to others' suffering by seeking to understand and then to alleviate it [cruelty], rather than to reinforce or remain indifferent to it" (ibid., p. 6).

¹² Social, in the sense that this cruelty affects reciprocal relationship within the social community.

¹³ Wrongful in the sense that it is an unauthorized and harmful attack per se, not in virtue of something else (for example moral equality).

we are [...] we can give rise on to our actions, decisions, and pursuits” (p. 79). Third, to maintain this sense of self as *integral* means to keep it stable, consistent, and coherent across time and space (which means, in different circumstances). The point is that we, as human beings, hence sociable beings, build a sense of self that is also echoed in a world where others see it. Losing the integrity of one’s sense of self, therefore, means either an internal discontinuity or a dissonance between what we think we are and how the others perceive us. The act of disrupting of another’s sense of self constitutes an act of cruelty.¹⁴

4.1.1 Stigmatization and dehumanization

Sangiovanni treats these two inferiorizing modes of treatment referring to racial discrimination.

Stigmatization occurs when we “Treat others as inferiors by treating them as *polluted*, as bearers of what Erving Goffman (1990) called a ‘spoiled identity’, marked out for special types of exclusion, disdain, or contempt on account of properties of their physical aspect, character, or background” (Sangiovanni 2017, p. 74). What makes this attitude wrong is the fact that it affects the person’s or groups’ capacity to develop a sense of self, or it makes impossible to maintain it intact. Above, I have treated Sangiovanni’s explanation of the sense of self. Given that we are embedded in the social world, as human beings we present ourselves to other selves. Importantly, in order to preserve our sense of self, we need to receive some positive echoes from the social world we are part of.

It is for these reasons that rigid, systematically imposed, and negatively tainted identities pervasively undermine our sense of ourselves *as* self-presenters, as beings who need some degree of control over the terms in which we appear to others in public. [...] the attitudes that express and reinforce the stigma will ultimately be echoed in our own self-conception, and so infect the way we interact with others, both intimately and publicly. At the extreme, such stigmatized identities when fully internalized, finally undermine our ability to access and realize the most important goods.

¹⁴ And, following Sangiovanni, “The reason such cases strike as cruel is that they are instances of taking advantage of another’s vulnerability to humiliate [...] in such a way as to reinforce an *already fractured* sense of self. A sense of self is fractured when [...] deep and internal conflicts produce a pattern of life that is rudderless and self-destructive, or [...] when it is *self-abnegating*: when, rather than playing the discussed constitutive role in the realization of the most important goods, it structurally undermines that role by undercutting one’s capacity to see oneself reflected in one’s values, projects, and commitments” (p. 98).

(Ibid., pp. 134-135)

This is the way stigmatization becomes dehumanization. In this sense, dehumanizing means treating persons “*Like animals* in need of the restraint and control of a superior, and hence as if they lacked typically human characteristics of self-control and self-consciousness” (ibid., p. 74, italics present in the text). This narrative works for asylum-seeking and refugee women, in the sense that, as I anticipated in the previous chapter and as I am about to explain, they are stigmatized by other asylum seekers, host populations and other family members. Rape and sexual violence, for instance, represent a reason of stigma and victim-blaming, and, worse, rejection from communities and family members (Pittaway & Bartolomei 2001). As reported,

Most societies, including of the host country, tend to blame the victim in the case of sexual violence, and this can increase trauma and psychological harm. It may happen that women who have suffered rape and sexual abuse may not disclose their trauma to immigration officers for fear of being labelled as prostitutes and being denied the refugee status or visa on moral grounds.

(Sansonetti 2016)

Under-reporting is due to the fear of being stigmatized in the host country, by other people in the community, and also due to the fear of stigmatizing their own families (Davaki 2021). Rape, sexual abuse, and sexual violence per se represent a dehumanizing experience for these women, as better explained in Chapter 1 of this work, and, according to the same source, when it leads to pregnancy, the stigma is even doubled.

Thus, the crucial feature for both these attitudes to constitute an inferiorizing treatment is their social meaning. This social meaning described above can be reinforced by the epistemic status of the beliefs that trigger the stigmatization and dehumanization. In fact, the faulty epistemic status “is morally relevant because of the way it *reinforces* the social meaning of the actions that are rationalized in terms of those beliefs” (ibid., p. 137, italics present in the text). It means that the beliefs concerning a certain group cause the stigmatizing and dehumanizing actions, which, in turn, have a certain demeaning social meaning. These processes are fact-independent, in the sense that the facts that could refute those beliefs are not taken into consideration. Moreover, stigmatization can arise from the fact that a woman arrived in Europe through Libya is likely to have incurred in prostitution, either because

forced by smugglers and traffickers or due to certain urgent circumstances or needs (Davaki 2021). This is then reflected in the judgments of other (male) guests of refugee camps (Zuccarelli 2017). This adds sexism to racism and xenophobia (Davaki 2021), stigmatizing and dehumanizing attitudes par excellence, which can make it hard to access to services, like housing. According to the Council of Europe, success in finding accommodation very much “Depends on their employment situation and lack of prejudice within the local community, as stigma and poverty are the major impediments. Not all Member States have adequate and sufficient social housing” (p. 34).¹⁵ Stigma bears also on integration processes, since asylum-seeking and refugee women experience discrimination in the labor market, being considered “Second-class citizens” (ibid., p. 35). A final point is that according to the same report, one of the main reasons asylum-seeking and refugee women have difficulties in accessing health care is stereotype, stigma, discrimination, and mistrust.

Lastly, the victims of dehumanization and stigmatization might be unaware of the social meaning of certain acts, so they are not ‘hurt’ by them. This does not make those acts any less wrongful in the relevant sense, because the wrong done does not depend on the social consequences of those acts. The social consequences of acts of stigmatization and dehumanization towards asylum-seeking and refugee women can include the reproduction of the circle of abuse and violence, the rejection of the claim of asylum, loss of self-confidence, poverty, and difficulty in integration (Davaki 2021).

4.1.2 Infantilization (and objectification)

Sangiovanni argues that when we “Treat others as inferiors by treating them *like children*, in need of the help of supervision of someone who knows better” (Sangiovanni 2017, p. 74, italics present in the text), we infantilize them. Unlike the two categories treated above, which referred to the example of racial discrimination, Sangiovanni uses this category of demeaning others – as well as the two following ones (objectification and instrumentalization) for encompassing the topic of sex discrimination. The gendered division of labor, he argues, is a very typical manifestation of men’s attitude to infantilize women, since it comes from the

¹⁵ <https://rm.coe.int/ipol-stu-2021-691875-en-1-/1680a23902> (Last access: 01/07/2021).

belief that women are physically and psychologically weaker and, therefore, they must be safeguarded.¹⁶ Sure enough, he continues, this belief is no longer widely and explicitly endorsed. However, this ideology has frozen – often unconsciously – in societal and institutional patterns, making the political, economic, and social consequences still real. Thus, “this history and these consequences are at once reflected in and contribute to the wrongfulness of much sex-based discrimination” (ibid., p. 142). How is this so? It is not enough to rest the wrongness of this paternalistic attitude on the fact that those beliefs are wrong and that the distinctions they make between women’s and men’s predispositions are arbitrary. The point is “The message sent to women as a result of policies adopted and justified by those attitudes” (ibidem). As noticed by Sigona (2014), “Humanitarian, academic, and media discourses tend to privilege a one-dimensional representation of the refugee which relies heavily on feminized and infantilized images of ‘pure’ victimhood and vulnerability” (p. 370).

This recalls what was said in the previous chapter about the risk of labelling asylum-seeking and refugee women as vulnerable subjects to be protected from others, and from themselves when we assume that they suffer from PTSD and, for this reason, are unable to take care of themselves and their own children. Infantilizing these women means recognizing them as lacking autonomy. Their infantilization through “the institutional handling of the residents, poses a threat to the parental image and the educational relationship” (Sanchez-Mazas 2015, p. 3). Again, “The external reality is characterized by the paradox of a comprehensive and almost infantilizing care” (Moro & Barou 2003, p. 106, my translation)¹⁷, when for ‘external reality’ the authors mean the reality of asylum system policies. The point, the authors state, is precisely the amount of influence that we have on their lives during the rescue and the whole application process. In humanitarian contexts, and in the asylum

¹⁶ Betty Friedan in her book *The Feminine Mystique* (1963) very well describes the infantilization of women implied in the gendered division of labor. American women, she argues, were – at the time the book was written – infantilized and considered as not able to make “good” decisions for themselves, that is the decisions that would make them “happy”. Ergo, the relegation of women in the private domain, which served as an impediment to fully develop their identity and personality, which was “arrested at the level of passive phantasy and passivity [...] The greater her own infantilism, and the weaker her core of self” (pp. 275-279).

¹⁷ “La réalité externe est caractérisée par le paradoxe d’une prise en charge globale et quasi-infantilisante”.

context in particular, women are treated like children in need of masculine protection and lacking in knowledge (Swine 2017). In the experience of the author, a former aid worker, humanitarian actors tend to approach women ‘in need’ in the ‘I know *what* is best for you’ and ‘*how* it is best done’.

The exemplification of this way of handling humanitarian emergencies is that although women who reported rape and sexual abuse in the camps and were aware of the insecurity issues of the camp, “their knowledge was never sought out or considered relevant to the design and execution of the modes of response put in place by the peacekeepers” (Swine 2017, p. 207). So, their evaluation of the measures implemented on their behalf in order to prevent sexual abuse from happening is mostly not considered. Considering women as passive victims, means considering them uniquely as beneficiaries of some kind of asylum policy, and never contributors. According to the Forced Migration Research Network of University of South Wales¹⁸,

Women and girls are designated as either ‘damsels in distress’, or mothers/child-bearing machines. They are seen as unable to take control of their own lives and dependent on and subservient to men. This can result in paternalistic programs to protect the good women. Some programs and aid workers punish “bad” women, single mothers, women who flee abusive relationships, shame raped women, and judge women who use survival sex as immoral prostitutes.

This stigmatizing and infantilizing attitude has an extremely negative impact on the protection of women, the study argues. It is worth to recall here what treated, in the previous chapter, about vulnerability. There, I reported Freedman’s concerns (2019) on the way the debate on refugee women is constructed, and the way vulnerability is thematized in the European jurisprudence. The point was that “Being labelled as ‘vulnerable’ can also act as an impediment to full autonomy and agency as the ‘vulnerable’ person is reduced to a dependent or childlike status” (p. 2). Also recall the testimony of a woman from Cameroon seeking asylum in Germany¹⁹, who narrated the paternalistic attitudes of humanitarian actors, who treated her like she was inferior: “You are always being told what you can do and what you cannot do” (Chemin & Nagel 2020, p. 41).

¹⁸ <https://www.unhcr.org/59e5f4447.pdf> (Last access: 01/07/2021).

¹⁹ Chapter 3, §3.4.

The message sent to these women by infantilization is that, again, they do not have the capacity to develop a sense of self, and the result is that women are not allowed to speak for themselves and to take autonomous actions.

I want to argue that infantilization undercuts the authority of women to speak for themselves; infantilizing women do not have the standing to define the terms of their social, and in this case economic, engagement with others without the intermediation of men. Infantilization is, like stigmatization, therefore a violation of opacity respect: a rigid, systematically imposed, negatively tainted identity that denies women the capacity to shape the terms in which they are to be seen by others.

(Sangiovanni 2017, p. 145)

This “rigid, systematically imposed” and “negatively tainted” identity is that they are dependent, weak, inferior, by nature more inclined to the private sphere. In this way, the author explains, women are not active agents, but passive object. In this sense, to infantilize means to objectify. As Freedman (2019) observes, this is a kind of symbolic violence. According to Sangiovanni (2019), this is an instance of social cruelty, which makes this attitude wrong in the relevant sense.

4.1.3 Instrumentalization and objectification

Finally, “we can treat others as inferiors by treating them like *objects*, as lacking in subjectivity or interiority” or “as *instruments*, as we would a tool” (Sangiovanni 2017, p. 74, italics present in the text). As with infantilization, these two examples of social cruelty are conceptualized by the author in terms of sex discrimination.

The paradigmatic example of discrimination of this kind is sexual harassment at the workplace, which disadvantages a woman as a woman, because it is a means to silence her. It tells women that they are welcome in workplaces run by men only as objects – and, therefore, instruments – of sexual perusal, without any professional authority.

Unwanted sexual attention is not simply unwanted sexual attention *simpliciter*, or a mere assertion of power or authority as may occur in any hierarchical work setting, but an assertion of dominance whose effect is to humiliate, coerce, and intimidate *through the mobilization of norms governing a gendered structure of power*.

(ibid., pp. 150-151)

Sexual harassment is an instance of wrongful sex discrimination because it objectifies the women involved as women, which means treating them as things.

Asylum-seeking women do experience the wrongful attitude of instrumentalization and objectification from a variety of actors, including smugglers, traffickers, other refugees, police officers, coastguards, NGO's staff and volunteers, Member States' parties and politicians, and news channels (Amnesty International 2016; Fernandez 2019; Freedman 2016; Freedman 2017; Friedman 1992; Gerard & Pickering 2014; Pickering & Cochrane 2012; Pickering & Powell 2017; UNHCR 2018). First, they are being sexually objectified by smugglers, traffickers, police forces and humanitarian actors. As it has been treated in the first chapter of this work,²⁰ sexual harassment is particularly common during the whole experience of refugeehood. Moreover, especially during the journey, refugee women are in great danger of being caught by traffickers, who force them into prostitution. Sexual objectification is then the main type of objectification experienced.

Instead, a perhaps less cruel but yet subtle way to commit injustice against these women, is to exploit them for political purposes. Coyle (2013) argues that the reference to asylum-seeking and refugee women as 'vulnerable victims' has high risks of being instrumentalized by parties and political ideologies.²¹ On the one hand, victimization of women works perfectly well for right-wing parties, which take the violence they are exposed to as the ultimate reason why European countries should not be opening their borders to refugees. Thereby a double objectification, Coyle (2013) argues, their argument goes as follows: "See what they do to *their* women? Do we want the same for *our* women?".²² The politicians take it also as a proof of the fact that, according to them but far away from the truth, in Europe episodes of rape and sexual violence are mainly perpetrated by (irregular) migrants or refugees (Schuster 2020).

Here, I argue, asylum-seeking women's experience of SGBV is instrumental for arguing in favor of a policy of closed borders, and the narration of this violence objectifies all the women, targeted as *someone's* women. On the other hand, reference to women's experience

²⁰ See Chapter 1, §1.1.2.

²¹ See Chapter 2, §2.3.

²² See https://www.repubblica.it/politica/2016/06/18/news/salvini_migranti_boldrini-142286886/.

of SGBV is exploited also by left-wing parties, which take advantage of it to argue in favor of a policy of open borders. Asylum-seeking women's vulnerability is put on the frontpage of (left-wing) media coverage in order to cause sorrow and compassion, in order to gain voters for the parties they support (Coyle 2013; Giorgi 2012). Where is the wrongness grounded? Again, the concept of *sense of self* comes into play. Objectification and instrumentalization of this kind are wrong because they attack these women's capacity to build, develop and maintain an integral sense of self. Therefore, they entail social cruelty.

As Sangiovanni puts it, the point of this account of discrimination is to identify the reasons that ground the *wrongness of certain actions* – those actions that entail social cruelty. Even though the wrongfully discriminatory acts that entail social cruelty are directed towards members of discriminated groups (women, LGBTQ+, people of color), what seems evident is that, in his book, the scholar focuses on dynamics that occur among individuals. For these wrongful actions are carried out by individuals in relation to other individuals, even when directed at other individuals as representative token of a groups, who are then held morally responsible for their acts of social cruelty. However, there are other aspects of the vulnerability of asylum-seeking and refugee women, that needs explanation. On the one hand, as stated in the previous chapter²³, we want a focus on individuals to avoid excessive labeling and essentialization of this group of women. So, this account works perfectly in this sense. On the other hand, however, we need to recognize that there are also – and more fundamentally – group dynamics in play. They suffer from vulnerabilities that are structural and constitutive of that intersection between their gender and their refugeehood. That is why Sangiovanni's account is not sufficient, and we need to take one step further in the direction of an approach of injustice that explains where their intersectional vulnerabilities are grounded.

4.2 Injustice as oppression and domination

Young (2011, 2013) defines injustice in terms of oppression – “the institutional constraint on self-development” – and domination – “the institutional constraint on self-determination”

²³ See: Chapter 3, §3.5.

(Young 2011, p. 37). According to the author, oppression is a concept that has a group dynamic rather than individual mechanisms. This means that it is a phenomenon that operates on groups. The scholar (2011, 2013) argues that it is not possible to give an ultimate and perfectly clear definition of oppression, but, in the course of her book (2011) she gives some attempts. Generally, she argues,

Oppression consists in systematic institutional processes which prevent some people from learning and using satisfying and expansive skills in socially recognized settings or institutionalized social processes which inhibit people's ability to play and communicate with others or to express their feelings and perspective on social life in contexts where others can listen.

(Young 2011, p. 38)

If it is a given that all the oppressed suffer from a common condition, there are no definite and common sets of criteria able to identify the condition of oppression for all the oppressed groups.

On the other hand, domination is a concept that refers to

Institutional conditions which inhibit or prevent people from participating in determining their actions or the conditions of their actions. People live in structure of domination if other persons or groups can determine without reciprocation the conditions of their action, either directly or by virtue of the structural consequences of their actions.

(Young 2011, p. 38)

The case of asylum-seeking women (and asylum seekers in general) is evidently in line with this definition of domination. For asylum seekers cannot determine the conditions in which they can live the experience of refugeehood in host countries. For instance, citizens – through their governments – can make decisions towards reception policies that asylum seekers cannot reciprocate or effectively contest. Young highlights the fact that the two concepts overlap, but still maintains that they ought to be referred to separately. More precisely, even if it is reasonable to say that oppression often entails domination, there are cases of oppression that are not directly produced by domination, and not all the dominated people or groups are also oppressed. In this chapter, my focus is primarily on the concept of oppression. The cases of oppression that do not necessarily include nor entail domination are the five categories of oppression: *exploitation, marginalization, powerlessness, cultural*

*imperialism, violence*²⁴. The point of differentiating between different conditions of oppression relies in the acknowledgment that oppression is not a unitary concept, but it has many faces. As stressed by Young, the presence of any of those forms of oppression makes one group oppressed, with no need to suffer from *all* the categories of oppression. In the next pages, I will interpret asylum-seeking and refugee women's vulnerabilities through the lenses of these faces.

Before addressing these five faces of oppression, it is important to stress that oppression is understood here as a *structural* and *systemic* concept. This means that the causes of this oppression cannot be located only in individual conduct and intentions, but are "embedded in norms, habits, and symbols, in the assumptions underlying institutional rules and the collective consequences of following those rules" (ibid., p. 41). The point is that these norms, habits, market mechanisms, and collective social rules produce oppression in ordinary interactions and everyday life even though the people that are pursuing them are well-intended. Because of this, oppression is reproduced systematically in cultural, political, social, and economic institutions. In more precise words,

Structural injustice, then, exists when social processes put large groups of persons under systematic threat of domination or deprivation of the means to develop and exercise their capacity, at the same time that these processes enable others to dominate or to have a wide range of opportunities for developing and exercising capacities available to them.

(Young 2013, p. 52)

²⁴ Here, some secondary discussion on Young's theory. For a general overview on her theory: Ferguson, A. & Nagel, M. (2009) (eds.), *Dancing with Iris: The Philosophy of Iris Marion Young*, New York, Oxford University Press. On her ideas of structural injustice and group structure: Nuti, A. (2019), *Injustice and the Reproduction of History: Structural Inequalities, Gender and Redress*, Cambridge, Cambridge University Press. Woodly, D. (2015), "Seeing Collectivity: Structural Relation through the Lens of Youngian Seriality", *Contemporary Political Theory*, 14:3, pp. 213–233. For a critical reading of her theories of groups and five faces of oppression, see: Allen, A. (2008), "Power and the Politics of Difference: Oppression, Empowerment, and Transnational Justice", *Hypatia*, 23:3, pp. 156-172. Fraser, N. (1995), "Recognition or Redistribution? A Critical Reading of Iris Young's *Justice and the Politics of Difference*", *Journal of Political Philosophy*, 3, pp. 166-180. Hawkesworth, M. (2008), "The Pragmatics of Iris Marion Young's Feminist Historical Materialism", *Politics & Gender*, 4:2, pp. 318-326.

Structural injustice, by definition, relates to *social structures* (Haslanger 2012; Nuti 2019; Owen unpublished; Sangiovanni 2018; Young 2011). As Owen (unpublished) notices, Young conceptualizes social structures in terms of four features:

- a. A social structure is a multidimensional field where population is differently distributed across it;
- b. Social structures are not states, but processes which only exist in terms of interactions and actions of the people involved;
- c. The present interactions and actions are the result of inherited past interactions and actions;
- d. The actions and interactions that shape one social structure can produce unexpected and unintended effects.

Oppression, as understood here, is therefore also systemic, in the sense that there need not be any direct correlation between oppressed groups and oppressing groups. This means that an oppressed group does not need to have a correlate oppressing group. This is due precisely to the fact that there is no need for one single group that intentionally and consciously oppresses another in order for oppression to occur. Thus, the relations of oppression and domination “have no necessary connection to the avowed intentions of actors” (Owen unpublished, p. 3). Nevertheless, I add, this does not mean that individual responsibility ceases to exist. As Sangiovanni puts it, individuals can still be held responsible “for how they contribute to and reproduce structural injustice” (Sangiovanni 2018, p. 461). Important for the purpose of this work here is the conceptual move from the reference to individuals to the focus on categories of persons, i.e., groups.

Also, the five faces of oppression theorized by Young are understood here as structural. Young suggests going in this direction in a later work (2007), where she introduces the concept of *positional difference*, which “defines social groups as constituted through structural social processes which differently position people along social axes that generate status, power, and opportunity for the development of capacities or the acquisition of goods” (p. 64). The groups that are situated in disadvantageous positions suffer from structural inequality, in the sense that they have structural disadvantages to access resources, opportunity for self-development, for decision-making, and are more likely to be treated with

disrespect. Therefore, they are more at risk of facing exploitation, powerlessness, marginalization, cultural imperialism, and violence. In line with what I argued in the last chapter when treating vulnerability, Young is precise in stating that “these structural inequalities do not determine that every member of a less privileged group suffers deprivation and domination” (ibidem), but precisely that the members of these disadvantaged groups are structurally more vulnerable to harm than others. Examples of structural inequalities are racial inequalities, and gender inequalities.

4.2.1 Exploitation

Recall from Chapter 1 Maria, 26-year-old woman, from Cameroon, who was rescued by Médecins Sans Frontières:

“People sell people. Selling people is normal in Libya”

She stated that, after being abducted by armed men, she was forced into prostitution and repeatedly raped.²⁵

The first face of oppression, of which the quotation above is an example, is the *exploitation*. This is understood as a normative reformulation of the Marxian descriptive or functional notion.²⁶ Young follows a line which is also more normative in core than the theory of exploitation expressed by Macpherson (1973) that in capitalist society there are individuals who exercise their skills and competences for the benefit and for the purposes of other people. The power of the workers is systematically transferred to the capitalist class and decreases by more than the transferred portion, as they suffer loss of autonomy and materials. To ensure that there is justice, therefore, it is necessary to eliminate the institutional forms that allow this transfer, to replace them with other forms that, on the other hand, encourage the promotion of skills and a similar development of them in all individuals.

²⁵ See Chapter 1, §1.3. Médecine sans Frontières (2016), “Trapped in Transit. Refugees, migrants and asylum seekers locked up in Libya del 2016”, <https://msf.exposure.co/trapped-in-transit?platform=hootsuite> (italics present in the text).

²⁶ The Marxian notion of exploitation refers to the paradox of capitalism: how class domination can even exist if we all are, at least in theory, free? Profit comes from the difference between the value of the work done and the labor force, so whoever owns the capital gets rich by taking possession of the surplus value obtained.

Thus, Young defines this concept as “the process of the transfer of the results of the labor of one social group to benefit another” (Young 2011, p. 49). Young criticizes and distances herself from distributive interpretations of exploitation. According to Young, the injustice of exploitation consists not so much in the inequalities of productive resources possessed by classes, or by social groups, such as men and women. Instead, it consists of the social processes that give rise to this inequality and the transfer of energies between the various groups. For there to be justice, cultural institutions and practices must be reorganized.

The concept of exploitation is not limited to describing the domination of one class over another but can be expanded further. It can include other social groups and other forms of domination, such as racial domination and that exercised over women. Regarding gender injustice, it was easy for her to show that female oppression is the cause of the systematic transfer of power from women to men, especially the fruits of their domestic and material labor and sexual energies.²⁷ Women work for men, and this is precisely what would make possible the realization of the power of the latter, as they are free to spend their energies in other areas and activities (Young 2011).

The exploitation theory works well not only for categories of class, race, and gender, but also for social group in general, including the social group of refugees and seekers of international protection, which is exploited by traffickers and smugglers. They make significant gains on the refugee crisis in general, as they take advantage of the needy situation of individuals fleeing persecution, wars, and poverty. As seen elsewhere, they demand high prices to facilitate entries into the EU. For the women, this price is often rape, abuse, the pressure to exchange sexual relations with the smugglers when cashless, and the involvement in a network of sex workers within the camps (Freedman 2016).

²⁷ See: Brown, C (1981), “Mothers, Fathers and Children: From Private to Public Patriarchy”, in: Lydia Sargent, *Women and Revolution*, Boston, South End; Delphy, C. (1984), *Close to Home: A Materialist Analysis of Women's Oppression*, Amherst, University of Massachusetts Press; Ferguson, A. (1989), *Blood at the Root*, London, Pandora.

There is another and more subtle aspect. Investigative reports by The Post Internazionale (2017)²⁸ and L'Espresso (2014)²⁹ clearly show that often cooperatives do not release pocket money³⁰ to addressees but keep it in order to enrich themselves. The Prefectures, it still emerges, are in a hurry to place migrants regardless of their future quality of life. "There is no ranking and even the calls that are made official reward only the economic aspect: the body that offers least to host them wins", says Alberto Molosso, president of PIAM non-profit organization in Asti³¹ (TPI 2017, my translation). Furthermore, there is no Commission that carries out checks on the work of these entities. In the same investigation, the association LasciateciEntrare identifies in subcontracting the ultimate drift of this system: "Cooperatives that are remunerated with 35 euros per day per migrant, transfer them in turn to other centers that keep them for 20 euros a day. As if they were bargaining chips. Controls must be increased" (ibidem).

As for women, they seem to be functional to the perpetuation of this type of reception system. First, they are functional to pity. So, in the public discourse they raise enough public awareness to motivate the continuity of some reception policies, but not enough awareness to consider the idea of opening channels, safe transit and more controlled permanent camps. This way they can continue earning illegally. Furthermore, it is the women who seem to suffer the most from this system, as they are deprived of the psychological support and a dignified and safe living conditions necessary to face the abuses suffered and to avoid new ones. This is exacerbated by the fact that European reception procedures were not originally designed to prevent or address gender-based violence³² and in the reception centers there is

²⁸ <https://www.tpi.it/2017/01/05/accoglienza-migranti-chi-guadagna/#r> (Last access: 30/09/2021).

²⁹ https://inchieste.repubblica.it/it/repubblica/rep-ita/2014/05/06/news/la_grande_truffa_dei_centri_accoglienza-85402037/ (Last access: 30/09/2021).

³⁰ In Italy, each migrant has the right to packets of money, which are precisely the 'pocket money', i.e. 2.50 euros per day. See: https://www.gazzettaufficiale.it/atto/serie_generale/caricaArticolo?art.progressivo=0&art.idArticolo=1&art.versionsione=1&art.codiceRedazionale=05A11464&art.dataPubblicazioneGazzetta=2005-12-05&art.idGruppo=0&art.idSottoArticolo1=10&art.idSottoArticolo=1&art.flagTipoArticolo=1 (Last access: 30/09/2021) and http://www.prefettura.it/FILES/AllegatiPag/1237/01_10_2015_-_Manifestazione_Interesse_Accoglienza_Migranti_-_Allegato_4.pdf (Last access: 30/09/2021).

³¹ The PIAM non-profit organization belongs to the type of CDA. It was the first in Italy to experiment with the integration of migrants in families, as well as in reception centers.

³² See Chapter 1.

considerable difficulty in grasping the signs of the traumas suffered (Querton 2014; Kneebone 2014). But, above all, refugee and asylum-seeking women are exploited in the sex market by traffickers and others, who force them into prostitution and turn them into slaves (Amnesty 2016; Kneebone 2014), as illustrated in Chapter 1 where I also reported the testimony of Hope, who was forced to have sex with the clients of a Libyan brothel, and Amal, who was given transformed into a sexual slave by an Islamic State’s militia (Amnesty International 2016; Médecine sans Frontières 2016).³³

4.2.2 Marginalization

“It was very hard in those months when there were no other women, it was stressful. I had no one to talk to, to open up to”. Bintu, a Nigeria woman arrived in Italy in 2016 (Zuccarelli 2017, p. 2)

The phenomenon of marginalization occurs when “a whole category of people is expelled from useful participation in social life and thus potentially subjected to severe material deprivation and even extermination” (Young 2011, p. 53). This is one of the most typical forms of injustice that female refugees and asylum seekers suffer. They experience this kind of oppression even before they leave. In fact, if in war or for any other circumstance they lose their male reference figures, such as brothers, husbands, and fathers, they are humiliated and marginalized by the community to which they belong (Querton 2014). Marginalization occurs primarily during the journey and within refugee camps and reception centers by other guests. The reason is that almost always most people who live in transit countries operate a more or less severe discrimination against them, *as* women and *as* foreigners, which is often accompanied by legitimation by those countries themselves. A great example of that is Libya (Amnesty International 2021; Eapen 2017; Guterres et al. 2014; Kneebone 2014). One of the latest Amnesty International’s reports on the topic stresses that

Since late 2020 Libya’s Directorate for Combatting Illegal Migration (DCIM), a department of the interior ministry, had legitimized abuse by integrating two new detention centres under its structure where hundreds of refugees and migrants had been forcibly disappeared in previous years

³³ See Chapter 1, §1.3.

by militias. At one recently rebranded centre, survivors said guards raped women and subjected them to sexual violence including by coercing them into sex in exchange for food or their freedom. (Amnesty International 2021)³⁴

Once they arrive in the reception centers, the great majority of the guests are men, who tend to become the dominant group and marginalize women, present in a clear minority. An effective example is the one in paragraph opening. Bintu, a Nigerian girl who arrived in Italy in 2016 and was welcomed in the Leon d'Oro refugee camp³⁵ in Novi Ligure, confessed that “It was very hard in those months when there were no other women, it was stressful. I had no one to talk to, to open up to”, said Bintu (Zuccarelli 2017, p. 2). The other guests did not speak to her, excluding her from all activities because, as soon as they learned that she had lived for some time in Libya, they thought she had been forced into prostitution. Besides being stigmatized, Bintu suffered a double marginalization. First, she was excluded from the social life of the 'outside world', as an asylum seeker, in the absence of documents and knowledge of the Italian language. Moreover, at the same time she suffered this form of oppression also by those who should have become part of her community, i.e., the other guests, with the risk of being deprived of part of the material sustenance she needed, such as water and food. However, the distributive aspect of material deprivation is not the only harm, albeit serious, of marginalization since it could be solved with an equitable redistribution of goods and services. Injustices would continue to persist even with a decent material life, in the form of disrespect for oneself and a sense of worthlessness, which concern “the deprivation of cultural, practical and institutionalized conditions for exercising capacities in a context of recognition and integration” (Young 2011, p. 55). First, since marginalized people are not autonomous, but depend on the support of welfare services and institutions, they are subject to demeaning, arbitrary and paternalistic treatment. Lack of autonomy exposes them to the risk of being subject to the arbitrary authority of those who provide care support. Consequently, therefore, this means that social workers, or public and private

³⁴ See: <https://www.amnesty.org/en/latest/press-release/2021/07/libya-horrific-violations-in-detention-highlight-europes-shameful-role-in-forced-returns/> (Last access: 30/09/2021).

³⁵ The camp has been closed since 2019, some time after the approval of the Security Decree promoted by Salvini.

officials set the rules and exercise power over the living conditions of marginalized people. “Medical and social service professionals know for themselves what is good for those they serve, and marginal and dependents themselves do not have the right to claim to know what is good for them” says Young (2011, p. 54).

In the case of refugee and asylum-seeking women, this form of paternalism is particularly common. Paternalism is the attitude of humanitarian workers and security officers who continually interfere in the management of their lives. As already mentioned above, advice, reprimands, binding suggestions on how to take care of oneself and one's children and on the code of conduct to adopt are a common reality in the reception centers. Humanitarian workers try to build certain types of female subjectivity, that is, modern and emancipated personalities (Capesciotti 2016; Sansonetti 2016). Fundamental rights are therefore suspended, such as that of choice, the right to a private life and autonomy. Moreover, once they have obtained the status of refugees, if they are not alone, women have fewer opportunities and opportunities to integrate into the new society, and worst employment outcomes, given the recurrency of the logic of sexual division of labor, and their being primarily responsible for the care of children and the home, besides the pressure of maintaining their traditional cultural identity (European Commission 2018; Sansonetti 2016; Sharma 2011).

4.2.3 Powerlessness

“During her journey to Greece, Oumo was forced to engage in transactional sex twice, the first time to access a fake passport and the second time to gain passage on a boat from Turkey. *‘I had no choice’*, Oumo explained”
(UNHCR *et al.* 2017, p. 8)

“

There is a substantial difference between those who have power and those who do not, says Young (2011). In the first place, it is true that the majority of the population does not participate in public decisions which also affect their quality of life. However, the 'powerless' are those who have no authority even in the sense of agents who mediate the decisions made by others. They never exercise power, even if power is systematically exercised over them they never give orders, because they have no right and must always receive them. To be

powerless means to “lack the authority, the status, and sense of self that professionals tend to have” (Young 2011, p. 57). Associated with this form of oppression, there is “the inhibition in the development of one’s capacity, lack of decision-making power in one’s working life, and exposure to disrespectful treatment because of the status one occupies” (ibid., p. 58).

We may say that refugee and asylum-seeking women hardly exercise power, which is mainly exercised over them. This is connected in a certain way to the oppression of marginalization. Women have little power over their bodies or their children, as those who do – such as male family members – exercise their control over their education, their linguistic competences, and their way of behaving (Kabir & Klugman 2019).³⁶ The lack of power leaves the person few opportunities to exercise and develop their skills, and this is due to the gendered division of labor. Those who do not have any form of power have no effective autonomy and are not respected. Asylum seekers are not allowed to work until they receive the relevant documents and, in fact, until they receive the status, and often even for a period after recognition, the labor market is almost fully closed to them (Pascale 2016). Refugee women face greater and more persistent difficulties in integrating into the labor market than their male counterparts. Highly educated women also tend to have a higher unemployment rate than other migrant women and refugee men (Abadie *et al.* 2016). There is therefore a lower expectation for refugee women to find work than men, once they have obtained the status, and they fall more easily in a situation of powerlessness. Furthermore, if they are accompanied by male reference figures, they are unlikely to achieve economic and decision-making autonomy, as it is possible that they will not even be given the opportunity to seek work. If men and boys are more encouraged to integrate into the host society, women and girls are often forced to maintain a certain cultural identity (Sansone 2016). So, once again, power is exercised over them, with little possibility of exercising it in turn. On the contrary, those in power have a lifestyle that is characterized by 'respectability' (Young 2011), which can be considered a privilege. The aspect of privilege is particularly evident, again according to Young, in the dynamics of sexism. Women are not immediately treated with the respect and deference they deserve, but they must demonstrate their respectability. Instead, white

³⁶ See also: <https://theconversation.com/western-refugee-policies-can-cause-power-imbalances-in-the-home-leading-to-unintended-dangers-for-women-117213> (Last access: 30/06/2021).

men from lower social classes are treated respectfully until class membership is manifested. However, the lack of power of refugees and asylum seekers also affects their experiences during the journey. Violence, abuse, discrimination, and intimidation³⁷ are all tools aimed at depriving women of dignity, provided that there is an initial recognition of it, and therefore trust and, consequently, power. Furthermore, during the asylum application procedure, it is a fact that women are often not informed of the possibility of making a separate and independent application from the men in their family (Bonewit 2016).

As an instance of this, I recall here the testimony of Oumo, the girl from a country in Sub-Saharan Africa at war, who was forced into prostitution to gain access to a fake passport and to get a ride on a boat from Turkey. The point here is that she was not provided the necessary information regarding the services available to her, nor information on how to register for them.³⁸ Left to herself and deprived of the information she was entitled to, she was deprived of any form of power. Another aspect to bear in mind is that Dublin Regulations deprive asylum seekers of any choice as to where to seek asylum. If we consider the fact that men are generally the ones who leave earlier in the family and that women are unlikely to obtain recognition of family reunification (Mangano 2017), it is the latter who pay the highest price for this lack of power. This delayed or even denied right exposes women to further risks, since it forces them to transit illegal and dangerous routes (Ibidem). Furthermore, even when they manage to obtain recognition of this right, women are lacking in power. In fact, if family recognition works, their fate is anchored to that of their husband and to what happens to him on his journey to Europe and once he arrives on European soil. The contradiction is twofold: this right is hardly recognized and, should it be recognized, her future is entrusted to her husband's (or any other adult male family member's) fate.

4.2.4 Cultural imperialism

Case study: A humanitarian actor told the assessment team about an SGBV case that was assisted because the survivor's family approached humanitarian actors in Greece as the survivor was in need of medical attention. She was taken to the hospital and after receiving treatment left with her family the same day.

³⁷ Perpetrated by the police, traffickers, other asylum seekers and even humanitarian workers.

³⁸ See Chapter 1, §1.3.

(UNHCR et al. 2017, p. 9)

Cultural imperialism refers to “how the dominant meanings of a society render the particular perspective of one’s own group invisible at the same time as they stereotype one’s group and mark it out as the Other” (Young 2011, pp. 58-59). This alleged universal claim of the dominant group is challenged by the encounter with other groups, such as the one of asylum seekers (foreign people that need protection). To cope with this challenge, the dominant group adopt strategies to bring back the Other within their domination area. In Young’s words, “the difference of women from men [...], Africans from Europeans [...] homosexuals from heterosexual [...] becomes reconstructed largely as deviance and inferiority” (ibid., p. 59). Asylum seekers suffer from the oppression of cultural imperialism by the dominant culture, that is, that of the transit and host countries. In Libya, for example, they suffer from this form of domination and those who perpetuate it are the local men and women, among whom there is a strong racism and misogyny. They risk to being harmed, raped, sold as sexual slaves, since asylum seekers are considered dangerously deviant from the local population and women are considered inferior to men. In Europe, on the other hand, they are oppressed by the humanitarian workers themselves and by the heads of the territorial commissions.³⁹

First, in fact, despite the UNHCR guidelines recommend reassuring tones and questions pertinent to the instance, the hearings often turn into questioning with accusatory tones (Mangano 2017). Humanitarian workers, on the other hand, do not consider them human beings capable of making decisions about their own bodies and taking care of their children (Gerard and Pichering 2014; Kneebone 2014; Oxford 2014; Querton 2014; Sansonetti 2016; Singer 2014; UNHCR, 2016). The starting point for this form of oppression is the universalistic claim of the culture and experience of the oppressing group, that is, the dominant one, which is self-classified as universal and therefore representative of all humanity. The oppressing group, since it regards its own experience and culture as normal, when it encounters other groups that refute their universal interpretation of its own experience tends to view difference as inferiority, deviance, lack and negativity (Young 2011). Muslim

³⁹ See Chapter 1.

asylum-seeking and refugee women who, for example, wear the hijab are labelled by the host and dominant culture⁴⁰ as oppressed. In fact, according to the common stereotype, the hijab is the symbol of female submission since women are allegedly forced to wear it (Janson 2011). These women are therefore labeled as ‘different’ and judged as inferior. Discriminated as women, asylum seekers and therefore ‘guests’, and as Muslims. Discrimination manifests itself with verbal and physical attacks and also within the labor market, where they are often forced to remove the veil, forcing some to give up their jobs and therefore to economic independence (Polchi 2017).

However, this is not the only form of cultural domination they suffer.⁴¹ They are also victims of the male cultural imperialism of their community of origin and, therefore, are caught between two oppressive mechanisms. In addition to the claim to conform to the dominant cultural group of host countries, in fact, refugees and asylum seekers also suffer from the oppression of the men of their own community. They expect women in the host country to embody the female models of their own culture of origin (Sansonetti 2016). For this reasons, unaccompanied women face challenges finding accommodation, finding employment and access to health services, like all refugees. Unlike male refugees though, “finding stable and adequate accommodation is much more complicated”, underlines the Agency for the Third Sector, the Redattore Sociale (2016, my translation)⁴². Accordingly, they use emergency shelters more often than men, are forced to accept unsuitable, overcrowded and potentially dangerous accommodation. Furthermore, accompanied women they suffer from a sort of imperialism within their cultures that encourage traditionalist family structures. For instance, language courses are more difficult for women to reach than for men, as they are often incompatible with their family duties and childcare, for whom, struggling to find a job, they are unable to access nursery services (European Commission 2018). Women in the host country find work mainly as domestic workers or carers, below their skills and qualifications, and are often exploited and underpaid. “Women are often forced to accept

⁴⁰ In this case, European countries, and culture.

⁴¹ As for domination, I refer to Young’s definition, reported above.

⁴² <http://www.redattoresociale.it/Notiziario/Articolo/502570/Donne-rifugiate-cosi-le-discriminazioni-ostacolano-la-nuova-vita-in-Europa>.

illegal jobs and degrading conditions in order to remain in the country of arrival”, writes the European Parliament Resolution of 8 March 2016 on the situation of refugee and asylum seekers in the European Union.⁴³ “This ‘segregation’ on the labor market seems to affect women much more than men, who are able to have access to a wider range of opportunities”, continues the abovementioned survey (Redattore Sociale 2016).

From a health point of view, women asylum seekers and refugees arrive in the host country psychologically and physically tested, but the services that welcome migrants and help them deal with gender-based violence are few and often they are not made aware of the existence of this issue. The case study in opening paragraph of this section is a perfect example of this: a woman who asked for assistance due to SGBV was released the same day after having received treatment. This is a case of cultural imperialism because it represents a discrimination against a weaker social group, that of women seeking asylum, based on a stereotyped view of migrants since the health care procedure in Greece in the case of sexual and gender-based violence in this case was not respected. The report shows that when the worker asked if services to address sexual and gender-based violence were available, other humanitarian workers said that refugee and asylum-seeking women are not expected to be using this type of service. In a clear example of a stereotype towards a group it is taken for granted that the victim does not want medical and psychological care and attention, because she is in a hurry to continue her journey, and therefore this service is either not made available or, when it is, the women are not even informed, even though they would be entitled to it.

The groups that suffer from cultural imperialism, in this case those of women and adolescents seeking international protection and refugees, are defined from the outside. The members of these groups perceive that the dominant meanings are attributed to them and not arising from their own interpretations of themselves. Du Bois (2017) and Young (2011) called this experience a 'double consciousness', which takes shape when oppressed groups elaborate a refusal to coincide with stereotypes and devalued images of themselves. Double consciousness is therefore the sensation of seeing oneself not only through one's own eyes but also through the eyes of others, who look upon with a mixture of pity and contempt. What

⁴³ https://www.europarl.europa.eu/doceo/document/TA-8-2016-0073_EN.html.

happens is that the group that undergoes domination is differentiated from the group that dominates, as this condition of oppression originates in experiences of segregation. Therefore, Young points out, the injustice of cultural imperialism consists in the fact that the oppressed group cannot express its own interpretation of social life in such a way as to be able to leave a mark on the dominant group, which instead imposes its experiences considered as universal, normal, and legitimate. Through the stereotypes attributed to them, those oppressed by cultural imperialism are at the same time at the center of attention and invisible, as their experience and culture are not given appropriate importance, which are instead marginalized and the subject of stereotypes. Precisely in this invisibility combined with being constantly at the center of attention and judged, the experience of asylum seekers is misrecognized.

4.2.5 Violence

I never got the chance to sleep in settlements. I was too scared that anyone would touch me. The tents were all mixed and I witnessed violence... I felt safer in movements, especially on the bus, the only place I could shut my eyes and sleep. In the camps we are so prone to being touched, and women can't really complain and they don't want to cause issues to disrupt their trip.

A Syrian refugee named Reem talking to Amnesty International (2016)

Lastly, systematic violence. A group suffers the oppression of systematic violence when its members live in constant fear and awareness of being targets of unjustified aggression, of suffering physical, material, or psychological damage. In the category of violence, according to Young, it is also necessary to include less serious cases of harassment, insults, and intimidation, when they are perpetuated for the sole purpose of humiliating and demeaning the person belonging to the group that suffers the oppression. Women wherever in the world are aware that they risk harassment, sexual assault, or attempted rape in their lifetime.

What truly makes this oppression an injustice is not only the mere act of violence suffered. As horrible as these acts of violence are, the issue at stake here is “the social context surrounding them, which makes them possible and even acceptable [...] its systemic

character, its existence as a social practice” (Young 2011, pp. 61-62).⁴⁴ A clear example of the awareness of being constituted as a target of violence and its legitimacy is that of women in war scenarios, where rape is used as a weapon to frighten, humiliate and dishonor. It is considered normal practice and is therefore legitimized.

In Rwanda, between 100,000 and 250,000 women were raped during the three-month genocide in 1994. United Nations agencies estimate that more than 60,000 women were raped during the Civil War in Sierra Leone (1991-2002), more than 40,000 in Liberia (1989-2003), up to 60,000 in the former Yugoslavia (1992-1995), and at least 200,000 in the Democratic Republic of Congo during the last 12 years of war.

(UNRIC 2017, my translation)

Also, according to Young, an important feature of this form of domination and oppression is its irrationality, as those who perpetuate it are motivated by fear or hatred of such groups, or even by the mere desire to abuse and victimize. Distributive theories of justice do not address the issue of violence (Young 2011). The reason lies in the fact that philosophers do not take into consideration the systemic nature of this form of oppression and consider it the result of the action of individuals, such as fanatics, suffering from mental illness or deviant. Therefore, they do not recognize the distinctive feature of violence as a form of oppression, that is, it's being systematic and legitimized by society. Violence is systemic when it is directed at the members of a particular group just for the fact of belonging to that group. Therefore, Young's description of systemic violence seems to be working very well to describe the experience of women refugees and seeking international protection.

For example, women refugees and seeking protection have reason to fear episodes of violence and rape only because they belong to the female gender and because they are migrants and are aware that they are exposed to risk every day. So much so that some of them, before leaving, decide to undertake hormonal treatments to inhibit ovulation and prevent any pregnancies caused by the rape they know they are at risk of incurring (Chiarelli 2017). “Just living under such a threat of attack on oneself or family or friends deprive the oppressed of freedom and dignity, and needlessly expends their energies” (Young 2011, p.

⁴⁴ This is linked with what has been treated in the previous chapter of this work. In particular, with the acknowledgment that injustice for asylum-seeking women is linked with the systematicity of vulnerability and the constant risk and fear of being harmed.

62). The European community and its citizens seem to be accustomed to this violence and injustice, legitimizing it. As Young highlights, this kind of systemic violence is quasi-tolerated in the sense the citizens find it unsurprising since it happens frequently: “To that extent society renders their acts acceptable” (ibidem). The violence and dangers to which refugee and asylum seekers are subjected during their journey, their stay in transit countries and in host countries have already been highlighted: sexual and physical violence, subjection to prostitution, verbal abuse and harassment, risk of genital mutilation, intimidation and human trafficking, deaths related to childbirth (Eapen et al. 2017; Gerard and Pichering 2014; Guterres et al. 2014; Kneebone 2014; Oxford 2014; Querton 2014; Sansonetti 2016; Singer 2014; UNHCR 2016). All of this causes potentially permanent physical and psychological damage. It is a direct, systematic, and structural violence, as there is no clear dividing line between the public and private actors of this violence, such as other refugees and asylum seekers and persons belonging to the security staff and humanitarian actors (Gerard and Pickering 2014). Women traveling alone feel insecure in transit refugee camps in Croatia, Greece, and Hungary, where they are touched, physically and verbally abused (Amnesty International 2016)⁴⁵. Across Europe, they are forced to sleep with hundreds of single men and use the same toilets, which makes them particularly at risk of violence. As already reported in Chapter 1, §1.3, Reem, Natasha, Ramya, and another 22-year-old Eritrean girl told Amnesty International workers what they experienced throughout their journey on European soil. Such violence and the injustice that follows are structural, as they derive from the combination of public and private actors, such as traffickers and the police. As reported by Amnesty (2016), an Iraqi girl said that a German security guard offered her clothes in exchange for sexual intercourse.

Of all the faces of oppression analyzed here, it seems evident now that it is this last form of oppression that hits most specifically and extensively asylum-seeking and refugee women. For it is the oppression that more systemically places the women that are subject of this thesis at risk of harm.

⁴⁵ <https://www.amnesty.org/en/latest/news/2016/01/female-refugees-face-physical-assault-exploitation-and-sexual-harassment-on-their-journey-through-europe/>.

4.3 Injustice as a kind of epistemic wrongdoing: *Epistemic injustice*

At this point, a further step forward is needed. There is another kind of injustice that is relevant to discuss, to analyze asylum-seeking and refugee women and girls' experience of asylum and refugeehood conceptually and normatively, one that derives from wrongful epistemic practices. As noticed by Pohlhaus (2017), the idea of a form of injustice that involves epistemic values and practices brings together at least three paths of philosophy: epistemology, political philosophy, and ethics.

What is epistemic injustice?

Epistemic injustice refers to those forms of unfair treatment that relate to issues of knowledge, understanding, and participation in communicative practices. These issues include a wide range of topics concerning wrongful treatments and unjust structures in meaning-making and knowledge producing practices, such as the following: exclusion and silencing; invisibility and inaudibility (or distorted presence or representation); having one's meaning or contributions systematically distorted, misheard, or misrepresented; having diminished status or standing in communicative practices; unfair differentials in authority and/or epistemic agency; being unfairly distrusted; receiving no or minimal uptake; being coopted or instrumentalized; being marginalized as a result of dysfunctional dynamics; etc.

(Kidds *et al.* 2017, p. 1)

As highlighted by Nancy Tuana (2017), knowledge and the subjects of knowledge have been very central to feminist theory since its inception. According to this scholar, "feminist and other liberatory epistemologies aimed not only to diagnose and contest epistemic injustices, but also to provide resources for more just epistemic practices" (p. 125). Feminist epistemologies have pointed out, first, that epistemology as a discipline failed to see that any knower knows from a particular standpoint, that knowledge is always *situated*. In this sense, feminist epistemologies highlighted that objectivity, lack of emotionality and disinterestedness are not necessarily qualities required to be a knower, and that there are linkages between knowledge and power. These linkages prepare the ground for systematic epistemic silencing and epistemic violence. As treated in the previous paragraph about the infantilizing attitudes of humanitarian actors towards asylum-seeking and refugee women, the point is precisely the fact that given that they believe to know better than these women what is best for them and their children, they exercise power over them thereby reducing their

autonomy (Chemin & Nagel 2020; Freedman 2019). Or, also, recall the lack of attention and lack of listening of what they have to say when implementing policies for minimizing the risk of abuse in refugee camps (Swine 2017). Again, they are epistemically silenced. Although it is perhaps an unwanted outcome, the result is that they exercise over them power and epistemic violence.

The scholar that initiated this line of thought is Miranda Fricker with the book *Epistemic Injustice. Power & the Ethics of Knowing* (2007). Epistemic injustice is defined by the scholar generally as “a wrong done to someone specifically in their capacity as a knower” (p. 1). The aim of theorizing this kind of injustice was to shed light on the ethical implications of two common epistemic practice, which are “conveying knowledge to others by telling them and making sense of our own social experiences” (ibidem). Fricker theorized two forms of epistemic injustice – *Testimonial and Hermeneutical injustice*, which I will treat in depth.

Central to these two forms of epistemic injustice is the notion of *social power*,⁴⁶ and specifically what Fricker defines as *identity power*. According to Fricker (2007), identity power is “a form of social power which is directly dependent upon shared social-imaginative conceptions of the social identities of those implicated in the particular operation of power” (p. 4). Identity power is present whenever shared conceptions of social imagination are at work. The parties must accept and share the given collective conception. For example, gender is a concept where identity power is in play, since it is a fertile field for social and collective imaginative co-ordination. For an example it is what it means to be a man or a woman, where stereotypes play a central role, even if people do not to consciously accept them. The exercise of identity power – Fricker argues – can be active or passive. Actively exercising identity power means performing an action to achieve a goal that she has the power to achieve. For example, Andrea L. Miller (2018) published a legal study in which it was made perfectly clear that identity power is likely to play a significant role in decision-making. The participant were 619 sitting trial court judges from the United States. As for their racial and gender identity, 85.5% were white and 68.2% men (29.7% women). In regarding to gender, the

⁴⁶ Defined as “A practically socially situated capacity to control others’ actions, where this capacity may be exercised (actively or passively) by particular social agents, or alternatively, it may operate purely structurally” (Fricker 2007, p. 13).

sample was representative of the statewide population of judges. The study established that in different law cases – involving divorce and children custody, and discrimination – the influence of gender ideology is powerful.⁴⁷ This is a clear example of gender bias, but also of the direct exercise of identity power. For it should be clear that if the great majority of court judges are men, then these men are exercising an active identity power in decision-making. For they actively silence the women involved in law cases. On the other hand, consider a scientific context, like a conference, where the speakers are deliberately only men, because it is common belief that women cannot speak in public or even participate in science. These men are exercising a passive identity power by simply being men. Finally, identity power may be *agent-sourced*, or *structure-sourced*. This means that it may be exercised by determined agents, or even be purely structurally operated.

Returning to asylum-seeking and refugee women, they seem to be subjected to both these two forms of identity power. Again, I use the same example of humanitarian actors epistemic silencing asylum-seeking women, it is clear how this silencing is caused directly by agents (humanitarian actors), and how it is also structurally operated, since it is precisely the asylum system itself that creates and reinforces these dynamics (Swine 2017). Moreover, EU citizens exercise passive identity power by simply being EU citizens, with the additional rights that this involves. The point is that they have a sort of credibility default by simply being native and citizens than asylum seekers do not have.

As it will be treated later in this chapter, the concept of identity power is central for both the accounts of testimonial injustice and hermeneutical injustice. In a later paper Fricker (2017) clarifies that the class of wrongs in which someone is disadvantaged and downgraded in their status as an epistemic subject, is a form of discrimination. More precisely, “the cause of testimonial injustice is a prejudice through which the speaker is misjudged and perceived as epistemically lesser (a direct discrimination)”; while “the cause of a hermeneutical injustice is a background of inequality of hermeneutical opportunity – specifically, hermeneutical marginalization in relation to some area of social experience” (Fricker 2017, p. 53).

⁴⁷ See: <https://journals.sagepub.com/doi/10.1177/1948550617741181> (Last access: 01/10/2021).

At the same time as Fricker was elaborating the concept of epistemic injustice the book *Race and Epistemologies of Ignorance* (2007), edited by the scholars Shannon Sullivan and Nancy Tuana, was giving renewed attention to the concept of *epistemology of ignorance*, introduced by Charles Mills (1997), which denotes an active resistance to particular kinds of knowledge, and treating it in the light of the idea of epistemic injustice. Medina (2008) highlights how this ignorance is not mere unwillingness to know, but “is an ignorance that requires a carefully orchestrated and laboriously maintained form of epistemic neglect” (p. 313).

When asylum seekers arrive in the host countries, they must convince somebody else of the truthfulness of their story. Women need to convince authorities that they have experienced traumas related to FGM, sexual abuse, etc., or to fear to return to their home countries because they would be persecuted or subjected to FGM, and these authorities need to believe them. As highlighted by Eckenweiler (2019), “Knowledge-sharing, understanding, and justified, true beliefs are thus at the heart of the process(es) of claiming and being granted asylum”⁴⁸. The point is that interviews are conducted in an inquisitorial mode and the atmosphere is filled with tension atmosphere (Eckenweiler 2019; Singer 2014).⁴⁹ During these interviews, there are many problems involving translation, and, also, involving cultural differences, prejudices and mutual suspicion between interviewer and interviewed. This can erode the capacity of explaining and the attitude of understanding. When trauma deriving from sexual abuse is involved, victim-blaming, shame, and fear of being stigmatized are very common and “they may be reluctant to tell their stories in full if at all, and if they do, they may meet with misunderstanding, misinterpretation, and disbelief”.⁵⁰ These barriers are common due to cultural norms surrounding gender, which translates into lack of social support.

The issues treated so far in this chapter have, in fact, an epistemic impact. As will be clarified in the next pages, oppression, discrimination, and epistemic lacunas, gaps, and deficits mutually reinforce. Epistemic injustice, especially in the declinations of

⁴⁸ <https://www.ghe.law.ed.ac.uk/seeking-asylum-epistemic-injustice-and-humanitarian-testimonies/>.

⁴⁹ Also, see Chapter 1, §1.4.

⁵⁰ <https://www.ghe.law.ed.ac.uk/seeking-asylum-epistemic-injustice-and-humanitarian-testimonies/>.

hermeneutical injustice and epistemology of ignorance, can be understood as a group notion. As regards testimonial injustice, Fricker (2007) seems to pursue a more individualistic understanding of this notion in the same way Sangiovanni does. For the relevant relation within which credibility deficit, and therefore testimonial injustice, occurs is between individuals, because Fricker I will recognize however that testimonial injustice is not only about individual exchanges, but that credibility deficit fundamentally involves group identities. Fricker does not deny that testimonial injustice involves groups in the sense that credibility deficits affect certain groups with more force, but she was fundamentally interested in describing a one-to-one dynamic that occur between speakers.

I will now analyze the abovementioned three forms of epistemic injustice in the light of asylum-seeking and refugee women's experiences.

4.3.1 Testimonial Injustice

Testimonial injustice is to be considered “a distinctively epistemic injustice, in which someone is *wronged specifically in her capacity as a knower*” (Fricker 2007, p. 20, italics present in the text). This kind of injustice is caused by credibility deficit. Although, generally, there can be two kinds of prejudicial dysfunction – credibility deficit and credibility excess – this does not mean that credibility can be treated as a good responding to distributive logics of justice. For “there is no puzzle about the fair distribution of credibility, for credibility is a concept that wears its proper distribution on its sleeves” (ibid., p. 19). Thus, although credibility excess can be somehow damaging⁵¹, the very instance of testimonial injustice is rather the deficit of credibility. This deficit, in turn, is caused by prejudice because when credibility deficit is caused by an innocent error, it is not an instance of epistemic injustice. Instead, the ethical trouble that causes testimonial injustice is present when the judgement of the hearer is poisoned with *prejudice*. However, when prejudice causes testimonial injustices that are connected with other types of injustice, *systematic* testimonial injustice occurs.

⁵¹ Fricker gives the example of a children being attributed a credibility excess, which brings him a damaging and unwanted ethical burden. The other example she makes is the one of a young academics who is given an excess of credibility by her supervising professor, who is then let down because her expectations were too high. This is clearly damaging for the young scholar. In the case of asylum-seeking women, an excess of credibility would mean, for example, being unwillingly involved in some kind of campaign for women rights, which would put them in a disadvantageous position of recognizability.

Therefore, systematic epistemic injustices are produced by “those prejudices that track the subject through different dimensions of social activity” (ibid., p. 27). In this way, epistemic injustice is not the only type of injustice suffered by the subject, who also experiences other kinds of (actual or potential) injustices.

Not all types of prejudice track people in this specific way, but only *identity prejudice* – which means that it refers to some social identity features exhibited by some groups. Again, it can be positive or negative, and testimonial injustice refers only to *negative* identity prejudice. In turn, identity power is in place when (negative) identity prejudice influences the hearer’s judgement of the speaker’s credibility. The systematicity of this identity prejudice derives from the fact that the speaker suffers from credibility deficit because of identity prejudice in the hearer. So, Fricker argues, “The central case of testimonial injustice is *identity-prejudicial credibility deficit*” (ibid., p. 28). Systematicity refers to a synchronic dimension, whereas when testimonial injustice is persistent, it means that it lasts over time. It goes without saying that the most severe cases of testimonial injustice refer to both these dimensions.

Asylum seekers are among those groups who are vulnerable to credibility deficits and, therefore, to testimonial injustice, often accused of inventing, or at least concocting traumas, stories of persecution and fear to improve their chances of obtaining the international protection (Eckenweiler 2019). As claimed by Baillot *et al.* (2009), “the intersection of race, gender, culture, and nationality may present distinct challenges to women asylum-seekers for whom a claim of rape is a feature of their application” (p. 197), because decision-makers often consider their narratives not credible, contributing to silence them (Baillot *et al.* 2012). Interviewers tend to attribute a lack of credibility to these women primarily because they do not tell the stories of sexual abuse and rape in a coherent way and at the first interview. However, as highlighted, you cannot expect someone who's been here a month to go into a hostile interview environment and disclose everything, it's crazy” (Baillot *et al.* 2009, p. 208). Only in asylum hearings where an atmosphere of intimidation is avoided can genuine communication arise. Yet, as already stressed in this chapter and also in Chapter 1, interviews are typically conducted with intimidating techniques of inquisition. The credibility

assessment in this context is of great importance, since corroborating evidence is often limited (Baillot *et al.* 2009, 2012; Querton 2014; Singer 2014).

Moreover, it seems that barriers to credibility may be further compounded by obstacles relating to inter-cultural communication and by difficulties associated with 'judging the possibility and probability of events in societies different from one's own'. As one interviewee in the present study put it, 'some of the stories you hear are almost incredible but you have to keep in mind that you're not in a war situation, and you just don't know what could happen'.

(Baillot *et al.* 2009)

It is worth to spend few lines on the role of wrongful stereotypes in shaping prejudices – intended as pre-judgements – which cause credibility deficits which, in turn, cause testimonial injustice. In general, stereotypes involve “a cognitive commitment to some empirical generalization about a given social group” (*ibid.*, p. 31). An example is ‘women are empathic’, or ‘refugees are poor’. These statements can be more or less strong.⁵² Psychology tells us that during the process of the speaker’s credibility judgment we use stereotypes (Fricker 2008; Kahneman & Tversky 1974; Taylor 1982). In a very basic understanding of this concept, stereotypes are very useful in our everyday life, and reliable stereotypes are a rational part of the hearer’s resource when assessing the credibility of the speaker. Nonetheless, stereotypes that are often negatively prejudicial⁵³ and hence lead to testimonial injustice. When the negative valence of identity prejudices is directed against people *qua* social type, then we are facing a negative identity prejudice. Therefore, Fricker defines a *negative identity-prejudicial stereotype* as

A widely held disparaging association between a social group and one or more attributes, where this association embodies a generalization that displays some (typically, epistemically culpable) resistance to counter-evidence owing to an ethically bad affective investment. This is the sort of prejudice that is at work in systematic testimonial injustice.

(Fricker 2007, p. 35)

⁵² The issue of stereotype is also treated in Chapter 2, § 2.3 of this work.

⁵³ Prejudices are defined by the scholar as “Judgements, which may have a positive or a negative valence, and which display some (typically, epistemically culpable) resistance to counter-evidence owing to some affective investment on the part of the subject” (Fricker 2007, p. 35).

An example of a negative identity-prejudiced stereotype in the context of refugeehood is the one of the ‘bogus asylum seeker’, who “seeks to use the asylum route for economic immigration and to a picture of those whose refugee claims cannot easily disallowed as motivated by economic reasons for seeking entry to ‘developed’ states rather than elsewhere” (Owen 2019, p. 43). Asylum decision-makers begin therefore the process of claim assessment with suspicion, the same suspicion that floats within host countries citizens. In this way, the speaker’s voice – the one of asylum-seeking women – is distorted in the hearer’s perception – the one of decision-makers and, also, public opinion. On the other hand, asylum seekers are well-aware of this default assessment made by decision-makers. As stated by Saul (2017), “Since stereotype threat may impair performance, it may lead to less credible testimony” (p. 237). This impaired performance can include stumbling over words, displaying signs of stress and hesitation, being confused on what one’s wants to say.

Bias and stereotyping work to undermine the credibility of girls and women, men and boys who give accounts of trauma and fear. Evidence suggests that in hearings, people testifying to sexual violence confront “a tendency amongst some asylum professionals to marginalise, trivialise or ignore accounts....” Researchers argue that, indeed, refugee women who testify to persecution and fear linked to sexual violence are, among asylum-seekers, least likely to be heard and believed.

(Eckenweiler 2019)

There are various factors that contribute to the lack of credibility, partly already mentioned: late disclosure, omissions, or inconsistencies, or on the contrary calm and proper demeanor (Baillot *et al.* 2009). In other words, delay in reporting rapes and abuses, nervous and confused way of narrating, and, also, too little emotions can negatively affect these women’s credibility. Asylum decision-makers do not take into consideration that a ‘culture shock’ for being in a foreigner and hostile environment, combined with trauma, can lead to a variety of behaviors in response. These behaviors go from fear of reporting rapes, to appearing too confused or too calm, and to memory loss and/or errors (Herlihy *et al* 2012; Memon 2012; Puddifoot 2021; Rogers *et al* 2015; Saadi *et al* 2021). The point in that, in such a suspicious environment, every behavior is taken as proof of being facing a bogus asylum-seeking woman, who lies about violence and trauma suffered to increment the chances of a positive response.

Testimonial injustice can be therefore seriously harmful. The wrong, according to Fricker, can be of a primary or secondary form. In the first place, to wrong someone in their capacity as a knower wrongs her in a capacity which is essential to human value per se, which makes it an intrinsic injustice. This is because by wronging someone in a capacity that constitutes an essential dimension of human value, that is knowing, we are dehumanizing her, in the way also Sangiovanni (2017) theorizes. By degrading a person *qua* knower, we are considering this person less than fully human. And “the dimension of degradation *qua* human being is not simply symbolic; rather it is a literal part of the core epistemic insult” (Fricker 2007, p. 45). We can easily see the relation to the other forms of injustice treated above. For to treat someone as having less credibility than she deserves is clearly demeaning and dehumanizing, other than aimed at exacerbating their powerlessness.

In the second place, the wrongness of testimonial injustice can also be assessed by looking at its harmful consequences, other than the damage that it does itself. Testimonial injustice has a set of follow-on harmful consequences, which must be understood as extrinsic to testimonial injustice, similar to what Luna (2018) called *cascade effects* and to what I called *vulnerability loops*⁵⁴. This secondary harm can be *practical* or *epistemic* in nature. A practical secondary harm of testimonial injustice is best exemplified by the case of the woman seeking asylum who has not been believed in her assessment of SGBV that we have seen in the previous chapter.⁵⁵ Instances of secondary harm, as we have seen, are the reiteration of abuse, loss of the asylum claim, etc. it is like a domino effect, as it has been treated previously in this work. For what regards the epistemic harm, on the other hand, testimonial injustice may affect the speaker’s self confidence in her own beliefs, or in the justification for her beliefs. Some asylum-seeking women may not, and often do not, entirely narrate their stories of abuse and persecution out of fear of not being believed, and not being so confident that what she experienced was really an abuse by the interviewer’s standards.⁵⁶ As Fricker effectively

⁵⁴ See Chapter 3, §3.2.

⁵⁵ See Chapter 3, §3.5.

⁵⁶ This, I argue, still constitute an example of testimonial injustice even though the woman does not actually narrate her story of SGBV. Testimonial injustice here comes due to a taboo and legitimate fear of not being believe. Contrary to what Fricker suggests, testimonial injustice is not only an injustice that comes within individual interactions. Rather, it can come structurally, as this example shows.

points out “someone with a background experience of persistent testimonial injustice may lose confidence in her general intellectual abilities to such an extent that she is genuinely hindered in her educational or other intellectual development” (p. 48). An abused women may lose self-confidence and fail to recognize new abuses when they arrive, such as the paternalizing attitudes of the volunteers and humanitarian workers.

According to Congdon (2017), the wrongness of testimonial injustice is best captured by a multipronged approach that takes into consideration its harmful consequences, its standing as an epistemic and ethical vice, its objectification of the victims of this injustice, and finally the misrecognition it involves. We must specifically consider that, alone, the harmful consequences of epistemic injustice do not entirely explain the degree to which it wrongs people. Neither it is done if we develop this argument in terms of this injustice’s impacts on general social welfare. As the scholar points out, we leave something out of the moral picture. This is because “the hearer not only causes vicious forms of damage and loss, but more subtly, adopts a morally untoward *stance* towards the speaker that reflects a morally deficient *character*” (Congdon 2017, p. 246). A virtue-based approach argues that we are required to directly perceive the speaker as credible or not. However, the morally deficient hearer is particularly resistant to counterevidence that could make her assess positively the credibility of the speaker. This is because “the problem consists not simply in a one-off wrongful decision on the part of the hearer, but in a flawed epistemic and ethical character” (ibidem).

Nonetheless, the scholar is still not satisfied, because he argues that this virtue-based account does not stress enough the fact that epistemic injustice is not merely wrong but is wrong *to somebody*. He turns then to epistemic objectification, which “is meant to articulate the sense in which testimonial injustice does a direct and intrinsic wrong to the speaker by treating her as less than a full epistemic subject” (ibid., p. 247). Now, reminding ourselves of the already treated distinction between being treated *as an informant*, i.e., as an active participant in epistemic exchanges, and *as a source of information*, i.e., as a passive object, we can say that what is wrong is to treat some others as *mere* source of information, solely as epistemic objects. However, according to Congdon (2017), “only some instances of testimonial injustice fit the model of epistemic objectification. The broader range of cases involves a failed relation between persons [...] as *failures of epistemic recognition*” (ibid., p.

248). Recalling Sangiovanni (2017) and the concept of social cruelty that entails acts and attitudes that obstruct the development and conservation of one's sense of self, failure in epistemic recognition is here explained as a "dissonance between one's sense of self-worth and the expressive dimension of an act or practice that withholds or denies validation of that worth" (Congdon 2017, p. 248). This is done through acts and attitudes that involve epistemic disesteem and epistemic disrespect. For the purposes of my research, this approach is useful to the extent that introduces the notion of vicious cycle of injustices that involves epistemic and non-epistemic wrongs. As I will be arguing later in this chapter, epistemic injustice and other forms of oppression and inferiorizing treatment interact, enable, and exacerbate each other. As Congdon (2017) realizes, testimonial injustice involves also the objectification, a instrumentalization, and a dehumanization of the victims.

4.3.2 Hermeneutical Injustice

Miranda Fricker (2007) gives three definitions of hermeneutical injustice, which I report here.

- 1) *The injustice of having some significant area of one's social experience obscured from collective understanding owing to persistent and wide-ranging hermeneutical marginalization.*
- 2) *The injustice of having some significant area of one's social experience obscured from collective understanding owing to a structural identity prejudice in the collective hermeneutical resource.*

Lastly, the final version of the definition given by the author.

- 3) *The injustice of having some significant area of one's social experience obscured from collective understanding owing to hermeneutical marginalization.*

The wrongness of hermeneutical marginalization lies in the structural prejudice of the collective hermeneutical resource it causes. It means that the interpretation of a marginalized group's social experience is biased by the influence of the more powerful group. Moreover, the prejudice is toward social groups *qua* social types. Exactly as testimonial injustice,

hermeneutical injustice can be *systematic* or *incidental*. Systematic hermeneutical injustice entails that the groups that are hermeneutically marginalized, are marginalized also from a socio-economic point of view, for example the systematic exclusion from some professions that causes the exclusion from hermeneutical exchange. Therefore, these groups are oppressed: “Both kinds of epistemic injustice [testimonial and hermeneutical] stem from structural inequalities of power” (ibid., p. 156). Incidental hermeneutical injustice, on the other hand, is a one-off moment of hermeneutical marginalization, powerlessness, and oppression.

What is distinctive of this form of epistemic injustice is its being a purely structural notion. For no *specific agent* perpetrates it. The condition for this injustice is the hermeneutical marginalization⁵⁷ of the subject, which is an epistemic form of structural powerlessness. However, Fricker explains that this injustice occurs only when the subject tries to put herself out of the hermeneutical marginalization by attempting to render an experience intelligible, to others or to herself. This means that “the hermeneutical inequality that exists, dormant, in a situation of hermeneutical marginalization erupts in injustice only when some actual attempt at intelligibility is handicapped by it” (Ibid., p. 159). As specified by the scholar, the fact that this injustice manifests itself when the hermeneutically marginalized subjects try to make sense of her own experiences on the one hand and struggles to render these experiences intelligible to others on the other, makes visible the recurring connections with testimonial injustice. As Fricker explains it, both the oppressed group and the one that oppresses have a hermeneutical lacuna. However, this lacuna is not significantly disadvantageous for the dominant group. Instead, members of the oppressed group are cognitively handicapped by this lacuna, firstly because they do not have a proper understanding of their very own experiences of oppression. In the scholar’s words, being a member of an oppressed group means that:

⁵⁷ As already seen in the previous paragraph, dedicated to Iris Marion Young’s faces of oppression, marginalization is to be subordinated and excluded from participation from some practice considered of high value by the participant. To be *hermeneutically* marginalized refers to the lack of successful interpretation of disadvantaged groups’ social experience by non-subordinated nor marginalized groups.

The cognitive disablement prevents her from understanding of her own experience: that is a patch of experience which it is strongly in her interest to understand, for without that understanding she is left deeply troubled, confused, and isolated, not to mention vulnerable to continued harassment. Her hermeneutical disadvantage renders her unable to make sense of her ongoing mistreatment, and this in turn prevents her from protesting, let alone securing effective measures to stop it. (ibid., p. 151)

In the case of asylum-seeking and refugee women, hosting communities have limited experience and, also, limited epistemic resources that create barriers to the knowledge that others try to share. In this case, “the chaos that forces people from their homes and the violence they may themselves suffer can be hard to sort for oneself; conveying it in a coherent and compelling way to others is more complex still” (Eckenvailer 2019)⁵⁸. And, on the other side of the coin, cultural and religious differences, gender norms, differences how manhood and womanhood are conceived threaten asylum officials’ understanding of their narrative, which, in turn, undermines their credibility. Here we can also see in play the same looping effect treated when speaking of vulnerability⁵⁹.

Thus, the structural prejudice towards these women derives from the fact that there are insufficient hermeneutical resources to understand their experiences. The point is that citizens in the European host countries and asylum decision-makers live in a society in which the traumas narrated by these women⁶⁰ are almost unconceivable and, for this reason, hard to believe (Baillot *et al.* 2009, 2012). These women are epistemically disadvantaged, precisely because all the groups involved have lacunas regarding these traumatic experiences. On the one hand, the asylum decision-makers do not have sufficient hermeneutical resources to understand these experiences, and, on the other hand, these women cannot make sense of their own traumas, because they are hermeneutically disadvantaged. For they not only need to conceptualize their experiences in terms of violence, discrimination, vulnerability, and injustice, which can be difficult due to trauma, but they also need to conceptualize them in a way that *others* can understand. And these *others* often happen to have different cultural backgrounds, genders, sexual orientations. Thus, on the one hand, Fricker (2007) puts the

⁵⁸ <https://www.ghe.law.ed.ac.uk/seeking-asylum-epistemic-injustice-and-humanitarian-testimonies/>.

⁵⁹ Chapter 3, §3.2 and §3.5.

⁶⁰ See Chapter 1 for a treatment of the reasons to leave their country of origin and of the journey to and through Europe.

accent on the fact that the person who suffers from hermeneutical injustice cannot make sense of her own experience of oppression, on the other hand, Medina (2013, 2017) stresses out a further layer of injustice, which is that the same person's voice is not adequately heard by the dominant group, which does not attempt to make it intelligible.

A specific contribution to hermeneutically killing refugee voices comes also from media coverage. As diverse studies have found (Chouliaraki *et al.* 2017; Cooper *et al.* 2020; Georgiu & Zaborowski 2017; Philo *et al.* 2013), when treating issues relating refugees, media generally do not engage with actual refugees, since their voices are not included in press reports. Moreover, the same studies also highlighted hostile coverage of refugee and asylum matters, and a blurring distinction between refugees and asylum seekers, and other types of migration (e.g., economic migration) (Owen 2019).

In this sense, like testimonial injustice, hermeneutical injustice can also be caused by the stereotype threat (Goguen 2016; Saul 2017). This is especially true when dealing with systematic cases of hermeneutical injustice, where marginalized groups suffer from identity prejudice. In this case “the speaker is doubly wronged: once by the structural prejudice in the shared hermeneutical resource, and once by the hearer in making an identity-prejudiced credibility judgment” (ibid. p. 156). Systematic hermeneutical injustice is therefore a specific type of *structural discrimination*. The discriminatory mechanism lies in the collective gap in interpretation which significantly disadvantages some groups and not others. Like testimonial injustice, hermeneutical injustice causes a primary and secondary set of harms. The primary harm consists in “the exclusion from pooling of knowledge owing to structural identity prejudice in the collective hermeneutical resource” (ibid., p. 162), which basically means exclusion from being recognized as an agent capable of spreading knowledge. In the case of asylum-seeking and refugee women, the primary harm would consist in not being heard or considered as competent enough knowers when humanitarian actors engaged in implementing measures for avoiding the risk of sexual abuse in the camps, example that has been treated in the previous paragraphs (Swine 2020).

The secondary and derived kinds of harm can be distinguished between practical and epistemological harms. On the practical side, hermeneutical injustice causes an asymmetry in collective interpretation of groups' experiences between advantaged and disadvantaged

social groups, which is extremely disadvantageous to the marginalized party. In this case, on the practical side, hermeneutical injustice just described is disadvantageous to the group of refugee women because the humanitarian actors' refusal to consider them competent knowers and, therefore, their refusal to take into consideration their points, may mean the failing of the measures implemented.⁶¹ This means that they will experience again sexual harassment. Secondary epistemic harms have to do with the subjects' loss of epistemic confidence in various ways. This loss can in turn cause loss of knowledge or preventing to gain new one, and, in general, an interruption in gaining certain epistemic virtues. Thus, these women's lack of involvement in implementing policies and measurements that would make their experience of asylum less traumatic, can cause a lack of knowledge in the way the system of asylum works, and in what manner abuse can shape it. The primary harm of hermeneutical injustice, therefore, "has to be understood not only in terms of the subject's being unfairly disadvantaged by some collective hermeneutical lacuna, but also in terms of the very construction (constitutive and/or casual) of selfhood" (ibid., p. 168).

Imagine therefore a woman (let's call her Ranya) that, as the example made above, has suffered from SGBV before leaving her home country, during the journey to and through Europe and once hosted in a refugee camp.⁶² Here, humanitarian actors, camp's employers and volunteers are aware of the existence of these abuses toward female guests by a variety of public and private actors, and want to implement some measure to minimize these risks. Since Ranya has first-person experience of such abuses and has (at least partly accurate) knowledge of what could have avoided that, she attempts to highlight some elements that have maybe facilitated those abuses, in order to suggest their elimination. She is not heard nor listened, because she is not considered a competent knower, so they refuse to implement the measurements suggested. The primary epistemic harm suffered by Ranya is that her experience of abuse was not collectively understood, otherwise they would have listened to her. Moreover, this attitude very much endangers her possibility to understand in depth her

⁶¹ I am not arguing that lived experience needs to translate to authority immediately. The problem arises, I argue, when the lived experience of these women is *never* listened, and therefore never rendered intelligible within the asylum system. The point is precisely that the asylum system constantly fails to understand their experiences.

⁶² See the many faces SGBV can take in Chapter 1, §1.1 of this work.

own experience. Among the secondary sets of harm, as we have seen, there is the very possibility for this abuse to occur again, since it is possible that decisive measures have not been taken, and this also has consequences on her credibility, since her double trauma affects it in the ways abovementioned (distress, confusion, incoherency of the narrative, etc.).

When facing consequences of hermeneutical injustice, Medina (2017) speaks of *hermeneutical death*, precisely “the loss (or radical curtailment) of one’s voice, of one’s interpretative capacities, or of one’s status as a participant in meaning-making and meaning-sharing practices” (p. 41). The scholar identifies four parameters (source of the problem, its dynamics, its breadth, and its depth) for identifying hermeneutical injustice, from which he derives different kinds of hermeneutical injustices. For what regard the source of hermeneutical injustices, they can either be produced *semantically*⁶³ or *performatively*⁶⁴. In the second place, concerning the dynamics of hermeneutical injustices, they can arise from *institutional*⁶⁵ or *interpersonal*⁶⁶ dynamics. Thirdly, cases of hermeneutical injustice can be classified according to their breadth, and, indeed, Fricker (2007) already clarifies this aspect. Indeed, she recognizes that there can exist maximal, minimal and midways cases of hermeneutical injustice, depending on the case. Finally, we need to consider the depth of the cases of hermeneutical injustice, “According to how deep the hermeneutical harm goes in undermining or destroying the meaning-making and meaning-sharing capacities of the victims of such harm” (Medina 2017, p. 47).

The scholar identifies different levels, from skin-deep cases, where the subjects may be left with no mark in their interpretative agency and power, to marrow-of-the-bone cases, where the harm is very pervasive and undermining in one’s epistemic life. What he calls

⁶³ “Cases in which hermeneutical disadvantage and harms result from the unavailability of labels; cases where understanding fails because words are lacking” (Medina 2017, p. 45).

⁶⁴ These cases occur “when subjects are judged as unintelligible or less intelligible than other subjects not because of the words they use but because of their communicative performance of expressive style” (ibid., p. 46).

⁶⁵ “When there are structural conditions or institutional designs that prevent the use of certain hermeneutical resources and expressive styles, or simply when those conditions or designs favor certain hermeneutical communities and practices and disadvantage others” (ibidem)

⁶⁶ “When there are hermeneutical intimidations in interpersonal exchanges” (ibidem). The paradigmatic example is the case of micro-aggression.

hermeneutical death, as abovementioned, would represent the most radical case, since someone's voice is 'killed'.

4.3.3 Epistemologies of Ignorance

Medina (2018) defines epistemology of ignorance as the epistemic practices that protect the voices, meaning, and perspectives of some by silencing the voices, meanings, and perspectives of others" (p. 247). The pioneering book for this kind of injustice – which can be considered a form of epistemic injustice – is *The Racial Contract* by Charles Mills (1997).

Thus in effect, on matters related to race, the Racial Contract prescribes for its signatories an inverted epistemology, an epistemology of ignorance, a particular pattern of localized and global cognitive dysfunctions (which are psychologically and socially functional), producing the ironic outcome that whites will in general be unable to understand the world they themselves have made.
(Mills 1997, p. 18)

The notion of epistemology of ignorance was conceptualized before Fricker's analysis of epistemic injustice. However, its characteristics make it fully part of the category of epistemic injustice as Fricker (2007) and other scholars (Andersen 2017; Congdon 2017; Medina 2013, 2017) have defined it. In this important work, Charles Mills argues that racism requires an inverted epistemology, which is the epistemology of ignorance. Mills' subject of study and primary application for this kind of injustice is the race, white vs. non-white people. He understands white supremacy as the result of false assumptions and fundamental misunderstandings. During our studies, when analyzing the history or the present of the world, or even when studying philosophy, the author states, we do it through the lenses of white people, without even recognizing it. Whites, then, all live in an invented world, or, as the scholar would say, in a *racial fantasyland*, which is also called *transcendental delusion*⁶⁷ by Alcoff (2017). This blindness and misunderstanding are made possible by the Racial Contract, a contract that whites have signed and that establishes and maintains white supremacy thanks to structural blindness.⁶⁸ Given that "We live in a world which has been

⁶⁷ To indicate the belief that thought can be discerned from the cultural and geo-historical background of its source.

⁶⁸ This theory of the Racial Contract, as admitted by the scholar, was inspired by the work of those feminist that have theorized *The Sexual Contract* (Pateman 1988, 2015).

foundationally shaped for the past five hundred years by the realities of European domination and the gradual consolidation of global white supremacy” (Mills 1997, p. 20), this contract is real and global. This contract has been creating European economic domination and, therefore, white racial privilege. Thus, in order to maintain this white privilege, we all need to willfully remain blind about the extent of this dominance. Whites and Eurocentrism have a strong motivation not to know and not to learn that the way they have designated as inferiors and inadequate thinkers some populations and some races is not supported nor justified by any study or evaluation (Alcoff 2017). Those in privileged positions must also remain ignorant about the mechanisms of racial domination and racisms and about how these mechanisms benefit them (Tuana 2017).

The fundamental point here is that this injustice does not just represent a mere gap in knowledge, an accident in epistemological oversight. At stake here there is not the lack of successful interpretation of marginalized groups’ experience, such as the case of hermeneutical injustice in its purest form and as theorized by Fricker. The point here is precisely that dominant groups *remain willfully ignorant* about what renders them the dominant groups. So, ignorance is actively produced for the purposes of gaining power and maintaining oppression, domination, and exploitation (Sullivan & Tuana 2007). The point here is precisely that there are cases in which hermeneutical injustice in the form of mishearing of certain voices theorized by Medina (2017) is also intentional: it is noticeable an *active*⁶⁹ tendency of misinterpreting oppressed groups’ experiences.

Now, the case of asylum-seeking and refugee women. It is argued that

The epistemological framework that maintains and sustains the institution of gender-based asylum is structured to provide “legitimacy” to arbitrary and ambiguous use of the epistemic resources of the authorities in the given nation-state that is evaluating the asylum applications as a matter of procedure.

(Sertler 2018, p. 17)

⁶⁹ Medina (2018) explains that what characterizes ‘active ignorance’ is the fact that to the classic features of ignorance (which are the absence of (1) true belief and/or (2) the presence of false belief) we need to add the followings: “(3) cognitive resistances (e.g., prejudices, conceptual lacunas) (4) affective resistances (e.g., apathy, interest in not knowing— “the will not to believe”) (5) bodily resistances (e.g., feeling anxious, agitated, red in the face) (6) defense mechanisms and strategies (e.g., deflecting challenges, shifting burden of proof” (p. 250).

At the core of the issue there is the fact that, first, structurally, the institution of asylum marginalizes, silences, and ignores the epistemic resources of the applicants. On the other hand, the way the institution of asylum is structured, preserves, and upholds already existing epistemic resources of the evaluative mechanisms (Dotson 2014; Sertler 2018). Hence, epistemology of ignorance is in play here, since the asylum institution is structured in a way that cannot provide the conditions for legitimizing these women's epistemic resources. According to Sertler (2018) then, the resistance to achieve epistemic resources that would be useful to render these women's experience intelligible is willful and useful for the purpose of maintaining actual policies of asylum, without enhancing gender-sensitive policies that would increment the asylum requests and international protection recognitions. This is because states have all the interests in minimizing the burden related to the protection of refugees, since the costs of fulfilling this duty are significant (Owen 2019).

Pohlhaus (2017) proposes to look at the varieties of epistemic injustice through four lenses: social contract, coordinated ignorance, epistemic relations (trust), and interdependence. The first two lenses are linked to the reinforcing relations of dominance and oppression. As the scholar highlights, the beneficiaries of (hypothetical or real) social contracts “not only submit to political institutions and habituate themselves to standard of behavior for mutual benefit, but also blind themselves to epistemic institutions and habituate themselves to standards of epistemic behavior” (p. 17). The consequences are twofold. Firstly, the scholar argues, following Mills (1997), the social contract becomes a racial contract, where European men represent the epistemic class of knowers, while non-whites become a group of sub-knowers. On the other hand, as the feminist literature have pointed out, this creates a system of oppression and domination that makes women less than competent knowers (which, in this case, would be men). Secondly, there is what has been named epistemology of ignorance. This lens unveils how the beneficiaries of these social contracts, and thus of the system of domination and oppression itself remains ignorant of this unjust setting. Pohlhaus (2017) calls it *willful hermeneutical ignorance*, or “the propensity to dismiss whole aspects of the experienced world by refusing to become proficient in the epistemic resources required for attending to those parts of the world well” (ibid., p. 17). Of course, this is not mainly an individual attitude, but a collective behavior – which makes it

institutional and structural. The third lens regards the fact that knowers become knowers in relation to others that teach them what and how to know. So, as “care is the relation that binds moral agents, *trust* is the relation that binds epistemic agents” (ibid., p. 18, my italics).

Therefore, epistemic injustice manifests in having epistemic agents isolated and a lack of epistemic trust. The scholar makes the examples of certain groups being excluded from participation in areas of communal epistemic life (i.e., politics, instruction, science). This exclusion “Wrong the individual knowers excluded and stymie the development of knowledge along particular trajectories” (ibidem). On the other hand, people that are not exclude from participation in areas of communal epistemic life suffer from lack of that epistemic friction (Medina 2013; Pohlhaus 2017) that would be present if also the excluded group were allowed to participation. This is epistemic interdependence, because of which it is hard to remedy to epistemic injustice by allowing epistemically excluded groups to participation. This is because “where there are serious and systematic breakdowns in trust, epistemic injustice still prevails” (ibidem).

4.4 Loops of injustice in play: how epistemic and non-epistemic injustices relate one another

I end this chapter by clarifying the relations in place between various forms of epistemic and non-epistemic injustice. The vicious cycles in place in the case of epistemic injustice should appear clear at this point. Firstly, asylum-seeking women suffer from a sever credibility deficit, which was here conceptualized as testimonial injustice. This form of epistemic injustice leads to a lack of hermeneutical resources. This has been treated as hermeneutical injustice because this lacuna disadvantages in making one’s experience intelligible to oneself and to others. Precisely, this is unjust because it disadvantages the oppressed group unevenly more than the dominant group, which can make advantage of this hermeneutical lacunas. The difficulty to make sense of their own’s experiences to themselves and to others, in turn, jeopardizes the credibility of the epistemically marginalized subjects. This is explainable in these terms: if asylum-seeking women cannot make fully sense of their own experiences of abuse, powerlessness, marginalization, violence (and so forth), they will narrate them in an incoherent and inconsistent way, which make the hearer suspicious. This suspicious attitude

– owed to the stereotype of the ‘bogus asylum-seeking woman’ threat – together with the difficulty faced by these women in rendering the content of their narration intelligible to others, will cause this deficit in credibility. Testimonial injustice and hermeneutical injustice reinforce and reproduce one another. Finally, this whole process is made even more unjust by the fact that, as I have shown, it is often the case that this hermeneutical intelligibility is willfully in place to maintain the current power relations.

This not only is epistemically unjust, because it contributes to reinforce hermeneutical gaps between the dominant and the oppressed groups, but it also causes and gains its power on other forms of injustice. I begin by showing how testimonial injustice and Sangiovanni’s five modes of inferiorizing treatments, and hermeneutical injustice and Young’s five faces of oppression are fundamentally related. Afterwards, I will preliminarily sketch how all the forms of injustice treated can relate one another to form vicious cycles of injustice. First, the five modes of inferiorizing treatments theorized by Sangiovanni (2017) and testimonial injustice:

- a. Infantilization is a constitutive form of testimonial injustice. In fact, the infantilized person’s testimony is taken to lack credibility in virtue of their lack of the faculties of the mature and autonomous individual. For instance, asylum decision-makers infantilize asylum-seeking women by recognizing them the same credibility they would attribute to a child. So, maybe it is not the case that they do not believe the subject’s story *tout court* but tend to resize it. Besides, testimonial injustice enables infantilizing attitudes, since it enables stereotypes that, in turn, can take paternalist forms. For instance, in order to increment the chances of receiving the international protection, these women are advised by attorneys and volunteers to lie regarding their experiences, even when it would not be necessary, because they think that their real story would not look abusive (or gendered) enough to convince decision-makers (e.g., lying about having experienced rape because FGM would not look like a good enough cause for refugee status). This, in turn, affects their credibility because decision-makers expects them to be lying.
- b. Instrumentalization is constitutive of a form of epistemic injustice because it treats the other as a mean to an end. Hence, it treats their testimony as having no standing in the

relationship with them. This means that what they say can be ignored or considered only prudentially insofar as it is indicative of dispositions that enable or obstruct the realization of the end. In this case, the testimony of asylum-seeking women is ignored when it is not useful to the realization of this end. For instance, when the testimony of a particular experience lived by the speaker does not enable the reproduction of the stereotype of the abused asylum-seeking woman, it is considered prudentially or not considered at all. Thus, testimony is not considered as proper testimony but as only in terms of its symptomatic salience with respect to the desired end of the instrumentalizing person. On the other hand, wrongful lack of credibility (testimonial injustice) can enable instrumentalizing treatment. For it means seeing asylum seekers as a problem to be managed and, therefore, there is no need to consider their testimony as relevant if that testimony is not beneficial for the way they are to be managed.

- c. Objectification is constitutive of a form of epistemic injustice in which one stands to the other as lacking the status of being a testifying being, a being capable of trusted speech. Their words do not matter. Moreover, testimonial injustice can enable objectification, especially via instrumentalization. For instance, wrongly attributing someone credibility deficits lead to consider them as passive objects lacking interiority and subjectivity, thereby considering only instrumentally the story that it is more convenient to hear. Asylum-seeking women's testimony of violence can be functional to reproduce that categorical fetishism treated in the last chapter. Therefore, what they say becomes instrumental to this kind of narrative. The result is a sort of objectification, in the sense that these women are not taken just as testifying objects. However, not all testimonial injustice implies nor enables objectification, since there are cases in which wrongful credibility deficit is caused by the presence of stereotypes or, as I now argue, by dehumanizing attitudes.
- d. Dehumanization is constitutive of a form of testimonial injustice in which the other – in this case asylum seekers and asylum-seeking women – is treated as having a lesser standing qua human being that renders their speech intrinsically lacking in credibility. In this case, the dehumanization can be due to gender and racial discrimination, and by xenophobia. Hence, testimonial injustice is typically dehumanizing and enables

dehumanization. Dehumanization also enables all other forms of inferiorizing treatments, but also some of the faces of oppression theorized by Young. For having a lesser standing qua human being enables objectification, instrumentalization, infantilization, and stigmatization, but also allows violence, exploitation, and marginalization.

- e. Stigmatization is constitutive of a form of testimonial injustice in which credibility is seen as deficient in virtue of membership of an ascribed identity as a member of a group. The ‘bogus asylum-seeking woman’ who pretend to have suffered SGBV, and therefore is wrongfully not believed, is a powerful example of stigmatization of this kind. On the other hand, wrongful credibility deficit is itself actively stigmatizing since it labels the speaker as non-credible.

Second, Young’s five faces of oppression (2011) and hermeneutical injustice:

- a. Hermeneutical injustice can be a product of epistemic exploitation and, also, enables socio-economic exploitation by preventing the exploited from recognizing their common experience and common interest, and the possibility of a change. Without a proper understanding of their own experiences, these women struggle to find a way out of their marginalization by interpreting them as common experiences. This in turn prevents them from detaining power over their own lives. Exploitation can take also the form of transferring result of epistemic labor (or labor in its epistemic dimension) from the marginalized social group – in this case, asylum-seeking and refugee women – to the dominant one – non-displaced European population. As Marx puts it,

The ideas of the ruling class are in every epoch the ruling ideas [...] The class which has the means of material production at its disposal, has control at the same time over the means of mental production, so that thereby, generally speaking, the ideas of those who lack the means of mental production are subject to it.

(Marx 1968, p. 5)

The term ‘idea’ is understood in a very broad sense, and Marx himself sometimes uses the terms ‘notion’ and ‘concept’ as a synonym. The point is precisely that it is the dominant group that give meaning to the notions and concept that shape asylum-

seeking women's experiences (of injustice).⁷⁰ This is liable to generate hermeneutical injustice.

- b. Hermeneutic injustice is an epistemic form of powerlessness and thereby an enabler of social, political, and economic powerlessness. When one cannot make sense of their own experience, then they do not have the power to ameliorate it. So, powerlessness is constitutive of hermeneutical injustice (a person that face hermeneutical death is, by definition, powerless). On the other hand, dominant groups do not want to hermeneutically engage with the experiences of the oppressed groups, because they believe to know already what they need to know. This leaves them powerless in the sense that nobody will let them participate into the process of addressing the injustices they suffer. They are excluded from decision-making process because their voices are not listened, nor considered. In this sense, hermeneutical injustice enables powerlessness, and powerlessness exacerbates hermeneutical injustice. When hermeneutical injustice also combines with epistemology of ignorance, then hermeneutical injustice is also instrumental to exercise power over oppressed groups.
- c. Hermeneutic injustice is an epistemic form of marginalization and an expression and manifestation of social, political, and economic marginalization. A person that does not make sense of her own experience marginalizes herself; and if the hosting community do not make sense of her true experience, it marginalizes her. Hermeneutical injustice enables marginalization, and marginalization reinforces hermeneutical lacunas in dominant groups. When this hermeneutical lacuna is willfully not filled, then hermeneutical injustice is instrumental to marginalize her.
- d. Cultural imperialism is a form of hermeneutic injustice. dominant groups exercise cultural imperialism and hermeneutical injustice when the particular perspectives of oppressed groups are made invisible by the dominant groups, and this invisibility makes it hard either to make sense of their experiences and to make them intelligible to others.

⁷⁰ Moreover, historically this is the case of the cultural imperialism of men over women.

- e. Hermeneutical injustice is a form of epistemic violence and may also be the product of social violence. SGBV causes trauma, which *causes* difficulties in making sense of one's own experience of violence, which, in the worst cases, causes hermeneutical death. There are also cases in which the purpose of violence (emotional, sexual, and physical abuse) itself is to cause the annulment of the person, who faces then hermeneutical death. This means that violence is willfully used to impede one person to make sense of what is happening around them: in this case violence is instrumental to hermeneutical injustice.

This helps me introducing the mechanism treated in the next chapter and by which all forms of injustice work together and create loops, or vicious cycles of injustice. The willful refusal to hear asylum-seeking women's voices, which would help in attributing them the right amount of credibility, result in demeaning attitudes and oppression. The 'bogus asylum-seeking woman' stereotype constitutes a stigma which results in dehumanization of the woman in question, who is not seen as a person with her dignity anymore, but as an undeserving woman trying to make advantage of the refuge system of the host country (Owen 2019). Host developed countries act what Owen (2019) and Cavell (2007) call *soul-blindness*, an attitude that considers these women as "lacking the entitlement to the standing that 'we' rightly possess" (Owen 2019, p. 34), which is humanity. The very fact that asylum-seeking women are not attributed the credibility they deserve is caused by this process of dehumanization, but dehumanization in turn reinforces the fact that these women are not believed when reporting violence and abuses, and if they are seen as less than human, they are destined to fail to make their voices intelligible. This can cause marginalization in Young (2011) terms, as exclusion from useful participation in social life. In turn, this marginalization contributes to the difficulties they have to make sense of their own experiences, because they do not have the instruments to do so.

When marginalized, as already sketched, these women are hardly autonomous and rely on welfare systems, institutions, and humanitarian workers, where cultural imperialism and paternalistic treatment is on the agenda. Specifically, the risk is to be subjected to arbitrary

authority from those who are in charge of care support.⁷¹ This means that these women are also infantilized in the sense Sangiovanni (2017) explains, which is to treat others like children in need of supervision by someone who knows better⁷². Willful hermeneutical ignorance regarding refugee women narratives is functional to preserve the *status quo* – the maintenance of power relations that are extremely advantageous for dominant groups. If we, in host countries, do not know and do not understand these women’s experiences, we can continue treating them with dehumanizing and infantilizing attitudes, taking advantage of their powerlessness – that means that they never exercise power, which is always exercised over them.⁷³

4.5 Conclusion: The end of the story?

In this chapter my aim was to analyze possible theories of injustice in the light of asylum-seeking and refugee women experiences of asylum and refugeehood. The attempt was to understand whether these theories were exhaustive to fit their particular social and intersectional situation. I have chosen these three theories, oppression, discrimination, and epistemic injustice that followed the definition of injustice I anticipated at the beginning of the chapter, which I know repeat. For injustice suffered by asylum-seeking and refugee women here includes

All the acts perpetrated by public or private agents, institutional structures, policies, measurements, and epistemic practices that create, reinforce, or exacerbate their situation of vulnerability, oppression, discrimination, and epistemic silencing.

This definition, together with the theories associated seem to be working to narrate the experiences of asylum seekers and refugees (and, also, undocumented migrants). However, the aim of this research is to try and find the element(s) that put all the pieces together and explains what it is that characterizes intersectional groups such as the one of asylum-seeking and refugee women.

⁷¹ See: §4.2.2.

⁷² See: §4.1.2.

⁷³ See: §4.2.3.

As I hope to have effectively argued, these women are oppressed in the sense that suffer from marginalization, exploitation, cultural imperialism, violence, and powerlessness. Moreover, they are discriminated due to their race and culture, due to their habiting the asylum social space, and, also, as women, in five different ways: infantilization, objectification, instrumentalization, dehumanization and stigmatization. Finally, they suffer from a credibility deficit (attributed by asylum decision-makers and public opinion) when reporting episodes of rape and abuse, and when exposing their fear of being returned to their country of origin during the interviewees (testimonial injustice). Also, remaining in the area of epistemic injustice, they also suffer from the most disadvantageous consequences of the hermeneutical gap between their narratives and the hosting culture, which does not have the right epistemic instruments to make their experiences intelligible (hermeneutical injustice) and, more importantly, does not want to achieve these epistemic instruments (epistemology of ignorance). As it may be already clear, all forms of injustice treated in this chapter are really connected one another, and a clear demarcation line cannot be drawn between them when talking about the subject of this research. This means that one particular experience can be conceptualized through the lenses of more injustices, and that one form of injustice can lead to another and be reinforced by what I have defined *loops of injustice*. For example, the fact that asylum-seeking women are not given enough credit when giving testimony of the past of abuse, can be treated through the lenses of cultural imperialism *and* epistemic injustice. On the other hand, cultural imperialism in play when humanitarian actors act as if these women are not able to look after themselves and their children, might also be seen as infantilization, as Sangiovanni puts it. Moreover, structural, and systemic violence and the stigma coming out of it can also be conceptualized as dehumanization.

A doubt, however, legitimately arises. That is, what about *male* asylum seekers and refugees? Although they do not represent the subject of this research, some words should be spent to find some analogies. It is undoubtedly true that also male asylum seekers represent an oppressed, discriminated, and epistemically silenced group in the sense of the three main theories of injustice just analyzed. For instance, male asylum seekers too suffer from credibility deficits, and they too experience dehumanization. So, the answer to this may be that yes, it is a given that asylum seekers and refugees, *as a whole*, suffer from these kinds

of injustices, but nonetheless women suffer from it in more acute and sever ways. Women are maybe more systematically not believed. Or the answer may be that they have constitutively an element of injustice that adds to the others and that men do not have, which is gender-based discrimination. Or, rather, there may be gender specificities in the way these injustices develop and manifest.

Since I argued on several occasions that the issue at the core of this research is not to demonstrate that women are *more* vulnerable to men to these types of injustice, but that there are *qualitative* differences due to their membership to an intersectional group, I find this last hypothesis far more convincing. In particular, it may be argued that the way women are not believed when reporting abuses and SGBV is distinctive because of the replication of mechanisms of credibility deficits typical of case of sexual abuse and harassment also outside the context of asylum. Or, also, the multiple ways asylum-seeking and refugee women are marginalized present gender specificities in the combination of public (institutions) and private (family and their own communities) actors that perpetrate this sort of marginalization. There is also a last possibility. It might be argued that it is the systematicity in which all these elements combine that makes the distinctiveness of these women's experience of injustice.

Even though I consider the combination of qualitative matters and systematicity fundamental to understand their experiences, I am also convinced of the fact that this is not enough to argue to have found the ultimate reason why asylum-seeking women and girls suffer from a distinctive form of injustice due to their being an intersectional group systematically vulnerable to harm. Some other elements must be compounded to shed light on the matter. What can be added then to the definition of injustice for asylum-seeking and refugee women given above? I answer to this question in the next pages.

CHAPTER 5.

The Effacement: What is it? What does it do?

I open this last chapter with a very crucial point already mentioned at the beginning of this work. Parekh (2020), together with many of the other scholars' works that I am going to discuss in the following paragraphs (Ambrosini 2020; Bell 2021; Betts & Collier 2017; Oliver *et al.* 2019; Owen 2020). The point that I find crucial to address now is the fact that the refugee crisis that started in 2015 is composed in fact of three distinguished crises. The first crisis concerns the fact that a large amount of people was forcibly displaced and started seeking refuge in Europe, with the consequences of Europe struggling due to the political challenge of managing them. The second crisis – which according to Parekh seems more invisible yet equally substantial – involves the impossibility for refugees to get protection due to an inadequate response of the European Union and in general Western countries to the first crisis. This second crisis is

the crisis for refugees themselves. The crisis is that refugees around the world are largely unable to get refuge, that is, they are unable to access the minimum conditions of human dignity while they wait for a more permanent solution (either to go home or be resettled permanently elsewhere).

(Parekh 2020, p. 3)

To that, I add now that there is a *third crisis* that ought to be acknowledged, which is the crisis of recognition of the compound injustice that women that are seeking protection face throughout the journey through refugeehood, enabled by the process I named effacement. It is a crisis that impact theoretically, politically, and practically on the chances to obtain international protection, to see their vulnerability significantly reduced, and their compound injustice addressed. Thus, this crisis concerns both the theoretical and the practical realms of the topic on how to address refugeehood, and it is what I am going to explain in this last part.

This last chapter is meant to constitute the last step of the bottom-up journey towards an account that unveils the experiences of injustice suffered by this group of women. In the previous chapter I showed that, and in what ways, different sources and types of injustice

explain the experiences of refugeehood and asylum-seeking lived by the women who are the subjects of this research. I have also anticipated how forms of epistemic injustice interact with non-epistemic forms of injustice, and how these relations give rise to vicious cycles or loops of injustice. In this final chapter I name the process in and through which these injustices interact forming cycles of injustice as *effacement*, where this term indicates how this process involves a making invisible of the gendered and therefore intersectional experiences of these women as asylum-seekers and refugees. My aim now is to introduce the process of effacement, which I provisionally define as referring to *the way in which multiple forms of injustice interact in epistemic and non-epistemic directions to render invisible the true extent and nature of their compound injustice*. I understand this process as constituting an injustice that is a structural feature of the way the global refugee regime is politically and practically framed and, also, of the way in which refugeehood is treated in the field of normative political theory.

The most effective way to clarify this concept is to show how it actually works. Hence, the first part of the chapter will be dedicated to make examples of how the effacement works. I will start by giving normative sense to the empirical information given in the first chapter and I will conceptualize it in the light of this newly introduced concept. This means that I will show precisely how that (and in what way) the forms of injustices treated in the previous chapter interact and relate one another, causing vicious circles of injustice in each step of the journey throughout refugeehood.

The second part will then reconsider the definition formulated few lines above and will address the way in which the process of interaction of different forms of injustice – i.e., the effacement – effaces the way in which refugeehood and asylum are gendered, how academic works in the field contribute to this effacement, and what are the practical and political consequences. It will thus show how this process involves a form of invisibility of female asylum-seekers as persons vulnerable to gendered injustices in the refugee journey (because these vulnerabilities and injustices are effaced), and how it is exacerbated by the way in which scholars working on migration and refugeehood address this issue and ignore the specific positionality of women. What these scholars (Aleinikoff & Zamore 2019; Bell 2021; Betts & Collier 2017; Cohen & Van Hear 2020; Miller & Straehle 2020; Oliver *et al.* 2019;

Owen 2020; Parekh 2020) do is to indicate possible ways to improve the international protection system in a more just and fairer direction. However, they do not address directly the issue of women. In doing so, they further efface their experiences and miss one important point in individuating what it means to reform the European and international refugee regime in a way that positively affects women.

Finally, in the third part of the chapter I will stress the normative salience of the effacement by arguing that it constitutes a form of structural injustice, and I will also show how it can be considered an action-guiding concept to formulate and implement new policies that avoid or mitigate such injustice through gender-sensitive policies.

5.1 All the way through the journey of asylum and refugeehood: The effacement in play

In the first chapter of this work, I outlined what it means for a woman to experience the context of refugeehood and asylum, thereby engaging with their voices and describing the different steps that this journey entails. I started from their reasons for fleeing their countries of origin, I then treated the journey to and through Europe, and, lastly, I referred to the process of the asylum claim, the interviewing process and what happens after the (negative or positive) outcome of the claim.

I now want to retrieve all this information in order to normatively reinterpret it in the light of the injustices treated in the previous chapter and in the light of the process that I am introducing here. What I do now is to show how the effacement works, whereas in the next part of the chapter I will explicate its effects and show where they can be seen. Thus, this first part treats in detail the process by which the different forms of injustice relate and interact in different way to create cycles of injustice. More precisely, the next pages will be dedicated to the mechanism of effacement, which is the way in which these vicious cycles end up effacing the particularity of the compound injustice suffered by these women.¹ Specifically, I now explain how the effacement is in play in every step of the journey

¹ By this, I mean that the injustices suffered are shaped in a gendered and intersectional way, and these loops of injustice make this element invisible.

throughout refugeehood and asylum, from the causes that lead the women to leave their country to the outcome of their claim for asylum in (European) hosting states.

One last clarification is needed and regards the different types of relations between epistemic and non-epistemic injustices, which were already sketched in the previous chapter. In particular, I individuate three kinds of relations, that are constitutive,² causal,³ and re-enabling,⁴ which will appear clearer in the next pages when applied to context. These relations, however, are not always to be understood as *necessary* relations, in the sense that in all the possible and imaginable cases the injustices are always related in the way I indicate. It means that these relations are context-sensitive⁵ and that there is a general tendency of one injustice to cause, imply, and enable another, not that it is always the case that it does.

5.1.1 Reasons to flee their country

As sketched in Chapter 1,⁶ there are many reasons that lead women to flee their countries of origin. Here, I recall three of them: SGBV, conflicts and wars, and political persecution. A disclaimer is necessary: SGBV *per se* can be a cause of fleeing from one's own country, it can be exacerbated by conflicts, or it can be a consequence and manifestation of political persecution. Consequently, the first diagram showing the vicious cycle of injustice can be explained either as a distinct step of refugeehood (that is, a distinctive reason to leave) and as a cycle that can be also part of or implied in the other cycles of injustice.

First, sexual and gender-based violence, in all its manifestations – sexual, physical, economic, and psychological violence, systematic rape, domestic violence, FGM, forced and early marriages, honor crimes, and forced sterilization (Amnesty International 2001; Collier 2007; Criado Perez 2019; Webber 2012). Seeing these events in the light of the forms of

² By *constitutive* relation I simply mean that one injustice can be considered a constitutive part of another injustice, in the sense that it implies it.

³ A *Causal* relation here refers to the power of one injustice to enable another. Again, there is no necessity for it to happen, but it indicates that it is very likely to do and generally does.

⁴ A *Re-enabling* relation here refers to the fact that the same injustice can enable back the same injustice that caused it. This kind of relation highlights the fact that two or more injustices have the power to reinforce one another.

⁵ In the sense that I always refer to the context of this dissertation, which is forced migration, asylum, and refugeehood. It may or may not apply to other cases, such as economic migration and gender injustice in general.

⁶ See: Chapter 1, §1.2.

epistemic and non-epistemic injustice treated in the previous chapter, this is a clear example of what Young refers to as *Violence*. However, it is also clear that other forms of injustice are typically involved in SGBV – faces of oppression, forms of inferiorizing treatment, and, also, epistemic injustice. First, all these kinds of SGBV imply *Dehumanization* of the women,⁷ who are considered by perpetrators of this violence as having a lesser standing qua human beings and, therefore, are considered intrinsically lacking male-equivalent forms of human interiority and capacities for decision-making, and thus are less deserving of human treatment. Human beings are considered as such, and as distinct from animals, because they own a set of shared characteristics, such as civility, culture, language structure, specific cognitive capacities, rationality, ability to feel emotions, and vitality (Aristotle 2004; Awasthi 2017; Haslam and Loughnan, 2014; Tomasello 1999).

According to Awasthi (2017), “Sexual violence is a consequence of a dehumanized perception of female bodies that aggressors acquire through their exposure and interpretation of objectified body images” (p. 1). In this study on how the human brain perceives bodies, Awasthi argues that *Violence* encourages and is encouraged by *Objectification*, *Dehumanization*, and denial of agency, which can be interpreted as a type of *Infantilization* and induces *Powerlessness*. On the one hand, *Dehumanization* of women is enabled by the *Cultural Imperialism* that men retain over women. As already treated, Young (2011) defines Cultural Imperialism as the universalization of the dominant groups’ own experience by the dominant groups themselves. When the claim for universalization is challenged by the encounter of other cultures or other groups, the dominant groups react. Recall Young’s (2011) words: “The dominant group saves its position by bringing the other group under the measure of its dominant norms. Consequently, the difference of women from men [...] becomes reconstructed as deviance and inferiority” (p. 285), and, hence, dehumanized.

On the other hand, *Dehumanization* enables other sorts of injustices, *Objectification* in the first place. Sexual objectification of women happens due to the fact that “female bodies are scrutinized and evaluated to a greater degree than male bodies” (ibid., p. 2), which makes

⁷ Catharine MacKinnon in *Are Women Human?* (2012) highlights how violence (and, more in general, gender inequality) against women is a product of a dehumanization of the women, in the sense that the way women are deprived of human rights is a reflection of how they are deprived of their humanity.

women vulnerable to *Violence*. If the subjects, in this case the women, are considered lesser human beings, it means that they are considered as objects whose bodies can be *Instrumentalized* to serve a range of purposes: reproduction, sexual gratification, genocide, passing on cultural traditions, preserving of honor, etc. *Dehumanization* and *Cultural Imperialism* also enable *Infantilization*, which in turn enables epistemic and non-epistemic *Violence*. In their communities, there are cases in which women are not considered as having the faculties of autonomous individuals that can make choices on their own and are therefore forced into (child) marriages (Ezer *et al.* 2006). Girls are then prevented from receiving a proper education,⁸ which can itself be counted as *Epistemic Violence* because it prevents them from developing their sense of justice and injustice, especially regarding principles of (gender) equality. They are then basically left with no effective choice but to be economically and psychologically dependent on the men of their family. This typically leaves them *Powerless*.

Violence and *Powerlessness* usually enable *Stigmatization* and *Marginalization*. Consider victims of rape who are often labelled and stigmatized as impure and guilty,⁹ and therefore suffer from secondary trauma (the result of victim-blaming). Victims of rape suffer also from its social repercussions, which typically includes *Marginalization* from their own family and social community.

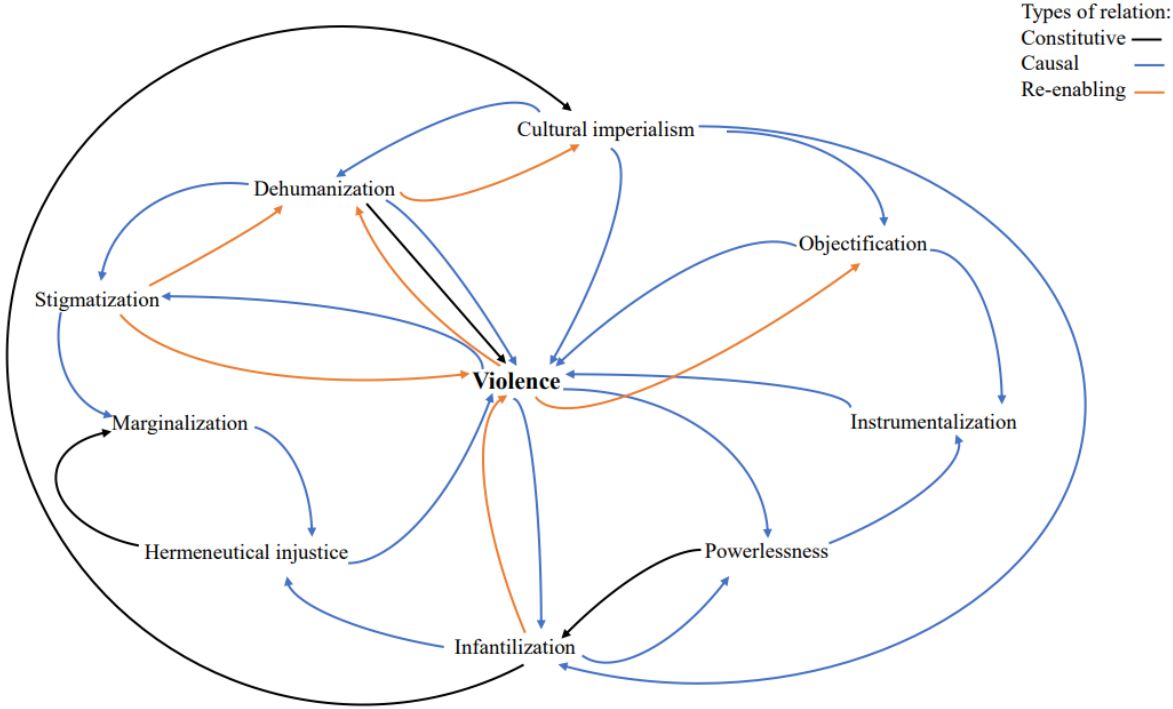
Hermeneutically speaking, these women often do not have the instruments to interpret their own experiences of *Violence* (due to *Cultural Imperialism*, trauma, *Marginalization*) and hence do not always have a sense of the injustice¹⁰ of the violence to which they are subjected. This is itself unjust because it prevents them from fully recognizing the injustice to which they as subject as an injustice against which they can act. This enables further *Violence*.

⁸ See: <https://www.bbc.co.uk/news/education-51769845> (Last access: 17/11/2021).

⁹ See: <https://www.un.org/press/en/2017/sc12819.doc.htm> (Last access: 17/11/2021).

¹⁰ The sense of injustice is understood here as concerned “with the demands for equality, desert, human dignity, conscientious adjudication, and the fulfilment of common expectations” (Philips 1951, p. 98)

Figure 1 Vicious cycles of injustice – SGBV



This figure precisely shows the interactions between different forms of injustice. *Violence* is in the center, in bold, because it can be considered the main injustice of this first reason to flee one’s country. As specified in the image, each type of relation and interaction is colored differently. As anticipated, this will continue for all the following diagrams. More precisely, a black arrow indicates that one form of injustice is a constitutive form of the one it is related with. For instance, in this case, dehumanizing another person or group is a constitutively violent act. Moreover, *Cultural imperialism* is constitutive of *Infantilization*, since treating women as inferiors often translates into infantilizing attitudes toward them. A blue arrow states a causal relationship between two forms of injustice. For example, in the case of this diagram, *Violence* is causally productive *Stigmatization* via the stereotyping of the victims of violence, which, in turn, enables *Marginalization* within a community. Lastly, an orange arrow denotes the power of two types of injustice to reinforce one another. Take again the last example that has been provided. *Dehumanization* causes *Violence*, which causes stigma. However, it is also true that *Stigmatization* can re-enable the same *Dehumanization* that causes *Violence* in the first place.

Second, exacerbated dynamics of violence occur when these women's countries of origin are scourged by wars, conflicts, and natural disasters. As already treated elsewhere in this research,¹¹ during armed conflicts *Violence* is used instrumentally as a part of the strategy to defeat the opponents (Guterres *et al.* 2014; O'Reilly *et al.* 2015; Plumper & Neumayer 2006; Querton 2014). Thus, women's bodies are used as Instruments to annihilate the adversary. Rape can be a weapon to spread HIV and other STDs, to damage women's bodies in order to affect their reproductive abilities, and to humiliate the opponents (Querton 2014). An implied precondition of *Instrumentalizing* a group of people is to consider them less than human (= *Dehumanize* them) and, therefore, as objects or animals that lack that necessary interiority to consider them as worthy of human respect. This kind of systematic *Violence* enables *Powerlessness* and *Marginalization*, and it can also be seen as a consequence of *Marginalization*. If one is subjected to violence, greater is the risk to be left with feelings of being powerless. For it is common for victims of SGBV to lose a sense of power and influence over their bodies and choices (Gravelin *et al.* 2017).

Women also suffer from indirect effects of wars, conflicts, and, also, natural disasters, such as economic devastation, displacement, and the breakdown of social order that can cause changes in power relations (Enarson 2020; O'Reilly *et al.* 2015). This enables domestic *Violence*¹² and *Marginalization*, which can take the form of exclusion from schools and/or the job market,¹³ which in turn enables epistemic and non-epistemic *Powerlessness*. This in fact prepares the ground for *Hermeneutical injustice*, since preventing women and girls from receiving an instruction leaves them lacking the epistemic resources that are necessary to

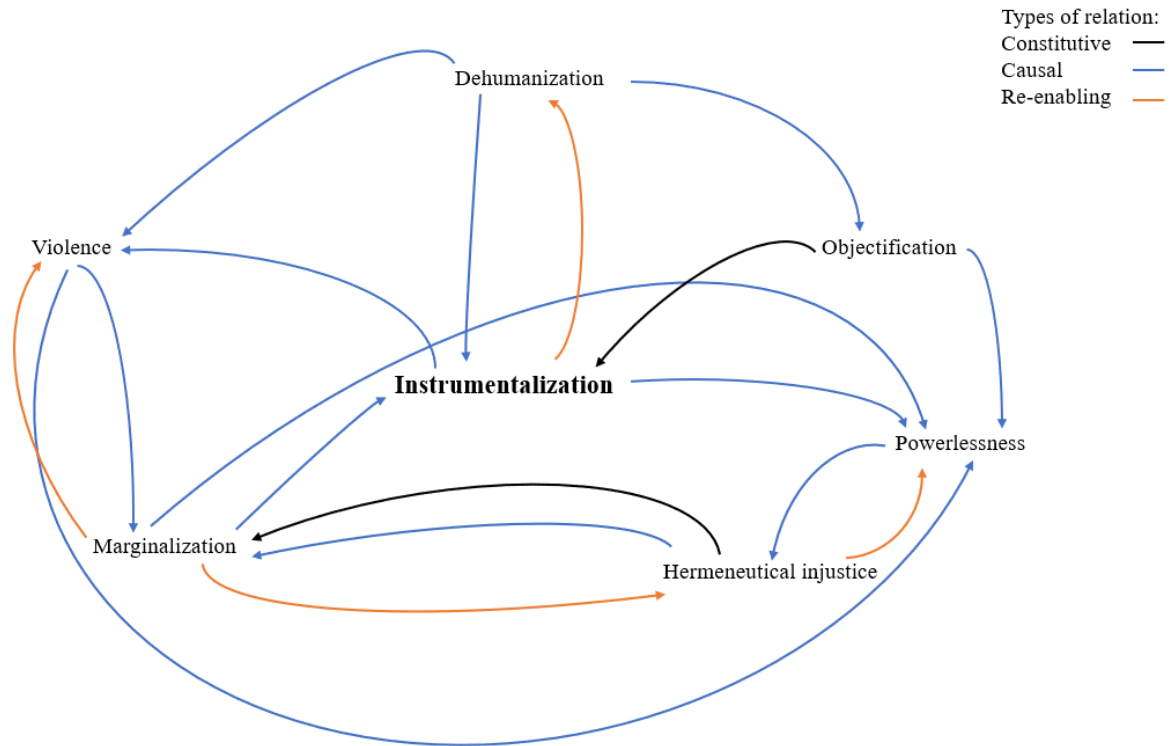
¹¹ See: Chapter 1, §1.2.

¹² According to the UK NHS, at a global level, "two factors related to gender inequality are strongly associated with intimate partner violence and abuse: 1 The unequal position of women in relationships and society – violence occurs at higher levels in societies in which men are viewed as superior and possess the economic and decision-making power. 2 Social norms supporting violence as a means of conflict resolution" (Scott 2015, p. 6).

¹³ For instance, Taliban prohibit girls from attending secondary schools and from working alongside men (See: <https://www.wsj.com/articles/afghanistans-taliban-prohibit-girls-from-attending-secondary-school-as-boys-return-to-classrooms-11631951310> and <https://www.independent.co.uk/asia/southeast-asia/taliban-kabul-female-workers-work-b1943353.html>). Obviously, this is an act aimed at excluding girls and women from the public life, and therefore marginalize them to render them practically and epistemically powerless.

interpret their own condition and experiences. *Hermeneutical injustice*, in turn, enables *Violence*, *Powerlessness*, and *Marginalization*.

Figure 2 Vicious cycles of injustice – Conflicts and wars



Here, the main injustice is *Instrumentalization*, which triggers the *Violence* and other injustices, such as *Powerlessness* and *Dehumanizing* attitudes. In this case, for example, *Objectification* is constitutive of *Instrumentalization*, because being considered as objects is a precondition of being used as tools. On the other hand, *Objectification* and *Instrumentalization* leaves the subjects *Powerless*, which in turn concur to cause epistemic injustice. *Hermeneutical injustice* then is at the same time a cause of *Marginalization*, and also re-enabled by *Marginalization*.

Third, women flee their countries also because of political persecution. Recall from Chapter 1 the story of Hasina, a refugee woman from Myanmar, who escaped political persecution, which resulted in *Violence*, as reported by Parekh (2020, p. 102).

Before Hasina was able to flee the violence in Myanmar, she was brutally tortured by the military. “They beat me, tied my hands and feet and hung me from a tree. Next to me there was another

woman. The soldiers cut her belly and vagina. They cut off her breasts and put them in plastic bag. I started screaming and a soldier bit a piece of my cheek off. Then they pulled me down and gang raped me.” When she woke up naked, three days later, with stab wounds on the side of her face, she immediately began her journey to Bangladesh. When she arrived at the refugee camp a friend asked her if she would like a job in a garment factory and she accepted willingly. The friend turned out to be a trafficker, and she was taken to a brothel and made to work as a sex worker. She works seven days a week and gets about \$1 per client. The poor pay and degradation is not the worst part for Hasina: working as a prostitute, she has to relive the trauma of her torture by military every day.

As stated in Chapter 1, the reasons why women are political persecuted are often, though not always,¹⁴ gendered. For instance, the Afghan case again. According to international newspapers, in Afghanistan four women have recently been shot to death by Taliban because of their activism in favor of women’s right.¹⁵ Among them, the economist Frozan Safi, who was preparing to leave Afghanistan out of fear of being persecuted by the Taliban and ready to claim for asylum in Germany. According to Pangea Onlus, an Italian NGO that for many years have supported women in Afghanistan, their activists are in danger of being killed and of SGBV by the hand of Taliban.¹⁶ Hence, political persecution of this kind entails *Cultural Imperialism* of men over women, which enables *Violence*. Again, as it has been treated above, women are also *Dehumanized*, *Objectified*, *Instrumentalized*, and *Exploited* for sexual and reproductive purposes, which in turn leaves them *Powerless*.

In the context of the example above, and more generally in cultures that strongly adhere to traditional and religious norms, women are indeed considered as serving a specific purpose in the private and familiar sphere, and no permission to live in the public sphere. In fact, as highlighted, “one of the main obstacles to female refugees’ integration into the labour market is internal to family: in some cultures, women are not allowed to work, especially if their

¹⁴ With this I mean that the ground for persecution might not be entirely gendered, for example the membership to a subversive political group, but that the violence is decline toward gender-based forms of violence. Also, women experience a particular form of fear of gender-based harm, whereas men typically do not fear.

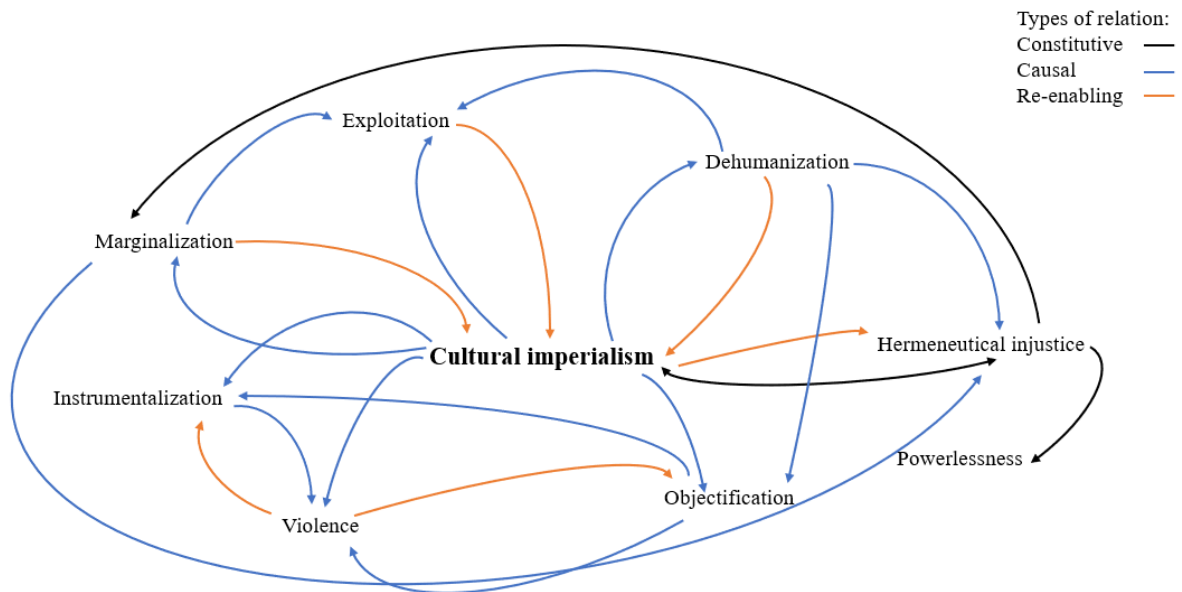
¹⁵ See: https://www.repubblica.it/esteri/2021/11/06/news/kabul_attivista_per_i_diritti_delle_donne_uccisa-325328743/.

¹⁶ See: <https://www.vanityfair.it/news/storie-news/2021/08/17/pangea-onlus-le-nostre-attiviste-kabul-sono-pericolo-non-lasciamole-sole>; <https://www.lastampa.it/esteri/2021/08/16/news/afghanistan-le-attiviste-distruogliamo-i-documenti-delle-donne-che-hanno-lavorato-con-noi-per-evitare-violenze-stupri-e-morti-1.40605136/>.

husbands cannot find employment” (Sansone 2016, p. 35). In this context, women’s voices are hardly ever heard, primarily because they do not occupy the public space where to make themselves heard.¹⁷

On the other hand, being excluded and *Marginalized* from the public sphere of society prevent them from acquiring the hermeneutical and epistemic resources that are useful to interpret the context they are living in, which in turn affects their integration in hosting societies.

Figure 3 Vicious cycles of injustice – Political persecution



This diagram shows how the vicious cycles look like in political persecution of the women. Gender-based or not gender-based, *Cultural imperialism* is the main injustice of this cycle. For political persecution can be understood in terms of a particularly violent attempt of the dominant groups to save their dominant position. *Hermeneutical injustice* is an epistemic form of *Cultural imperialism*, which, in turn can trigger, and can be triggered by, a series of other injustices, such as *Violence*, *Dehumanization*, and *Exploitation*.

¹⁷ Susan Moller Okin (1999, 1989) and Michael Walzer (1984) make this point perfectly clear in saying that the domination of women has to do with their exclusion from public spaces.

5.1.2 The journey and border-crossing

Recall again the story reported by Serena Parekh (2020), of Sina Habte, a refugee woman escaped from Eritrea while pregnant, who spent six months fleeing.

In 2015, Sina Habte's limp, pregnant body floated off the coast of Greece. Already past her due date when she boarded a flimsy boat to cross the Mediterranean Sea, Sina, wanted nothing more than to deliver her baby somewhere safe. A chemical engineer and citizen of the small African country of Eritrea, she'd spent 6 months fleeing almost certain life-long imprisonment, if not torture or death, for violating one of Eritrea's draconian rules. In her case, she wanted to live with her husband Dani instead of where the government assigned her. Eritrea is a country so repressive that it's considered the North Korea of Africa. After escaping Eritrea, sneaking across borders and living in the shadows of several different countries, she had nowhere else to go. If she returned home, she would be imprisoned, tortured or killed, and if she stayed in a refugee camp in Africa, it was likely that she would be found by Eritrean agents and returned home to the same punishment. So Sina, like tens of thousands of others like her, paid the last of her money to smugglers and boarded a small, overcrowded boat bound for Europe in the hope of claiming asylum.

(Parekh 2020, p. 1)

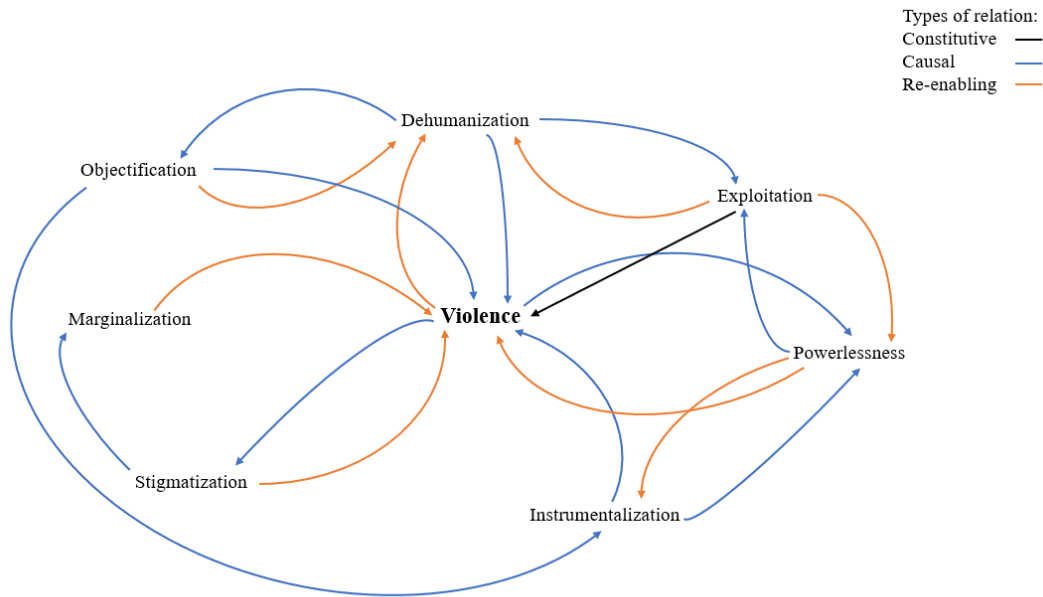
Claim that had never been made because she died while crossing the Mediterranean.

As described earlier in this research, the journey from the home countries to and through Europe is characterized by gender-based and non-gender-based *Violence*. Violence and danger are in fact structurally and systematically present throughout the entire journey to Europe, journey that can last many months, sometimes also years. As stressed elsewhere, this violence translates into sexual harassment, rape, transactional sex, torture, starvation, sexual *Exploitation*, perpetrated by different kind of actors – traffickers, smugglers, police forces, among others (Amnesty International 2016; Fernandez 2019; Freedman 2016, 2017; Gerard and Pickering 2014; Pickering and Cochrane 2012; UNHCR 2018). *Dehumanization* and *Objectification* are in place, particularly evident in Libyan detention centers.¹⁸

¹⁸ “The taps for drinking water at the camp are opened by the guards for just ten minutes a day at 4am. There is a daily queue for refugees to get their one cup of water per day and fights can break out among the desperately thirsty men. Detainees go without direct sunlight for months, with food delivered through a small hatch. They receive one small tub of couscous or similar comestible to share between two people. Unsurprisingly, many are starving. The main detention hanger is very rarely cleaned and is filled with maggot-infested piles of rubbish and rotting food. The toilets consist of a small collection of plastic buckets for over 650 people. Diseases are widespread, including scabies, diarrhea, and tuberculosis; all easily treatable, but the camp lacks any proper

Dehumanization and *Objectification* described in the footnote enable *Violence* and sexual trafficking,¹⁹ which is a strongly gendered form of *Instrumentalization* and *Exploitation* and enables forms of gender-specific *Powerlessness*. In fact, the victims of sexual trafficking in Europe are almost exclusively women and girls, and the perpetrators are mostly men.²⁰ *Exploitation* and *Powerlessness* in this case lead to *Marginalization* from the entire society, in countries of transit, and, also, in European countries of destination, where usually sexual trafficking is destined to take place and where they are excluded from participation in society from their traffickers.²¹ *Marginalization* is also caused by the *Stigmatization* involved in prostitution and sexual trafficking.

Figure 4 Vicious cycles of injustice – The Journey



medical facilities. No doctor has visited for six months”, See: <https://insidearabia.com/shocking-conditions-in-libyan-refugee-detention-centers-reveal-un-and-eu-impotence/> (Last access: 17/11/2021).

¹⁹ See: <https://www.europarl.europa.eu/news/en/press-room/20210204IPR97113/human-trafficking-stronger-measures-to-protect-women-children-and-migrants> (Last access: 17/11/2021).

²⁰ Precisely, 95 percent of the victims of sexual trafficking are females. See: <https://ec.europa.eu/eurostat/documents/3888793/6648090/KS-TC-14-008-EN-1.pdf/b0315d39-e7bd-4da5-8285-854f37bb8801>; <https://epthinktank.eu/2015/11/25/trafficking-in-women-2/> (Last access: 10/12/2021).

²¹ In general, many studies show how prostitution in general leads to exclusion from society and, therefore, Marginalization, mostly due to the Stigma involved (Fehrenbacher *et al.* 2020; Kelly 2004; Scambler and Graham-Smith 1992).

Again, here the main injustice is *Violence*. The logic behind this diagram is similar to the others, but differently here sexual *Exploitation* can be considered *Violence* in an inherently constitutive sense.

Border-crossing is another fundamental step of the journey throughout refugeehood. *Powerlessness* is constitutive of border-crossing, since being left with no decision-making power is an inherent feature of refugeehood, due to how the European asylum system is designed. For example, the increasing process of securitization of the borders makes it almost impossible for refugees to enter legally in the European territory to ask for asylum, leaving aside the impossibility of choosing in which country to apply for asylum.²² As Parekh (2020) effectively points out, Western states are “in part responsible for the inability of refugees to access refuge” (p. 18). In order to claim for asylum legally, refugees need to get a visa and buy a plane ticket in order to reach the country in which they want to claim for asylum. The point is precisely that they hardly obtain visas, because receiving countries already know that it is likely that people from refugee-producing countries will ask for asylum once in their territories. Thus, they do not grant them visas (Parekh 2020). The result is that they undertake illegal routes which put them at risk of harm and expose them to the oppressions and injustices just treated (Aleinikoff & Owen 2021; Aleinikoff & Zamore 2019; Betts & Collier 2017; De Bono 2019; Owen 2020; Parekh 2020). There are two main routes that refugees can take to enter the EU: the Balkan and the Mediterranean routes. As seen in Chapter 1, they are both very dangerous for different reasons.²³ During the time this chapter is being written, another migratory crisis is happening at the border between Belarus and Poland.²⁴

²² The Dublin Regulations are a series of regulations that set out which country is responsible for every individual asylum claim, which is usually the State where the asylum seeker first arrives in the EU. See: https://ec.europa.eu/home-affairs/policies/migration-and-asylum/common-european-asylum-system/country-responsible-asylum-application_it.

²³ See Chapter 1, §1.3.

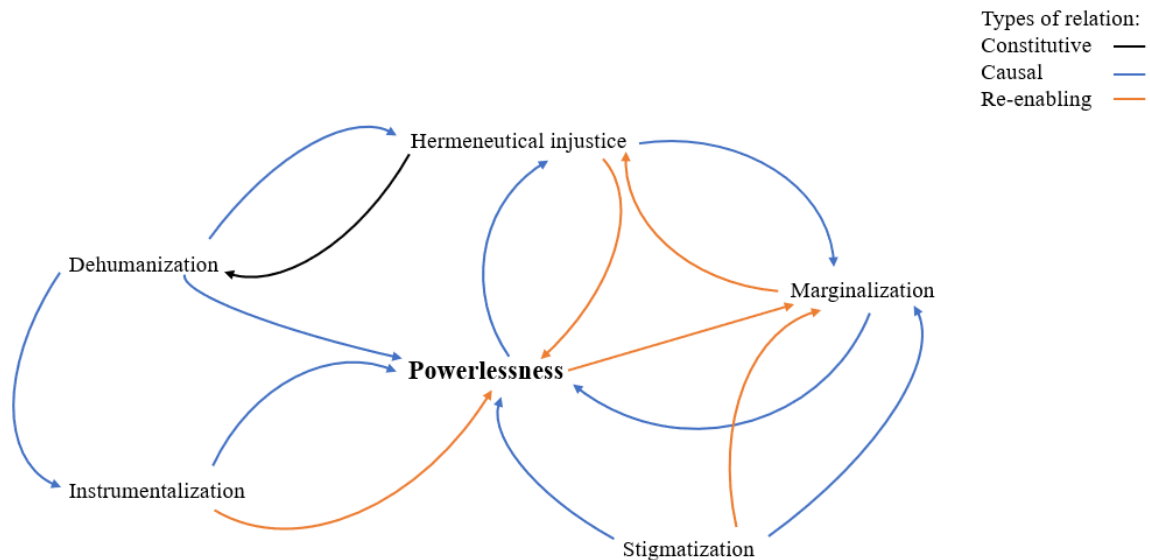
²⁴ Would-be asylum seekers are desperately trying to cross the border between Belarus and Poland in order to seek international protection in the EU. There is a lack of humanitarian support, and people have reported abuses by the hands of the authorities, since Polish’s response to this crisis is disproportionate. See: <https://www.theguardian.com/commentisfree/2021/nov/16/poland-belarus-border-crisis-eu-refugees>; <https://www.theguardian.com/world/2021/nov/08/belarus-escorts-hundreds-of-migrants-towards-polish-border>.

By the time refugees cross the European borders, they are likely to experience that hermeneutical death theorized by Medina (2017),²⁵ in the sense that persecution, *Violence*, *Stigmas*, *Powerlessness*, and *Marginalization* all prevent one from participating in meaning-making-and-sharing practices. If we consider human beings to be inherently relational (Melé and Cantòn 2014), being relational entails some forms of meaning-exchanges. If this dimension is completely cut out, *Dehumanization* is in play. Therefore, *Hermeneutical injustice* driven to its most drastic form is an epistemic form of *Dehumanization*. Moreover, the way part of the public discourse on border-crossing is being held in most European countries is typically dehumanizing, since refugees are seen and portrayed as ‘invaders’ (Berry 2016; Fargues 2015).

European citizens are so accustomed to the images of tragedies in the Mediterranean that they appear to lack empathy for them, and, therefore, people do not feel close to their sufferance. This dehumanizing attitudes and lack of empathy enable *Instrumentalization* by political forces for political purposes. On the one hand, there are the invader and bogus asylum seeker narratives dear to right-wing parties, and on the other hand left-wing parties use these tragedies to build a political discourse against right-wing parties. Within this dynamic which is only apparently gender-neutral, *Violence* and suffering experienced by refugee women are instrumentalized by right-wing parties to show how aggressive and evil male asylum seekers are. Moreover, the lack of empathy for refugees’ sufferance is in a way convenient both for parties and European residents, and, therefore, it is generally convenient for them to remain ignorant about the real extent of their experiences of persecution, *Violence*, *Exploitation*, etc. so as to continue the attitude of *Dehumanization*, which makes *Instrumentalization* possible.

²⁵ I recall here Medina’s definition of hermeneutical death: “The loss (or radical curtailment) of one’s voice, of one’s interpretative capacities, or of one’s status as a participant in meaning-making and meaning-sharing practices” (Medina 2017, p. 41).

Figure 5 Vicious cycles of injustice – Border crossing

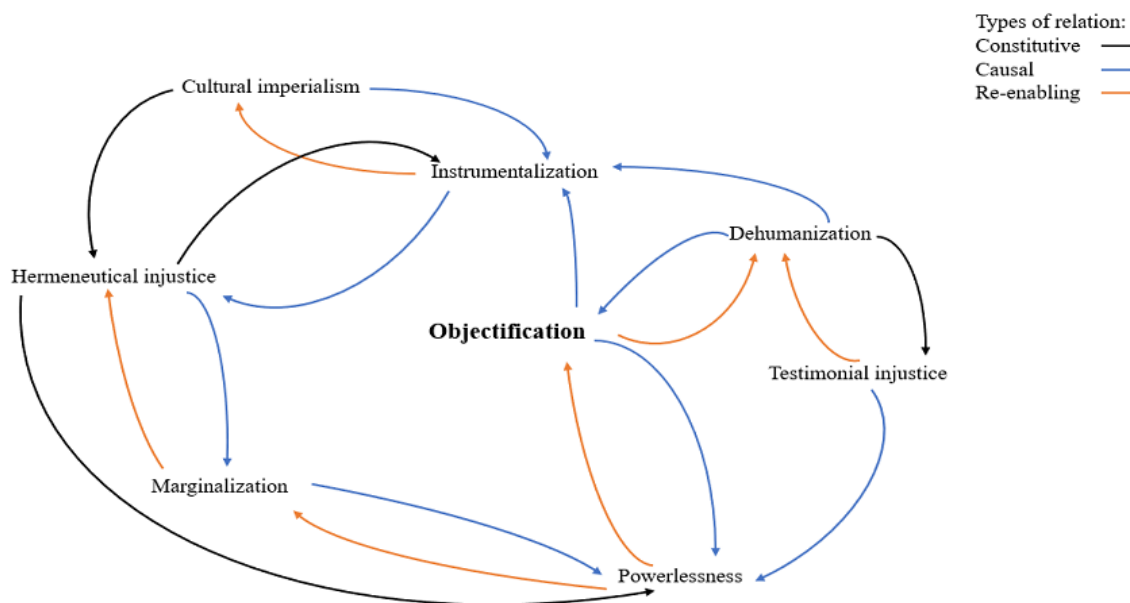


In this case, the central injustice is *Powerlessness*, for the reasons that I explained above, which causes and is caused by many factors, including *Hermeneutical injustice*, in this particular case constitutively *Dehumanizing*.

5.1.3 In Europe: The claim, the interviewing process, and the outcome

The Figure 6 below makes visible the fact that the European reception system and the way Western countries face the refugee crises that have occurred since 2015 are inherently *Dehumanizing*, *Objectifying*, and *Instrumentalizing*. In this case, I individuate *Objectification* as the main injustice of this context for the reasons explained after the diagram.

Figure 6 Vicious cycle of injustice – The European reception system



For many scholars highlight how western countries treat asylum seekers not as proper human beings but on a par with unwelcome goods to be sorted among them, since they consider them burdens to unload to someone else whenever possible (Miller 2016; Parekh 2020; Robinson *et al.* 2003). *Objectifying* and *Instrumentalizing* attitudes of this kind can be explained by the *Cultural imperialism* that western countries exercise over refugees asking for protection. *Dehumanizing* attitudes of this kind enable *Instrumentalization*, as the recent crisis at the border between Belarus and Poland demonstrates. Refugees are being used by Belarus' Prime Minister Lukashenko to destabilize the European Union. Ursula von der Leyen declared that “the instrumentalization of migrants for political purposes by Belarus is unacceptable. The Belarusian authorities must understand that pressuring the European Union in this way through a cynical instrumentalization of migrants will not help them succeed in their purposes”.²⁶ Similarly, the Italian Prime Minister Mario Draghi declared that migrants are being used as foreign policy instruments.²⁷

²⁶ See: https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_21_5867 (Last access: 19/11/2021).

²⁷ https://www.ansa.it/sito/notizie/topnews/2021/11/17/bielorussia-draghi-migranti-usati-per-politica-estera_aa8acf4f-0afd-473e-baa6-0cebf4dc86e4.html (Last access: 19/11/2021).

As already seen above, *Instrumentalization* of refugees and asylum seekers in political discourse is not free from gender specificities, because talking about women is often useful to pursue one's own political gain.²⁸ This attitude is instrumentalizing and, also, epistemically unjust in the sense that they address the women's situation without engaging with their voices. The interest is not really based on their experiences and injustices or on how to improve their protection, but on a narrative they can use for what is politically expedient in that moment. *Dehumanization* and *Objectification* enable then *Marginalization* and *Powerlessness*, which are also constitutive features of the European reception system. In particular, asylum seekers are hardly adjusted within the society hosting them, and women are also marginalized by other asylum seekers, and this is especially true for the women that have experienced SGBV, or are believed to have experienced SGBV, because of the stigma it causes (Pittaway & Bartolomei 2001; Sansonetti 2016; Zuccarelli 2017). *Marginalization* causes epistemic lacunas that lead to hermeneutical difficulties in making sense of their own experiences and, at the extreme, they might not even develop a sense of injustice concerning what is happening to them.²⁹ Moreover, European Member States' residents and officials generally have a suspicious attitude towards refugees and asylum seekers, which also affects the interviewing process in a way I am going to explain shortly. This translates into *Testimonial injustice*, since residents, politics, and policies tend to assume (or wish to assume) that the majority of asylum seekers are constituted by 'bogus' and undeserving refugees.³⁰

²⁸ See: Chapter 4, §4.3.2.

²⁹ The issue of Marginalization of women is a historical issue. Betty Friedan in her already-cited *The Feminine Mystique* (1963) discuss the so called 'problem that has no name', which is the feeling of deep dissatisfaction typical of American women during the Fifties and Sixties. The feminine mystique refers to the fact that women during those years were taught that femininity is how a woman realizes herself and, therefore, this was achieved exclusively in the private realm of the family and the household, and therefore through marriage, a husband, and children. This problem has no name precisely because women themselves were not able to understand and give a name to this experience: they were ashamed of this feeling of dissatisfaction, and they thought it was somehow an individual and pathological issue. They did not know how spread this feeling was among them, because they did not talk to each other about it. In those years they could not give proper meaning to what was happening to them, because they were practically relegated in their houses.

³⁰ See: Chapter 4, §4.3.1.

In the interviewing process many of the forms of injustice analyzed so far can be found. The mechanism of *Dehumanization* triggered by the previous steps of this journey of refugeehood on the one hand, and the *Infantilizing* and paternalistic attitude which is typically directed toward women³¹ combine with *Stigmatization* (enabled – as we have seen – in turn by *Dehumanization* and *Infantilization*) to enable *Testimonial Injustice*. On the other hand, as stressed in the previous chapter of this work,³² *Testimonial injustice* enables forms of epistemic *Objectification* and *Instrumentalization* when their testimony is not considered because there would be no real gain in considering it. For instance, a claim of an asylum-seeking woman who has not been subjected to SGBV may not be considered relevant because it is not useful to fuel the label of the stereotyped vulnerable woman,³³ which, in turn, serves to *Infantilize* and paternalize her, because it fuels their representation as unreliable. *Testimonial injustice* is also caused by a lack of epistemic resources on the part of asylum decision-makers and on the part of the women, who are not put in the condition to understand their own experiences of injustice *as* injustices. On the other hand, asylum decision-makers do not have the right epistemic resources in the sense that, as a number of other citizens and residents, they believe they have the right understanding of what is happening to these people, and therefore they do not appropriately engage with their voices and stories to understand them, but only to confirm their insight on the matter.³⁴

As we have seen, a lack of epistemic and hermeneutical resources from the hearer leads to *Testimonial injustice*. For if the subject herself cannot make fully sense of her own experiences of injustice (in the form of *Violence*, *Exploitation*, *Powerlessness*, *Dehumanization*, *Instrumentalization*, *Marginalization*, *Objectification*, etc.), their testimony risks resulting incoherent and inconsistent, which make the hearer suspicious. This suspicious attitude is enabled by the already-mentioned stigma of the ‘bogus asylum-seeking woman’ will cause credibility deficit. This attitude can be conceptualized as a form of

³¹ See: Chapter 4, §4.1.2.

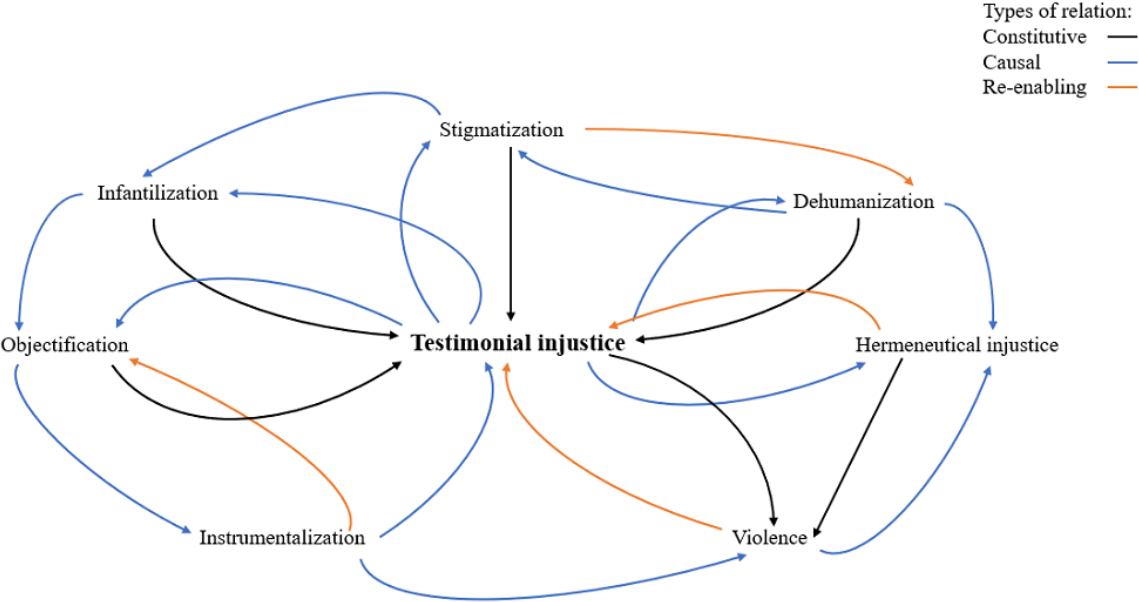
³² See: Chapter 4, §4.4.

³³ Recall the already-mentioned story of a woman who has been suggested to invent a story of rape, because, alone, FGM was not considered to be a good enough cause for escaping to guarantee her the international protection in the hosting country (Baillot *et al.* 2014).

³⁴ See: Chapter 4, §4.3.1 and §4.3.2 on Testimonial and Hermeneutical injustice.

epistemic *Violence*. On the other hand, even if the hearer does not approach the interview with a suspicious attitude, their lack of the appropriate hermeneutical resources to understand these women experiences, and also the lack of the will to challenge the ones already owned, may impact on the assessment of their credibility.

Figure 7 Vicious cycles of injustice – The interviewing process



The injustice that most characterizes this phase is *Testimonial injustice*, for the reasons explained above. *Infantilization* and *Objectification* are constitutive of *Testimonial injustice*, since the victim lacks credibility in virtue of their lack of the mental capacities of adults and autonomous individuals, and it lacks the status of testifying being, such as the status of person. Moreover, also *Dehumanization* is constitutive of *Testimonial injustice* since the person who is giving testimony is treated as having a lesser standing qua human being, which renders their speech intrinsically lacking in credibility.³⁵

After the interviewing process, which serves the purpose to evaluate the asylum seeker’s risk to be persecuted in her own country, there are two possible outcomes: the recognition of some sort of protection – asylum, humanitarian protection, or subsidiary protection,

³⁵ See: Chapter 4, §4.4.

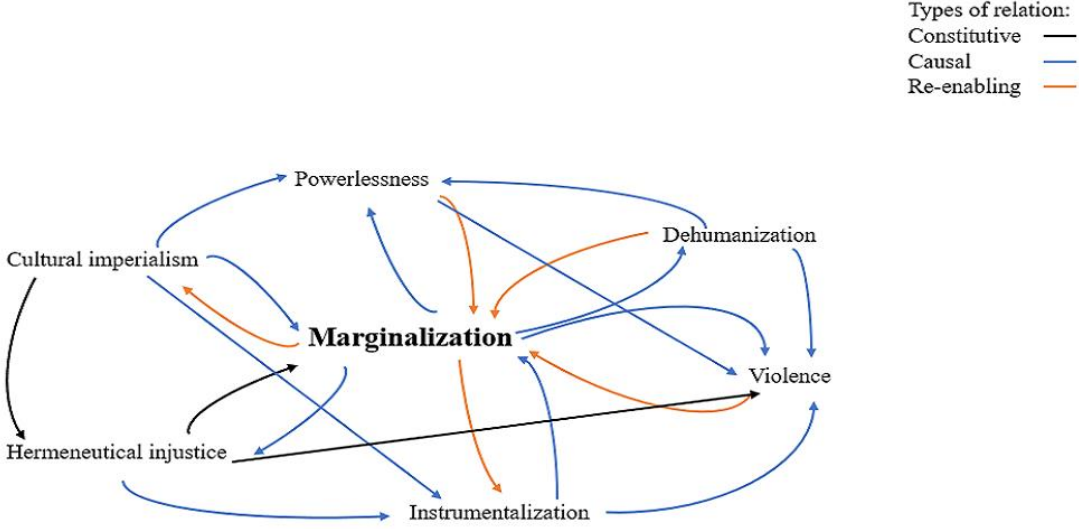
depending on the rules of that particular receiving state – or rejection of the application. After the first rejection, asylum seekers can appeal but, if the appeal fails, refugees become illegal migrants who are to be (forcibly) returned to their home countries. Generally, if caught, these illegal migrants wait for their repatriation in European detention centers. As stated earlier in this work, this wait can last very long, sometimes more than eighteen months, which is the limit set by the European Return Directive.³⁶

First, the positive outcome, which represents the recognition of some sort of protection. As shown in Figure 8, in the case of a positive outcome, asylum-seeking women are still vulnerable to *Marginalization* due to gender-based reasons. As already mentioned in the previous chapter, women risk being marginalized from the hosting society by their own community to maintain original gendered power relations. As it should now be clear, *Marginalization* enables forms of *Powerlessness* and *Dehumanization*, which also causes *Marginalization* in the first place. Moreover, *Cultural imperialism* and *Hermeneutical injustice* are in place when hosting communities not only expect refugees to be grateful to them for the protection they are offering, but they believe that being grateful is some sort of political obligation (D’Cruz 2014; Jeannet *et al.* 2021; Nayeri 2019). Besides, their show (or lack) of gratitude is often Instrumentalized for political purposes. Moreover, *Marginalization* and *Powerlessness* can enable or exacerbate SGBV, in particular domestic *Violence*.

³⁶

See: [https://www.europarl.europa.eu/RegData/etudes/STUD/2019/631727/EPRS_STU\(2019\)631727_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2019/631727/EPRS_STU(2019)631727_EN.pdf) and <http://migreurop.org/IMG/pdf/migrant-detention-eu-en.pdf> (Last access: 12/12/2021).

Figure 8 Vicious cycles of injustice – Positive outcome



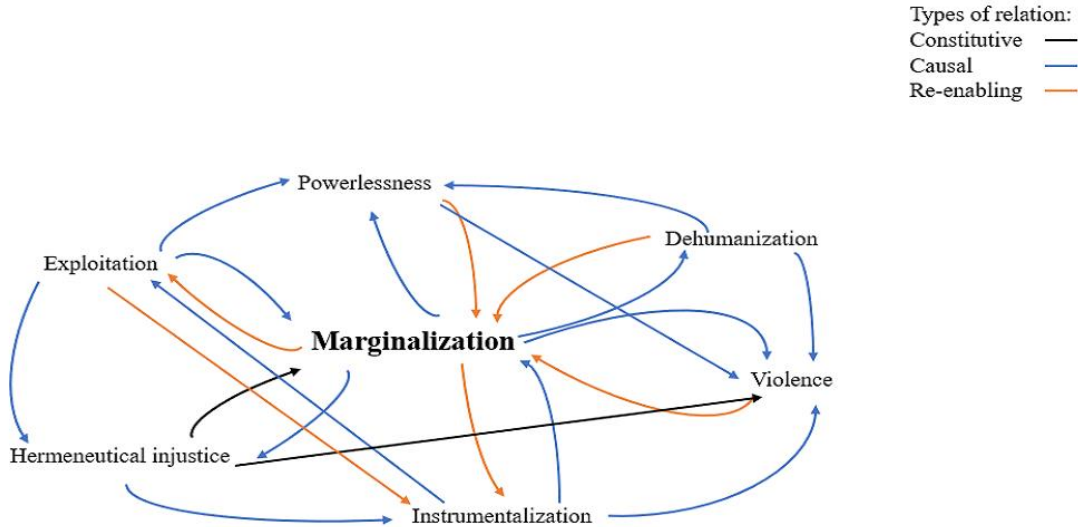
It seems obvious that in case of rejection of the claim for asylum, the situation gets much worse. Clearly, irregularity exposes to a series of vulnerabilities and injustices, or exacerbate the ones that are already there. Look at Figure 9. Being classified as an illegal immigrant exposes one to detention, extreme *Marginalization* and *Powerlessness*, which can enable *Instrumentalization* and *Exploitation*. As explained elsewhere in this research, women are generally exploited into care labor and prostitution, which enables various forms of SGBV. Detention centers are highly *Dehumanizing*, which exposes them to physical, psychological, and epistemic *Violence*. According to Van Hout (2021),

The situation of women in immigration detention is patchy in EU policy, academic literature and ECtHR jurisprudence. Where referred to, they are at best confined to their positionality as pregnant women or as mothers, with their unique gendered health needs ill-resourced. ECtHR jurisprudence is largely from male applicants. Where women are applicants, cases centre on dire conditions of detention.

The voices of these migrants are never heard since they are almost invisible to the hosting community. This is especially true for women. When they are made visible by media, it is usually to report some sort of crime committed by them or when they are victim of extreme violent acts. However, women hardly break the news, since crimes are most commonly committed by male migrants (at least the ones that interest public discourse). Epistemic

Violence and *Testimonial injustice* enable *Instrumentalization*, since on the one hand the wrongful action perpetrated by criminals are used to *Stigmatize* the entire category, and, on the other hand their voices are not heard because their testimony is not useful for the goals of the hearer, which is often to stigmatize them. *Marginalization*, *Powerlessness*, *Dehumanization*, and *Stigmatization*, in turn, enable *Violence*. Again, the main injustice of this phase is *Marginalization*, which characterizes most the fact of being illegal in a territory at the point of becoming invisible.

Figure 9 Vicious cycles of injustice – Negative outcome



I anticipate here what will be treated furtherly in the next paragraph. The last two diagrams look very much alike. It means that these women’s vulnerabilities and injustices do not disappear after the recognition of the international protection. The same forms of injustice are partially still there, they are not eliminated by the recognition of the protection *per se*. The reason relies in the intersectional nature of this group. For the injustices typical of the group of asylum seekers may be partially solved, but the gendered side of these injustices is not addressed.

5.1.4 How vicious cycles of injustice relate one another

So far, I analyzed the vicious circles of injustice that take place in each step throughout refugeehood. In each of these steps, indeed, there can be found the process of the effacement in play, which, as preliminarily defined, is characterized by injustices that interact with each other forming vicious cycles of injustice, and as we have seen they do so in different ways and by different types of relations (causal, constitutive, or re-enabling). What the process of effacement does is precisely to efface the way these injustices interact one another enabling next injustices and steps of the journey throughout refugeehood.

These cycles of injustice, I now explain, relate, and interact one another in different ways.

i) The same form of injustice in one step can enable the same kind of injustice of the following steps. Moreover, one form of injustice in one step can trigger another injustice in another step. ii) Some of the cycles of injustice work in a similar way even though they represent opposite situations. iii) Lastly, an injustice in one step can fully make sense as an injustice only if other forms of injustice are present in previous steps.

i) First, if we look a deeper look at the diagrams of the previous pages, *Dehumanization*, *Cultural Imperialism*, and *Objectification* are usually the background conditions that enable *Violence*, in the forms of SGBV, persecution, and violence during conflicts. They are often the pre-conditions for *Violence*. On the other hand, *Violence* is one of the most fundamental injustice for conceptualizing asylum-seeking and refugee women, since it is the injustice that triggers the journey and, therefore, the claim for asylum. However, *Dehumanization*, *Objectification*, and *Cultural Imperialism* are also the background conditions for the injustices that are present in the next steps of this journey throughout refugeehood, not only for *Violence*. Moreover, one form of injustice in one step can trigger another injustice in another step and it can also trigger entire cycles. For example, sexual and gender-based *Violence* triggered by *Dehumanization* and *Cultural imperialism* trigger the cycle of the journey, because it represents the reason to flee their country in the first place.

ii) Second, it is interesting to notice that, given these common background conditions, some of the circles of injustice work in a similar way. For instance, the reasons for leaving the country of origin trigger similar circles of injustice, precisely because *Violence*, be it

purely for gender-based reasons, or caused by conflicts and war, and by political persecution, presupposes *Dehumanization* and *Objectification* of the people one is acting violence against. Moreover, *Dehumanization* and *Objectification* also presuppose (and enable) *Cultural imperialism* of the dominant groups over oppressed groups.

However, interestingly, the resemblance between circles of injustice seems especially true for the ones that concern the outcome of the claim for asylum. both cases are characterized by *Marginalization*, *Powerlessness*, *Violence*, and *Hermeneutical injustice* (which, as argued in the previous chapter, can be considered an epistemic form of *Cultural Imperialism*). This means that having granted the international protection do not grant asylum-seeking women to stop being vulnerable to these forms of injustice. This is because their *Marginalization*, *Powerlessness*, *Violence*, and *Cultural Imperialism* (in its epistemic and non-epistemic forms) do not depend uniquely on their status as displaced, asylum seekers, or refugees. This is to say that the source of the injustices suffered is not only relatable to what is ‘public’. For being vulnerable and actually suffering from these forms of injustice is also enabled by gender-based reasons, which often have a ‘private’ and therefore hidden source.³⁷ In this regard, the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence is very clear in stating that SGBV includes violent, discriminatory, and violating human rights acts “occurring in

³⁷ I am referring here to the liberal distinction between the public and public spheres of individual lives. The primary function of this distinction in liberal theory is to highlight the differences that exist between the two spheres, both in a descriptive and in a normative sense. There are in general many definitions of the ‘public’ and the ‘private’, which, on the one hand, pertain to the realm of what is accessible, observable, and that presupposes a political structure, and, on the other, to what is intimate, to be protected from the interference of the ‘public’. For a more comprehensive discussion of this argument, see: Arendt, H. (1998), “The Public and the Private Realm”, in: *Ibid.*, *The Human Condition*, Chicago University Press, Chicago, pp. 22-78; Benhabib, S. (1992), “Models of Public Space: Hanna Arendt, the Liberal Tradition and Jürgen Habermas”, in: *ibid.*, *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics*, Polity Press, Cambridge, pp. 89-120; Benn, S.I. and Gaus, G.F. (1983), “The Liberal Conception of the Public and the Private”, in: *Public and Private in Social Life*, supra note 3, p. 31; Gal, S. (2002), “A Semiotics of the Public/Private Distinction”, *Differences: A Journal of Feminist Cultural Studies*, Vol. 13, No. 1, Duke University Press, pp. 77-95; Gavison, R. (1992), “Feminism in the Public/Private Distinction”, *Stanford Law Review* 45:1, pp. 1-45; Locke, J. (1967), *Two Treatises of Government*, Cambridge University Press, Cambridge; Mnookin, R. H. (1981-1982), “The Public/Private Dichotomy: Political Disagreement and Academic Repudiation”, *University of Pennsylvania Law Review*, pp. 1429-1440; Pitkin, H.F. (1981), “Justice: On Relating Private and Public”, *Political Theory*, 9: 327, pp. 328-352.

public or private life”.³⁸ Therefore, solving one source of *Powerlessness* or *Marginalization*, which is for instance irregularity or the brutally long waiting times for a response to the asylum claim, do not solve these two forms of injustice in its entirety, because there is still the gender-based source to be addressed. Clearly, this is not to deny that once obtained the international protection these women are anyway better off than in the case of rejection of the application. However, it is necessary to acknowledge that it is a matter of degree of injustices. Without addressing the gender-based sources of their vulnerabilities and injustices, they still suffer from many of them, and this is precisely what it is effaced and what this approach attempts to make visible. These injustices become invisible and therefore not addressed.³⁹

ii) Third, it can be the case that an injustice in one step only occurs if other forms of injustice enable it in previous steps. Let me start from the beginning. Take the example of a woman that decides to flee from her country due to gender-based political persecution, which is typically SGBV. *Dehumanization* and *Objectification* of women and *Cultural Imperialism* enable *Violence*. The *Violence* faced in this step triggers the journey, which makes her vulnerable and/or exposes her to further violence. This second risk of violence is due to the same *Dehumanization*, *Objectification*, and *Cultural Imperialism* of the previous step. Moreover, the *Powerlessness* enabled by the violence suffered before leaving the country also facilitate *Violence* during the journey and border crossing. For

³⁸ See: <https://rm.coe.int/168046031c> (Last access: 05/01/2022).

³⁹ This matter is not really new and refers to the feminist critique to the public/private dichotomy (Collins 1991; Davidoff 1998; Landes 1998; Okin 1989; Pateman 1989; Thornton 1991). In particular, Benhabib (1992) argues that the distinction between the two spheres has been drawn specifically to confine women and their typical spheres of activity in the private domain and faraway from the liberal public agenda. Therefore, a part of the feminist thought highlights the limits of this dichotomy and even challenge the view that the line of separation between the spheres should be drawn at all, as the famous slogan ‘the personal is political’ suggests (Okin 1989). More in general, the point of this critique to this dichotomy is that it confines women’s issues in an invisible and inaccessible domain. In the particular case of assessing whether asylum-seeking and refugee women are better-off after the recognition of some sort of protection, it can be noticed that whereas the public sphere is addressed – that is, whether asylum is recognized by the hosting state or not – the private sphere remains invisible. This means that focusing exclusively on the public aspect of asylum-seeking and refugee women hides the injustices whose source relies in the private sphere, which is the domestic. Thus, without taking seriously the gender-based issue concerning the ‘private’ realm, their injustices are not eliminated thereby simply granting them institutional protection.

these women are left with no power over the decision on how to leave their country to escape violence. *Violence* suffered due to persecution and during the journey also causes trauma and stigma, which affects their credibility with asylum decision-makers. This credibility deficit is likely to cause a rejection of the claim and to expulsion and/or irregularity on the European territory, which in turn causes further *Marginalization*, *Violence*, and *Exploitation*.

This shows that if we approach these steps and circles as layers of injustices, we may identify the relevant layers of vulnerability and injustices and therefore interrupt these cycles.

5.2 The effacement: A definition and the effects

Based on what has been said in the previous paragraph, I repropose the definition of the effacement given at the beginning of this chapter:

The process by which multiple forms of injustice and vicious circles of injustice interact in epistemic and non-epistemic directions to render invisible (= to efface) the true extent, peculiarity, and nature of these women's compound injustice.

It is true, as already treated, that these women suffer from Cultural imperialism in epistemic and non-epistemic forms, including the fact that “the dominant express their social superiority by not perceiving those they dominate” (Young 2011, p. 112), where the dominant groups can here be understood as both the group of men and the group of non-displaced populations (or residents). The point is that refugees and asylum seekers are perceived by scholars, policy makers, politicians, and general population in an *abstract* and pretentiously *gender-neutral* way, which leads to ignore the intersectional and gender specificities of refugeehood and asylum. As will be treated more thoughtfully in the next paragraph, with the formula ‘pretentiously gender-neutral way’ I mean that when referring to groups of people, in this case refugees and asylum seekers, in an abstract way really means to picture this group as *universal male*. The perception of refugees and asylum seekers, thus, is implicitly biased.

The effect of the effacement is primarily to make the complexity of the injustices suffered by asylum-seeking and refugee women *invisible*. Invisibility here does not refer to an

invisibility of the forced displaced women in the sense that media and policymakers do not perceive them. There is an increasing attention on women's oppression in the Global South and the violence they are subjected to and the need to safe passages for them, especially after the Afghani crises. The invisibility caused by the effacement is more of the kind theorized by Honneth & Margalit (2001), that is a "non-existence in the social sense" (p. 111), the lack of cognition and identification of their gendered and intersectional experiences.

Invisibility of women and gender-related issues is not a new topic. There is increasing literature and therefore awareness of the mechanisms that lead to invisibility of women, such as languages using gendered marks,⁴⁰ infantilization of women by media,⁴¹ little engagement with their voices even when treating gender-sensitive argument.⁴² This issue is amplified when the subject of invisibility are intersectional groups of women.

As stressed by Crenshaw (1982) and Purdie-Vaughns & Eibach (2008), people with intersecting identities, as asylum-seeking and refugee women, suffer from a distorted visibility in both the prototypical groups they are part of, in this case asylum seekers and women.

Because people with two or more subordinate identities do not fit the prototypes of their constituent subordinate groups, they will experience *intersectional invisibility*. By intersectional invisibility we mean the general failure to fully recognize people with intersecting identities as members of their constituent groups. Intersectional invisibility also refers to the distortion of the

⁴⁰ The main criticisms to gender neutrality are moved by feminist philosophers of language, who argue that terms like 'men' and 'he' are intended to be gender-neutral, but what they really do is to contribute to make women invisible "distracting attention from their existence" (Saul & Diaz-Leon 2018). Susan Moller Okin (1989), on the other hand, also highlights the phenomenon of the pretended gender-neutrality in language and in the work of contemporary political theorists.

⁴¹ Infantilization of women by media production includes the tendency of call them by first name omitting their surnames in the titles of the news that concern them. Or it is even common to call them by pet names, or to classify them by their social status. Women's surnames are very often confined to the article body, in secondary positions. It does not usually happen with men's family names. This is infantilizing and demeaning because it confines the women in the domestic sphere, it classifies them not as 'who' but 'whom', and it also contributes to invisibility precisely because names do not stick in memories (Murgia 2020).

⁴² There is little or even no engagement with their voices, even when discussing gender-related topics. For example, an Italian famous talk show host set up an installment regarding problems and difficulties faced by women in the workplace and in the job market, but he did not invite any woman to discuss the issue, which was addressed by a men-only roundtable. See: <https://www.giornalettismo.com/tutti-maschi-a-porta-a-porta-donne-lavoro/> (Last access: 13/12/2021).

intersectional persons' characteristics in order to fit them into frameworks defined by prototypes of constituent identity groups.

(Purdie-Vaughns & Eibach 2008, p. 381)

I add to this analysis that this invisibility, or misperception regards their experiences and injustices, rather than the group itself. Moreover, I argue that as showed in the previous paragraphs, one of the reasons why this misperception is in place precisely because these injustices intersectionally combine and interact one another, effacing this compound injustice.

The process of effacement can be understood by distinguished two separated but interconnected levels: theoretical and practical. On the one hand, there is a theoretical argument that shows that effacement produces conceptual causes and effects, visible in academic works, especially in philosophy of refugeehood's research. This represent an intrinsic injustice, since the implied claim of neutrality does not give equal recognition to men and women that are forcibly displaced. On the other hand, the effacement has also practical effects on the narratives regarding asylum-seeking and refugee women, and that translates into lack of gender-sensitive measures. This means that effacement reiterates and reproduces forms of injustice by making them invisible and fostering that *status quo*. This is a kind of extrinsic injustice.⁴³

5.2.1 The theoretical side of the effacement: How scholars contribute to efface women's experience of refugeehood

At the beginning of this work, I stated that while there has been an increasing literature in policy and sociology for what regards women refugees and asylum seekers, the same cannot be said for normative political theory of refugeehood and displacement. There is no work specifically dedicated to asylum-seeking and refugee women and too little engagement with their experiences, engagement that mostly concerns mentions to SGBV and that does not translate into conceptual analysis. What these scholars (Aleinikoff & Zamore 2019; Bell

⁴³ For a focus on the meaning of intrinsic and extrinsic in philosophy, see: Marshall, D. and Wheatherson, B. (2018), "Intrinsic vs. Extrinsic Properties", *Stanford Encyclopedia of Philosophy*, Zalta, N. E. (ed.), available at: <https://plato.stanford.edu/cgi-bin/encyclopedia/archinfo.cgi?entry=intrinsic-extrinsic> (Last access: 12/04/2022).

2021; Betts & Collier 2017; Cohen & Van Hear 2020; Miller & Straehle 2020; Oliver *et al.* 2019; Owen 2020; Parekh 2020) all do, is to try to theorize on the concepts of refuge and refugees and to indicate possible ways to improve the international protection system, in order to make it more just and fairer. The problem is that, without facing directly the issue of women and intersectional groups, they further efface their experiences and, especially, what it means to reform the European and international refugee regime in a way that positively affects them and addresses their injustices and needs. The next section is precisely dedicated to the political and practical consequences of the effacement, namely the general failure to politically address their needs and their injustices, which translates into lack of measures that would reduce SGBV, and the forms of injustice and oppression that have been treated so far.

The point is that pro refugee and well-intended scholars all recognize the need for refugee protection, and for better ways to address this protection, and their work is fundamental for conceptualizing what politically means to be a refugee, and how we should look at the protection of forcibly displaced people. However, they do not adequately engage with the gender dimensions of refugeehood, and hence their analysis effaces this issue. Their work (Aleinikoff & Zamore 2019; Bell 2021; Betts & Collier 2017; Cohen & Van Hear 2020; Miller & Straehle 2020; Oliver *et al.* 2019; Owen 2020; Parekh 2020) is oriented at proposing how to improve refugee protection but they seem to want to protect an *abstract* figure of refugee. For this figure seems at first not to be gendered, or neutral in respect to gender, which means that the analysis is intended to apply to refugees as a whole (men *and* women, children, LGBTQAI+ people, persons with disabilities, etc.). The reality is that in their conceptualizations and proposals as to how ameliorate the systems of international protection what *de facto* they are actually referring to are asylum-seeking and refugee (heterosexual) *men*.

As numerous feminist scholars have pointed out (Bacchi 2009; Criado Perez 2019; De Beauvoir 1997), pure gender neutrality in public discourse or narrative, or theorization, is problematic to obtain. What happens is a pretended gender neutrality, which actually translates into the *universal male*, or *default male*, which means unintentionally seeing humans as male, a kind of ‘male, unless otherwise’. With this I do not mean that this male default is an intentional attitude among scholars, nor that normative political theorist working

on migration *de facto* consider all refugees to be male. What I do argue is that women's particular experiences of injustice are effaced in a way that are not seen nor treated, because they are assimilated with the one of the pretended totality of refugees, which, as I have explained, really means the men's experiences of refugeehood. Hence, this abstract figure of refugee that they have in mind is gender biased, it is male. The result is that women's particular experience of refugeehood and asylum is not seen and therefore, not conceptualized. The solution proposed by each of these scholars are only partly accurate and helpful for women.

An example of this is what Betts and Collier (2017) say at the beginning of their book, when clarifying the subjects of their theorization. In particular, they state quite clearly that their focus is “on the circumstances in which a society collapses into mass violence; not those in which awful things happen to some people” (p. 17). This means that for the purposes of their work, they consider only those refugees that become refugees after mass violence. The question that arises linearly is: Where are the women in this picture? More precisely, where are the women that flee their countries due to gender-based reasons? Does SGBV qualify for mass violence, or it is a phenomenon relegated to the realm of “awful things [that] happen to some people”? I find this at least ambiguous and problematic, since in proceeding in this way they are cutting out the specificities of nearly half the population of refugees, which make the solutions proposed to ameliorate the refugee system problematic. This is to say that many of the scholars mentioned above share this ambiguity in their theorizing.

Scholars that work in this area can be divided into three groups, according to how they see the refugee regime and to how they consider the most effective and fair way to protect refugees. The first group is composed by those who favor forms of regional protection (Betts & Collier 2017; Parekh 2020); the second group comprehend those who put the accent on resettlement and membership in States (Owen 2020); the third group concerns the scholars that find in free movement a fair way to address refugeehood (Aleinikoff & Zamore 2019).

- a. Regional protection. Scholars that share this view (Aleinikoff & Zamore 2019; Betts & Collier 2017; Parekh 2020) argue that western states should implement systems of *local integration* (intended as economic, social, and political integration) of refugees wherever

these refugees find themselves – Western states or states of the Global South (Parekh 2020). This is because, they argue, refuge is not only about humanitarian assistance (i.e., providing food and shelter to people in need), but it is especially a matter of developing and “restoring people’s autonomy through jobs and education particularly in the countries in the developing world that repeatedly host the overwhelming majority of refugees” (Betts & Collier 2017, p. 10).

Stressing the need of the recognition of socio-economic rights for refugees is fundamental. However, these scholars do not seem to consider female employment and education as a substantial issue, and therefore they do not address them. Moreover, whether it is arguably true that regional settlement programs that go beyond the logic of refugee camps constitute a valuable and just solution, it is equally true that without addressing gender-specific policies and programs that improve employment and education the risk is to ignore, and therefore tolerate and reproduce existing patriarchal structures. In this way, in the best-case scenario the extent in which women are protected is very limited, because once again gender specificities and gender-specific oppression are not faced. The main object of theorizing of how to build a better protection system is male.

- b. Distinction between types of protection, resettlement, and membership in third states. Owen (2020a, 2020b) suggests that there should distinguish between different types of protection depending on the source of the harm suffered by refugees – Asylum, Sanctuary, and Refuge. The first type of protection – Asylum – is meant to be provided for people who face political persecution and is supposed to grant new membership to the person who have seen this membership denied by their own state. The second type of protection – Sanctuary – is thought suggested for facing large numbers of refugees that flee their country due to generalized violence or following a breakdown of public order. In Owen’s (2020a) words, refugees that would fall under this type of protection are “persons who are not targets but rather would fall into the condition of being, as it were, collateral damage – or with the claims of persons whom the state is incapable of protecting from persecution by non-state agents” (p. 57). The point of this protection is precisely that the person who flee from this kind of harm is entitled to protection from a

third state and shall not be returned to their country so long as the conditions of danger persist. The third type of protection – Refuge – applies in cases of specific events, like natural disasters and famine, and “serves the same basic function as international emergency assistance to persons displaced by the relevant events within the state” (ibid., p. 62). This type of protection does not entitle any form of new membership and the repatriation can happen as soon as there are basic and reasonable conditions of safety.

Regarding this classification, I have a similar concern to the one that was related to the work of Betts and Collier (2017). Namely, it is not entirely clear where women’s gender-specific experiences ought to be placed in this classification, and if they can be placed at all. For this distinction between forms of protection is not gendered. In particular, problems arise with Asylum and Sanctuary, while refuge can be applied universally to everybody. So, what with the case of a claim for protection based on SGBV? For instance, would domestic violence, FGM, or early marriages fall under Asylum or Sanctuary? On the one hand, SGBV does not seem to be considered as political persecution, and there does not seem to be any grounds for considering it as such. On the other hand, except where it escalates as a result of conflicts,⁴⁴ in most cases SGBV is not a collateral damage, but the damage itself. Moreover, in countries of the global South that are typically source of asylum-seeking women, state-agents are not only incapable of protecting women from SGBV, but they tolerate and encourage it. So, who are the subjects of this classification of protection? Once again, at first, they seem to be abstract figures of refugees. However, if we take a better look, they are male figures.

Second, resettlement is “a process of transfer from the state in which refugeehood is recognised to the state in which new membership is acquired” (Owen 2020a, p. 71). The logic behind this is that after immediate and emergently safety measures, and the recognition of international protection are taken in the global South, refugees are thereafter resettled in third-party states of the global North where they would be acquiring full membership and hence new rights. The point is that states of the global South would be ideal for first safety because of proximity to refugees’ countries of origin, but because

⁴⁴ See: Chapter 1, §1.2.

of the same proximity they do not have the means to ensure full protection to the person who fled his or her country because of persecution. As Owen puts it, there is “the reasonable fear that one is still within relatively easy reach of the persecuting agents” (2020a, p. 72). Moreover, refugees should be granted the right to have a say in the choice of the country where they would be resettled and therefore of the country they would be acquiring new membership in, for instance for reasons regarding family relationships, knowledge of the language, work opportunities.

Again, the particular positionality of women is not considered. Recognizing refugees’ freedom of choice is not enough if we also want to protect the women. First, it seems not to be considered how women’s choices are often affected by the choices of other (male) family members. Second, women may face domestic abuse and other forms of SGBV precisely due to the decision to make a different decision from her husband or other (male) relatives. Hence, beside arguing for the right to choose where to acquire new membership there is the need to address gender-specificities that are implied in this choice. Moreover, this account does not seem to address that membership in a political community can be gendered. The obligation for the international order to provide new membership relies on the fact that we live “in a world in which state membership is the basic condition of political standing” and therefore, “when it is wrongfully denied through persecution, [it is the duty of the international order] to provide protection in a way that reaffirms the right to it” (Owen 2020a, p. 56). The problem is that without addressing the specificities of gender-based persecution there is a concrete risk of not protecting the women from it, but to move the problem from the country of origin to the country of resettlement.

- c. Free movement and open borders. “Let refugees move to where they can best rebuild their lives”, as suggested by Aleinikoff & Zamore (2019, p. 115), who argue for a free-movement regime among the states that constitute the international system of protection. These scholars stress the importance of giving the possibility to refugees, once the status is recognized, to move across these countries and seek for personal development opportunities. In other words, “refugees should be able to move among members of the regime to find decent work, rejoin family, access necessary healthcare, and pursue

educational opportunities” (ibid., p. 117). Free movement across these countries would be, they argue, a win-win solution for both refugees and hosting states and communities. For refugees because they would be able to regain agency and self-reliance. For hosting states because they can find the right employers for their employment needs. Moreover, smuggling and trafficking would be significantly undercut.

Again, the problem is that the fact that movement and labor opportunities are gendered is not considered. First, as highlighted elsewhere,⁴⁵ women on the move have generally lower (in not non-existent) education and qualification levels than men. This means that they would be hardly autonomous from their male family members, which reflects on their real possibilities to self-reliance through new job opportunities across states. Second, but related to this, free movement across states might be putting more pressure on them to join family members in other states in a way that would reproduce in these hosting states the same patriarchal schemes that contributed to their decision to leave their country. Third, I am not so positive that sexual trafficking would be significantly undercut in this scenario, since a huge amount of sexual trafficking happens in European states, and therefore within the states that are part of the international system of protection. Perpetrators are usually already able to move across these countries (or would be within this system of free movement), so little would change. Besides, the fact that the women would be entitled to free movement (and therefore their border-crossing would be legal), sexual trafficking on a larger scale might even be enforced by this system. So, women face a dilemma, namely the fact that on the one hand travelling alone exposes them at high risks of violence and sexual trafficking, or even exposes their children at risk, and on the other hand facing the journey with male family members might reproduce a patriarchal system that would *de facto* affect the actual free movement of women. Free movement, to be such, needs to be as safe and secure as possible. However, given that Aleinikoff & Zamore (2019) do not address the issue of gender, they do not see this dilemma and do not face the issue of what safe and secure movement for women would look like. Consequently, without a focus on gender-based issues and vulnerabilities, free

⁴⁵ See: Chapter 1.

movement, and open borders within the international system of protection would benefit primarily male refugees, leaving once again women's protection behind.

Partly connected with this last discussion, there is the issue of avoiding forcing refugees to take illegal and dangerous routes to reach countries of the global North. The abovementioned scholars may differ in stressing the right way to protect refugees but share a fundamental view. For they rightly address the fact that Europe's (and more in general, of western countries') process of securitization of borders and deterrence policies – i.e., the attempt to reduce the number of asylum applications – are responsible of forcing refugees to find alternative ways to seek refuge. Europe and other Western countries do not grant visas to people from certain countries due to the high chances that that person would ask for asylum once in European territory endangers these people and force them to endorse in illegal and dangerous routes (Aleinikoff & Owen 2021; Aleinikoff & Zamore 2019; Parekh 2020). That is true and reasonable. The way Western countries try to prevent large numbers of people seeking international protection actually forces them to opt for illegal way to reach these countries (De Bono 2019; La Spina 2020; Owen 2020; Parekh 2020; Spada 2020). However, it is also true that by making sure that visas are granted to probably would-be asylum seekers do not entirely solve the issue for women. For many of them would be likely forced to undertake illegal routes anyway because they have often no control over their documents.⁴⁶ Hence, many of them would not be able to obtain a visa anyway, or at least not without the permission of their male family members. What if the reason to flee their country is to escape from domestic violence? What if, even if the reason to flee is not related to SGBV perpetrated by their family members, these family members impede these women access to their own documents, preventing them the possibility to take legal routes to western countries? The issue is far more complicated than Europe trying to prevent people that are likely to claim for asylum to arrive legally. What it should be addressed is precisely how to implement gender-sensitive measures to ensure that legal routes would be available for everyone.

In conclusion, the work of these scholar is fundamental to address the refugee protection system in a more just and effective way. However, they work with an abstract figure of

⁴⁶ See: Chapter 1, §1.4.

refugee, and the cost of this abstraction is the effacement of the experiences of women's compound injustice and therefore of possible solutions for this injustice. This side of effacement of women's peculiarity in refugeehood contributes to produce injustices and cycles of injustices and it is itself an injustice. For this way of theorizing undermines the equality of recognition of specificities of men and women, even though (unintentionally) 'pretending' to do so and without acknowledging the necessity of this recognition.

5.2.2 The political and practical sides: Why unveiling this process matters

So far, I gave a theoretical argument for what effacement is and does. Now, I am going to dig into another set of fundamental questions, namely to what extent does the effacement of gender-based issues and specificities of refugeehood and forced displacement matter? Why should we worry about it? What are the practical and political implications of the effacement? The answer might be already implied in the first part of this chapter, where I showed how the effacement works as a mechanism, but I find it important to explicate it thereby going back to it and to previous parts of this work, in particular to Chapter 1 and Chapter 3, where I treated how vulnerability is addressed in the context of European asylum policies. In this way I am able to show how this process reflects also politically, through the disregard of women's gender-based issues in different policies, and in the practical consequences of the lack of gender-based measures.

First, because the peculiarity of the compound injustice and experiences of this women are not perceived, sometimes it seems as if women and children were conceptually 'fused' together, without women being recognized as autonomous subjects (Edwards 2010). A first example is Goal 6 of the 2003 UNHCR's *Agenda for Protection*, which concerns 'the protection needs of refugee women and refugee children'.⁴⁷ Here, 'refugee women and children' are conflated throughout the entire section (pp. 81-88). This document's section draws attention to the fact that "Refugee women and refugee children account for the vast majority of the world's refugees and beneficiaries of UNHCR programmes" (p. 85) and, therefore, tries to propose new frameworks to improve their protection. It disregards,

⁴⁷ <https://www.unhcr.org/uk/excom/standcom/4c0527999/agenda-protection-review-way-forward.html?query=Agenda%20for%20Protection> (Last access: 08/12/2021).

however, the fact that counted alone women represent nearly the 50 percent of the global refugee population.

Again, as clearly stated at the beginning of this research, the lack of gender disaggregated data – issue treated in depth by Criado Perez (2019) is a product of the invisibility caused by the effacement of these women’s experiences of compound injustice. This tendency and rhetoric of conflating ‘women and children’ is also present in some European information sites on the situation of refugees in Europe. For these websites and guidelines on how to better protect refugees often report the voice ‘women and children’, often without distinguishing between the two.⁴⁸ So, in many cases, the gender identity of the applicants for international protection seems to be limited to being taken into consideration only as mothers or careers of children (Askin & Koenig 2000): “The role of women as mothers is overemphasized in human rights law” (Edwards 2010, p. 32). Moreover, I add, this is damaging because it tends to essentialize their vulnerability, without taking into consideration the intersectional nature of this group and the ways to move beyond the risk of essentialization and labelling identified in Chapter 3.

This is an example of a case of conceptual effacement which has also a political and practical effect, precisely because their compound injustice is made invisible, their needs are not adequately perceived by scholars and policy makers, fact that therefore paves the way to a lack of implementation of appropriate actions to face their needs. There are other examples of this. Namely, the way in which vulnerability of women is treated in the EU law on asylum, and the fact that domestic politics and policies do not generally address gender-based issues on migration but leaves the work to NGOs or international organizations. The practical result is that they basically ignore the issue of women.

First, the issue of vulnerability in European norms of asylum. As clarified in Chapter 3, where I treated broadly the concept of vulnerability, the intrinsic ambiguity of the meaning of vulnerability reflects also in European laws, directives, and measures pertaining vulnerability in the context of asylum. This ambiguity, in particular, concerns the fact whether vulnerability in these regulations has to be taken with a group or individual approach.

⁴⁸ See: <https://www.europarl.europa.eu/news/en/headlines/society/20160226STO16256/refugees-there-is-a-real-need-to-protect-women-and-children> (Last access: 13/12/2021).

Recall what it was stated in the above-mentioned chapter, that is that an example of this is the list of vulnerable individuals in the context of asylum given by the 2003 and 2005 Reception Conditions Directives.⁴⁹ The ambiguity, I now argue, regards the fact that many (if not all) of the listed category of vulnerability are gendered, but they are not treated as such. The only direct reference to women is to FGM and pregnancy, that by definition relate to female subjects. However, the other sources of vulnerability are also deeply gendered, since, for example, the experience of a disabled or mentally ill woman is different from the ones of male subjects, because disability and mental illness expose to a series of gender-specific vulnerabilities (Khalifeh & Dean 2010; Meer & Combrinc 2015). Moreover, as explained, ‘sexual, physical, and psychological violence’ is deeply gendered, as it is rape and victims of rape. The problem is that the Directives do not address how these sources of vulnerability are gendered, treating the victims of these potential harms in an abstract way. The effect of this point is that in the shift from ‘vulnerable asylum seekers’ and vulnerable asylum seekers with ‘special protection needs’ and, then, in need of ‘special procedural guarantees’, the issue of gender is completely effaced. Namely, not only it is not unequivocally clear what these special protection needs are and what special procedural guarantees would entail, but neither it says how these would be applied according to the gender of the applicants. The fact that asylum seekers’ experiences, vulnerabilities, and injustices are substantially gendered and intersectional is effaced and, therefore, the interactions between these injustices and vulnerabilities are invisible. This once again consequently leads to a lack of gender-sensitive measures and policies.

Second, gender-based policies and measures are not addressed nor particularly considered in any step after their arrival on European ground. As it should be clear by now, during the journey to and through Europe, they are particularly at risk of further violence and abuse and then they arrive in countries where gender equality is not yet fully realized, but is still presumed, presupposed by public discourse and institutions. It is something which is

⁴⁹ Disabled and elderly people, pregnant women, minors, unaccompanied minors, single parents with minor children, victims of human trafficking, victims of torture, rape, or other forms of psychological, sexual or physical violence (it includes FGM), seriously ill people, people with mental disorders. See: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0033&from=EN>.

taken for granted, but it does not reflect reality, since, despite the progress made, as evidenced by the Strategic Engagement to Gender Equality 2016-2019 of the European Commission (2016), gender equality is still today a goal that remains unfulfilled worldwide: “We are far from reaching equality, in particular in areas such as participation in the labor market, economic independence, pay and pensions, equality in leadership positions, fighting gender-based violence, and gender equality in our external action”, the report says.⁵⁰

Connected to this, the same thing happens when it is taken for granted that, once they arrive on European soil, refugees and asylum seekers are safe from injustice. However, as has been seen and also visually shown thereby the vicious circles diagrams, the fact of being a woman and asylum seeker asylum together subjects them to intersectional vulnerabilities and injustices, process that makes them even more vulnerable to injustice. An example of this is an episode treated in the first chapter of this dissertation and reported by UNHCR (UNHCR *et al.* 2016).⁵¹ For a woman in need of medical and psychological care following violence has not been subjected to normal and appropriate procedures, but immediately released from the structure. As we read in the abovementioned report, the reasons for not taking into account her particular needs are the following: the operator who should have taken care of the woman victim of violence has taken for granted that, as a migrant, she would have preferred to continue her journey uninterrupted and as quickly as possible. In that case, in fact, the stereotyped vision of migrants prevailed over the needs of the woman. The gendered needs linked to this particular situation, in fact, were effaced and, in fact, invisible to the operator.

Furthermore, on the one hand, these women hardly report sexual and domestic violence due to a well-founded fear of being judged and blamed and, consequently, of being denied

⁵⁰ https://ec.europa.eu/anti-trafficking/sites/default/files/strategic_engagement_for_gender_equality_en.pdf (Last access: 18/08/2021). In the world of work and education, women continue to be over-represented in traditionally female roles, such as those associated with care. On the contrary, they are under-represented in the fields of science, mathematics, engineering and computer science. Furthermore, gender-based violence is still widespread and takes different forms, such as physical, sexual, psychological, stalking and economic. According to data from the European Commission (Jourová 2016), one in three women has been a victim of physical or sexual violence in their lifetime, 5% have been victims of rape and 20% have suffered online harassment. Such violence takes place at home, at school, on the street, at work, on the Internet, regardless of the social context, the level of education of the woman and her economic conditions.

⁵¹ See: Chapter 1, §1.4.

the application for asylum. On the other hand, when they do report episodes of violence, they are systematically not believed, as reported cases of testimonial injustice have proven. What becomes invisible then, are either these episodes of violence while still in their country, during the journey, and once in Europe, which is then not addressed nor prevented (Marouf 2008), and the way testimonial injustice interact with other non-epistemic forms of injustice to give rise to a circle that only brings more injustice and leaves them powerless, marginalized, infantilized, and exposed to further violence.

So, after border-crossing they are still not safe from injustice. The diagrams showing the process of effacement made visually clear that for these women vulnerabilities and injustices do not disappear after the recognition of the international protection, but they are partially still there because the gendered side of these injustices is not addressed correctly. Without visually explicating the process of effacement, we would not have noticed that in both cases of rejection and successful application the cycles of injustices would still look the same – even though with the appropriate acknowledgment of different degrees of injustices –, as noticed in the previous paragraph of this chapter. This is because what the effacement does is precisely to make invisible these injustices so that they are not addressed, because at first, they seem not necessary to be addressed. They are simply not adequately perceived. So, after the recognition we feel again assured of the fact that they will live a substantially better life than the one they were living in their country of origin and the one they would live if exposed to irregularity – which, to be clear, is undoubtedly true.

The problem is that one part of their compound injustice will not automatically disappear but may even be reinforced by the mistaken belief that they are now safe and sound. For the attention is not focused on them anymore (if this was ever the case) and their gender-based issues is once again invisible, embodied in the same gender-based issues of native and resident women. However, gender-based problematics are not the same for local women and refugee women, even when the latter have already gained protection of the hosting state and therefore similar rights. For they still remain an intersectional group, being at the intersection of refugeehood, gender, race (coming generally from the global South, they are for the most part non-white), culture and religion (they might be non-Christians).

So, to answer the questions at the beginning of this paragraph, the process of effacement of gender-specific experiences and compound injustice matters because it renders difficult to identify the right ways to address the true injustices faced by forcibly displaced women, precisely because they are made invisible and hard to perceive. Therefore, we should take this process seriously. For sufficient importance and attention is not given to the particular needs and requirements that are related to gender, such as psychological and medical support for the violence and traumas suffered, protection and information in contexts of sexual and care exploitation. That is, we forget that gender equality is not achieved and that women hide the violence suffered and, consequently, these women are not given sufficient attention, which they would need for the specific violence and trauma they have suffered.

5.3 In conclusion: Effacement as a further injustice

In this chapter I introduced the concept that I name effacement, which is a process that makes invisible the extent in which the experiences of the women in the contexts of refugeehood and asylum are gender-specific, and therefore intersectional, thereby an interaction between forms of epistemic and non-epistemic injustice. The forms of injustice considered were explicated in the previous chapter, and as showed in the circles' diagrams, interact one another in different ways. The types of relations have been classified in constitutive, i.e., showing an essential condition, causal, meaning that one injustice causes another injustice, and re-enabling, which means that the injustice (injustice₂) caused by another injustice (injustice₁) can also contribute to enable back this injustice (injustice₁). This happens in each step of the way throughout refugeehood and asylum (or layer of the journey of refugeehood and asylum), and the vicious cycles of injustice also relate one another in the way argued.

After showing how the process of the effacement works, I provided a definition and, also, a clarification of what I mean by 'render invisible', and 'efface'. Contextually, I highlighted what are the preconditions and the causes of this process that effaces these women's compound injustice. On a more theoretical level, I argued that the way that the current academic research on refugeehood and asylum in the field of Political Philosophy of Refuge address the topic is influenced by this process and itself contributes to efface women's

positionality. On the other hand, on a practical and political level, I showed the consequences of this process, which itself qualify as unjust.

Therefore, we need a follow up to the definition of injustice elaborated in the previous chapter. I ultimately define injustice suffered by refugee women as

All the acts perpetrated by public or private agents, institutional structures, policies, measurements, and epistemic practices that create, reinforce, exacerbate, and efface their situation of vulnerability, oppression, discrimination, and epistemic silencing.

This process of effacement is itself unjust since, as explained in the course of the chapter, it enables further injustices and, also, it prevents from the possibility of addressing other injustice, that are invisible.

I am going to conclude this chapter by making a last point. Namely, that this concept serves normative force because it grounds the reasons why individuals and Western states share a duty to act on it as an injustice to be addressed. I borrow here Serena Parekh's words and argument to make my point:

Even though the situation I describe was not an intentional outcome, Western states have a moral responsibility to address the political structures that unjustly prevent refugees from accessing the minimum conditions of human dignity while they are refugees. These countries should be seen as *politically* responsible. They are responsible because states contribute to the processes that produce unjust outcomes and even benefits.

(Parekh 2020, p. 181, italics present in the text)

In the case I have attempted to make, the political responsibility that applies to Western states is to address the political structures that prevent *women* refugees from addressing the compound injustice they suffer, since, as clarified in the course of this work, they contribute to the processes that produce this compound injustice by creating the rules and by setting up an international system of protection that does not address the protection in a gender-sensitive way. As Elizabeth Anderson (2012) states, "structural injustices call for structural remedies" (p. 171).

CONCLUSIONS

I have approached this research believing that “we cannot change unjust situations until we fully understand them” (Parekh 2020, p. 200). And this is what this work represents, the attempt to understand the unjust situations of asylum-seeking and refugee women in order to be able to act on this injustice. In particular, this research was born due to a threefold conviction. First, as stated previously, there was the pervasive feeling that something important was missing in the narration of refugeehood, forced displacement, and asylum, especially in studies and research in political philosophy that address this topic. This work was indeed an attempt to fill this gap. Second, before beginning this journey, I was convinced that it does not make any sense to speak of the vulnerabilities and injustices of oppressed groups without engaging with their voices. It would be, at least, disrespectful, if not morally despicable and, ultimately, unjust. How can we understand what their problems are and how to solve them if they do not have a say in our theorization? How can they begin to be more visible to the world if they cannot make their voices heard? We owe marginalized groups’ voices to have space in our theories, the point is to discover the right way to do it. This right way to do it is a dialectic between what they have to say and our normative work on it. This is what I tried to do in this research and why I included in various point their testimony, that is the opportunity of describing what happens to them with their own words. In fact, what the discussion on hermeneutic injustice have made clear is that without appropriate storytelling and engagement with marginalized groups’ voices, the risk is to narrate a story that is not the one of this marginalized groups, but the dominant groups’ own understanding of it. For this might be entirely distorted, which would contribute to exacerbate a series of other forms of injustice, effacement included.

Finally, I also engaged with this work strongly persuaded that before attempting to solve problems we must acknowledge these problems, they must be known deeply and thoroughly. In particular, this thesis was written in the conviction that we cannot face the situation of forcibly displaced women if we do not know exactly what their experiences of refugeehood, vulnerability, and injustice is about. That is to say, we cannot theorize on how to make the

international refugee system more just for women if we do not address what it is unjust about it, and we cannot ameliorate their experience of displacement if we do not know what their real problems are, and where they are sourced. With this in mind, I argued in favor of a bottom up and negative approach to justice. Before engaging in what a just international refugee system would look like for women, I argue that we must ask ourselves if we have the sufficient knowledge to address that issue. That is what this work is about, to engage with the real situation of these women. So, it started from the basis, with a phenomenological approach that emphasized the lived and experiential aspect of refugeehood of these women. Why they are leaving their countries. What happens to them during the journey and what border-crossing looks like for them. What it means for them to claim for international protection and to face an interview with asylum decision-makers. What happens after the outcome of this claim, whether positive – recognition of some sort of protection – or negative – rejection and expulsion.

The bottom-up journey continued then in explaining why we should study this group of women and consider it a socially salient group, more specifically an intersectional group, situated at the intersection of gender and the social space of refugeehood and asylum, which also translates in racial and cultural differences from the hosting community. The third step constituted therefore in problematizing what had come along often in the first two chapters, which is vulnerability. At that point it was clear how forced displacement put these women at severe risk of harm, at extreme vulnerability. However, vulnerability is not a concept that can be used lightly and without problems, since it brings a series of issues regarding stereotypes, and risks undermining the agency and the autonomy of the individuals labelled as vulnerable. So, this risk was acknowledged and overcome by an intersectional approach on vulnerability, that allows us to refer to a group as vulnerable minimizing the risk of essentializing it by telling a unique story of this vulnerability. On the other hand, vulnerability is so pervasive in the experience of asylum-seeking and refugee women that it is nearly impossible to understand their situation without referring to it. This pervasiveness and the way vulnerability is structural of the international refugee system are unjust.

Having recognized this, the next step was to give an account of injustice that could fit the experiences of displacement of these women, which were conceptualized in the light of three

different accounts – the paradigm of discrimination by Andrea Sangiovanni, Iris Marion Young’s theory of structural injustice the line of thought of epistemic injustice inaugurated by Miranda Fricker. As a last step of this bottom-up journey, I finally gave reason for the invisibility of the women from the given picture on refugeehood, asylum, and forced displacement that was introduced at the beginning of this research. I argued that the particular way in which the different forms of injustice treated in the previous chapter interact one another efface the complexity and the nature of the injustice suffered by these women. I named this process of interaction *effacement*, and I highlighted its theoretical, practical, and political consequences. In this respect, I also argued that the way scholar address refugeehood, despite having good intentions, contribute to furtherly efface these women’s compound injustice.

Now that I have showed what is wrong and unjust about the experience of displacement of these women, there is space to theorize on how to ameliorate their situation. Even if this goes beyond the scope of this research, I now provide some examples of the way in which this concept of effacement can be useful to imagine positive steps towards a just refugee system. This is to prove that there is a payoff in approaching the topic from the bottom.

Therefore, I conclude this work by arguing that we can and we ought to act on this injustice. The process of effacement serves in fact normative purposes because it indicates layers and cycles of injustice, and therefore paves the way of recognizing which layers of vulnerability and injustice must be eliminated to interrupt these cycles. As it was explained in the last chapter of this work, these cycles are formed of single forms of injustice and/or oppression that are connected one another in different way and according to different relations. By eliminating one or some of these injustices, we ‘break’ the single cycle and prevent a cascade of cycles of injustice to form, and, therefore, the process of effacement. This way, we can identify the solutions, thereby a fruitful dialectic between theory and practice. In order to show this, I take some of the steps (or layers) of the journey and I propose possible solutions for the injustices involved, that is to break these cycles of injustice. Indeed, I argue here that there are multiple ways of breaking the cycles: if we get rid of an injustice, then we can get also rid of others that are somehow related, in the same circle and in following

circles. This means that we can potentially get rid of entire circles and prevent the following ones from forming.

I do not go again through every step of the journey throughout refugeehood, but I choose some of them to make my point clear. I therefore begin again with what can prevent the causes that lead these women to leave their countries, then I address what safe passages and border-crossing for women would mean, and, finally, I treat what a fair interviewing process would require.

- A. First, when they are still at home, there is the need to act on the causes that bring these women to leave their countries. Given that the most substantial cause is SGBV, alone or as a consequence of conflicts and societal breakdowns, or as a manifestation of political persecution, it is necessary to take actions to prevent it in all the elsewhere described forms. If we look again at the diagram representing SGBV (Figure 1), we see that the main injustice that ought to be eliminated to break the cycles is *Violence*.

As the causes for SGBV the lead women from the global south to ask for protection in third states of the global north include rigid notions of masculinity and femininity, conservative gender roles, sometimes exacerbated by humanitarian emergencies, and the dependent socio-economic situation of many women, the most intuitive action is to intervene in the countries that most produce refugee women. One possible way of doing so is to implement and, also, ameliorate the UN Sustainable Development Goals,⁵² especially the Goal 5, which regards specifically the achievement of gender equality and empowerment of all women and girls. In particular, gender inequality is both a contributor and a consequence of SGBV. There are multiple ways to address gender inequality in the Global South, and there are various feminist NGOs that are involved in specific programs and that deserve more attention. It is time that institutions and states

⁵² See: <https://sdgs.un.org/goals> (Last access: 03/01/2022). The Agenda for sustainable development recognizes that to improve human lives as a whole means improving many sources of deprivation. In particular, the UN lists seventeen macro-goals, namely no poverty, zero hunger, good health and well-being, quality education, gender equality, clean water and sanitation, affordable and clean energy, decent work and economic growth, industry, innovation and infrastructure, reduced inequalities, sustainable cities and communities, responsible consumption and production, climate action, life below water, life on land, peace, justice and strong institutions, partnership of the goals. for obvious reasons, I am going here to focus primarily on the gender equality goal.

begin taking direct responsibility in addressing gender inequality in states of the Global South and in accepting the various NGOs' directives. For example, Women's Global Empowerment Fund helps women in Uganda thereby providing them "with the framework necessary to create viable opportunities for themselves and their families".⁵³ In particular the organization provides access to microcredit loans, education, and professional training. Global Grassroots operates in post-conflicts countries and provide services of trauma healing, and also train these to address other women's trauma and to share these practices in the communities they are part of. Moreover, they help "teams of women provide safe, clean water access to their communities and, in so doing, solve water-related social issues that impact women and girls", which includes SGBV and exploitation, young women and girls' education.

We see that in this way the vicious cycles turn into virtuous ones. For example, proper male and female education promote female employment and socio-economic independence, which is of obstacle to the maintenance of rigid and traditional notions of masculinity and femininity. This means that it is less likely for *Cultural imperialism* of men over women to occur, for *Dehumanization*, *Objectification*, and *Infantilization* to happen. In this way, there is less space for *Violence* to be perpetrated. Obviously, this does not mean that it will not happen. It means that it would not be so structural as it is now, which leads women to flee. It goes without saying that breaking this cycle of injustice would mean to stop the cascade of injustice and vulnerabilities, since it eliminates the main reason for these women to leave their countries and, therefore, they are not going to experience the injustices of the next steps.

- B. We need to set up safe passages and, consequently, regular border-crossing. As treated in the previous paragraphs, many scholars have argued the need for safe passages for refugees (Betts & Collier 2017; Owen 2020; Parekh 2020), especially through resettlement.⁵⁴ However, all these scholars have not addressed the matter of what does

⁵³ See: <https://wgefund.org/what-we-do/our-mission/> (Last access: 05/01/2022).

⁵⁴ Resettlement is "the transfer of refugees from an asylum country to another State, that has agreed to admit them and ultimately grant them permanent residence". Less than 1% of refugees are resettled each year. See: <https://www.unhcr.org/resettlement.html> (Last access: 05/01/2022).

it mean to establish safe passages for women, how these passages would look like, and what characteristics would a passage need to qualify as ‘safe’. I now provide some ideas in this regard and then I return once again to the cycles of injustice to explain the way in which establishing safe passages would come in aid in breaking them.

Most of all, for refugee women to undertake a safe journey means to be protected from SGBV in all its forms. For actions to prevent sexual violence, harassment, and rape ought to be put in place, such as the provision of separate facilities, effective surveillance, and training for humanitarian actors. Connected to this, we ought to make sure that sexual and reproductive rights are supported through the help of doctors and specialists, birth paths, periods supply, contraceptives, and safe voluntary terminations of pregnancy options. Moreover, it means to provide for childcare, when necessary, especially for the women who travel alone with their children, and to make sure these passages are also safe for children. In fact, if the women involved know or perceive that these passages are not as safe for their children as for them, they may decide not to leave. Furthermore, to make a passage safe means to provide for psychological support for the trauma suffered due to persecution, conflict, past and ongoing domestic violence. There is an often-underestimated issue, which is the actual possibility for these women to benefit of safe passages. To exemplify this point, let me turn to the Afghan case again. At the end of December 2021, Taliban authorities forbid women long-distance travels (precisely, more than 72 km) unless they are accompanied by a close male relative.⁵⁵ This means that if safe passages and resettlement starts in Kabul (or more likely, at the borders) and the woman willing to flee the country finds herself farther than 72 kilometers, it is materially impossible for her to enjoy resettlement.

This is just an extreme case, but it also applies to relatively trivial cases of domestic violence, where no humanitarian emergency or conflict is involved, but where men exercise control over the women of their family. Thus, it is not only important to make sure that women are actually able to reach these safe passages and use them, but that

⁵⁵ See: <https://www.aljazeera.com/news/2021/12/26/afghanistan-long-distance-travel-women-without-male-escort-taliban>; <https://edition.cnn.com/2021/12/28/asia/afghanistan-taliban-women-travel-intl/index.html>; <https://www.bbc.com/news/world-asia-59800113> (Last access: 04/01/2022).

they are given the actual possibility to use these passages independently from their relatives. This means again to train humanitarian workers in a gender-sensitive way, that is to give these women all the necessary information, included that they can ask for protection individually and independently.

Now, how do we reach these goals? Again, we ought to pay more attention to the work of feminist NGOs⁵⁶ and involve them in the management of resettlement. They know better what the issues faced by forcibly displaced women are, they often are already involved in their lives before the decision to ask for asylum in a third country and they are equipped for meeting their needs. So, on the one hand they are prepared to provide effective indications for the actions needed in order to make passages safe in a more gender-specific way, and, also, they can play a central role in implementing these actions.

It should be clear now that these actions would help in eliminating various forms of injustice involved in the cycles of the journey (Figures 4 and 5). First, violence during the journey would be significantly reduced if not (being totally optimistic) eliminated. This also means getting rid of the process of stigmatization that comes after sexual violence, and, therefore, it would reduce the trauma experiences and, also, the chances for them to be marginalized. Furthermore, we would get also rid of the powerlessness that is related to marginalization and that can enable instrumentalizing attitudes.

- C. For what concerns the interviewing process, as treated earlier in this chapter, there are two major injustices that need to be addressed – testimonial and hermeneutical injustice. Again, this does not mean that taking these actions these kinds of injustice would simply not be, but that these actions are a mean to reduce them significantly.

First, testimonial injustice can be dealt with in different ways, and it is necessary to work on the causes of credibility deficits. For example, again, specific training for asylum decision-makers is fundamental. Asylum decision-makers ought to be trained to gender-sensitive topics such as SGBV, trauma, PTSDs, coping mechanisms, and on how memory works. Moreover, there is the need for psychological support before and during

⁵⁶ Some examples of NGOs specialized in gender-based issues are (but not limited to): Pangea onlus, NGO Working Group for Women, Peace and Security, and Women's Refugee Commission.

the interviews for the asylum-seeking women involved. Before the interview, to prepare them for what it expects them, and during the interview, to work as a bridge for the communication between them and the decision-makers. For linguistic and cultural reasons, translators, and cultural mediators. Furthermore, it may come in aid the presence of women entitled to international protection, who could even be trained as mediators and as figures that prepare the woman for the interview. On the other hand, psychological help would be useful also for asylum-decision-makers themselves, to effectively bear other people's trauma. For there can be self-defense mechanisms that function as barriers in empathize with these women and that exacerbate credibility deficits (Baillot *et al.* 2013; Century *et al.* 2007; Rousseau & Foxen 2010). Lastly, childcare would be helpful. As already highlighted elsewhere in this research,⁵⁷ the lack of childcare during the interviews, which are therefore conducted in their presence, prevent these women to speak freely and consistently.

Second, also hermeneutical injustice can be present during interviews, but it must be addressed more broadly, since it often works as a precondition of testimonial injustice, in the sense that it prepares the ground for testimonial injustice. In order to ameliorate the awareness of these women's situations of injustice, we ought to theorize an ethical obligation to appropriate storytelling from newspapers, media, and also politicians. For newspapers, the point would be to engage with women refugees' voices, to bring them into public spaces and contribute to build knowledge and awareness. The goal is to normalize their voices into the public space so that residents and other refugee women can listen to them. In this way, there would be also less space for dehumanizing and objectifying attitudes towards women refugees. On the other hand, there is the need to address the more comprehensive issue of gender inequality, which is still pervasive in Western countries. Without acknowledging this issue, we again solve only one source of injustice, the one that involves the refugee and the asylum seeker, penalizing the source of injustice that arises from the gender identity marker of this intersectional group.

⁵⁷ See: Chapter 1, §1.4.

Breaking these cycles of injustice in the way just mentioned means breaking the invisibility that these cycles of injustice cause, invisibility that contribute to reproduce the same mechanisms of injustice that produce them. At this point, the relevance of the concept of effacement – and of breaking cycles of injustice – for political theory and refugee studies should be more evident. For on the one hand, political theory working on migration could largely benefit from the acknowledgment of the risk of contributing to create a distorted visibility of some groups. On the other hand, it is also a relevant concept for refugee studies – more broadly intended as an interdisciplinary branch on the experience of refugeehood – because it shed light on some theoretical mechanisms that also have repercussions on more practical levels. In fewer words, to recognize where a particular phenomenon comes from.

I have one last point to make. As stated at the end of the third chapter, the structurality and pervasiveness of vulnerability suffered by these women make their situation unjust. But at this point, it can be added that these women's situation is also unjust because cascades of vulnerability and vicious cycles of injustice can in fact be stopped, as I have tried to show at the end of this work. However, resources are not allocated where these cycles and cascades can be blocked – namely in programs that would prevent SGBV in refugee-producing countries, in implementing and ameliorating resettlement in a gender-sensitive way, in making sure that the interviews with asylum-decision makers are conducted fairly and with the necessary training. This outcome is probably not intentional, nor it is always created by rules and norms that are intentionally unjust. However, it is the outcome of these well-intended rules and norms to be morally wrong. Thus, although this situation of injustice is not willingly created by institutions and politics, and despite configuring as a structural injustice, there are precise responsibilities to be found. Again, and more substantially, “Western states are responsible for this outcome because they largely created the rules and norms that structure it” (Parekh 2020, p. 182).

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