



ANA RITA AMARAL FIGUEIREDO

Women under the Global Compact on Refugees

Internship Report to obtain a Master's Degree in Law,
specialisation in International and European Law

Supervisor:

Professor Veronica Corcodel, NOVA School of Law

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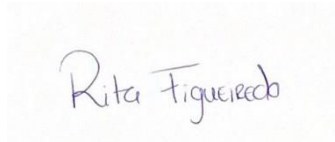
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Anti-plagiarism statement

I hereby declare that the work I present is my own work and that all my citations are correctly acknowledged. I am aware that the use of unacknowledged extraneous materials and sources constitutes a serious ethical and disciplinary offence.

A handwritten signature in blue ink that reads "Rita Figueiredo". The signature is written in a cursive style with a large initial 'R'.

(13/12/2024)

To my beloved nieces, Beatriz and Olivia.

*May you grow up in a more equal world
and always remember that you have the power
to create change and make a difference.*

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This internship report stands as a tribute to the boundless support and love I have received from my family and friends throughout this academic journey. People who celebrate my achievements as their own.

I owe an immense debt of gratitude to all the women in my family. To my mother, Albertina, for her unwavering love in every step of the way, making my dreams her own and encouraging them. Your support made everything easier to achieve and I owe this and many other accomplishments to you. To my sisters and mothers of my two beautiful nieces, Patrícia and Helena, for being a role model and encouraging me to believe that anything is possible. To my aunt, Fátima, and my cousin, Margarida, for being a second mother and sister, for standing by my side and believe in me all the times.

To my friends Inês, Maria, Margarida and Madeleine, thank you for your constant source of strength and for always reminding me that I could do it. To my best friend Beatriz, thank you for the long talks, advice, encouragement and for all your friendship in every step of this journey.

List of Abbreviations

CEDAW – Committee on the Elimination of Discrimination against Women

CEDAW – Convention on the Elimination of All Forms of Discrimination against Women

CJEU – Court of Justice of the European Union

FGM – Female Genital Mutilation

GCR – Global Compact on Refugees

LGBTQIA+ – Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, and more

RSD – Refugee Status Determination

UNHCR – United Nations High Commissioner for Refugees

Declaration on the number of characters

I hereby declare that the body of this dissertation, including spaces and footnotes, contains a total of 181 650 characters.

Abstract

In the course of an internship on the Permanent Mission of Portugal to the United Nations and other International Organization in Geneva, this report's purpose is to critically analyse the female asylum seekers and refugee women's protection under the Global Compact on Refugees. This study will initiate with a comprehensive analysis of feminism as a tool to answer the research question "How does the Global Compact on Refugees address gender-specific challenges and vulnerabilities within the refugee context, and to what extent does it represent an improvement over previous international legal instruments?", followed by an explanation of the relevance of the Global Compact on Refugees as an element of examination. The research then proceeds to analyse the different stages of female asylum seekers' journey to obtain the refugee status, in order to understand the several issues related to the reasons why they choose irregular pathways of migration, and the challenges they face under border control and detention centres policies and practices, through a feminist lens. Furthermore, it will also be evaluated the Refugee Status Determination procedure and its procedural gaps, that fail to take into account the unique vulnerabilities of female asylum seekers, placing them in unfair situations. Lastly, the focus will shift for the integration of refugee women into host communities, in order to address critical barriers that arise in the course of this process, such as access to education, employment and healthcare. In addition, it is also important to examine resettlement programs, in order to understand the extent in which they represent a better solution to suppress the challenges faced by women when integrating into new host communities. In conclusion, this research will contribute to the ongoing debates on the rights of female asylum seekers and refugee women within the context of international human rights and refugee law, emphasizing the need for a more feminist approach by the Global Compact on Refugees under each one of the steps previously mentioned.

Keywords: Female Asylum Seekers, Refugee Women; Feminism; Global Compact on Refugees.

Resumo

No âmbito de um estágio realizado na Missão Permanente de Portugal junto das Nações Unidas e outras Organizações Internacionais em Genebra, este relatório tem como objetivo elaborar uma análise crítica da proteção das mulheres requerentes de asilo e das mulheres refugiadas no âmbito do Pacto Global para os Refugiados. Este estudo começará com uma análise abrangente do feminismo como ferramenta para responder à questão de investigação “Como é que o Pacto Global para os Refugiados aborda os desafios e vulnerabilidades específicos do género no contexto dos refugiados, e em que medida representa uma melhoria em relação aos instrumentos jurídicos internacionais anteriores?”, seguido de uma explicação da relevância do Pacto Global para os Refugiados como elemento de exame. A investigação procede depois à análise das diferentes fases do percurso das mulheres requerentes de asilo para obter o estatuto de refugiado, a fim de compreender as várias questões relacionadas com as razões pelas quais escolhem vias irregulares de migração, e os desafios que enfrentam no âmbito das políticas e práticas de controlo fronteiriço e dos centros de detenção, através de uma lente feminista. Além disso, será também avaliado o procedimento de Determinação do Estatuto de Refugiado e as suas lacunas processuais, que não têm em conta as vulnerabilidades únicas das mulheres requerentes de asilo e as colocam em situações injustas. Por fim, o foco será colocado na integração das mulheres refugiadas nas comunidades de acolhimento, a fim de abordar os obstáculos críticos que surgem no decurso deste processo, como o acesso à educação, ao emprego e aos cuidados de saúde. Adicionalmente, é também importante examinar os Programas de Reinstalação, a fim de compreender em que medida representam uma melhor solução para a supressão dos desafios enfrentados pelas mulheres quando se integram em novas comunidades de acolhimento. Em conclusão, esta investigação contribuirá para os debates em curso sobre os direitos das mulheres requerentes de asilo e das mulheres refugiadas no contexto dos direitos humanos internacionais e dos direitos dos refugiados, salientando a necessidade de uma abordagem mais feminista por parte do Pacto Global para os Refugiados em cada etapa.

Palavras-chave: Mulheres Requerentes de Asilo, Mulheres Refugiadas; Feminismo; Pacto Global para os Refugiados.

Introduction

This internship report was developed as part of a six-month internship carried out at the Permanent Mission of Portugal to the United Nations Office and Other International Organizations in Geneva (from October 15, 2023 to April 15, 2024). In the course of the internship, my main responsibilities were to attend meetings across a diverse range of departments, including human rights, humanitarian affairs, migration, defence, disarmament and commerce. In addition, I was responsible for the elaboration of the respective detailed communication documents that reported these meetings to the Portuguese Ministry of Foreign Affairs.

Furthermore, I had the opportunity to participate in several high-level events and sessions of the United Nations and its Agencies, such as the Global Refugee Forum 2023, the 44th and 45th sessions of the Universal Periodic Review and the 55th Session of the Human Rights Council. Due to my performance throughout the internship, I was invited to give two statements in name of the Portuguese Mission during the 55th Session of the Human Rights Council.

Accompanying the work of the Portuguese diplomatic representation at the United Nations allowed me to gain a valuable perspective on the importance of multilateral cooperation in promoting and defending the need for a comprehensive and integrated approach in dealing with complex issues in these different areas.

From the 13th to the 15th of December 2023, I attended the second Global Refugee Forum, which is held every four years by the United Nation High Commissioner for Refugees (UNHCR), to support the implementation of the Global Compact on Refugees (GCR). At this Forum, Member States, non-governmental organizations, the private sector, academia, refugee-led organizations and displaced and stateless people gather together to discuss and find solutions towards the emerging challenges faced by refugees and host communities. By attending this Forum, I became aware of the insufficient attention that was being paid to the specific needs and vulnerabilities of female asylum seekers and refugee women. Consequently, this observation aroused the doubt regarding the feminist approach undertaken at the elaboration of the GCR and, therefore, became the foundation for the subsequent research and internship report.

The Global Compact on Refugees (GCR) is a soft law instrument developed in 2018 by the UNHCR in consultation with States and other stakeholders to transform the world's approach towards the refugee situation¹. This framework development was agreed at the unanimous adoption of the New York Declaration for Refugees and Migrants at the United Nations General Assembly, where its Member States agreed that the burden of protecting people who are forced to flee their countries of origin, and of supporting host communities should be more equal and predictable².

The GCR's commitment and its representation of the most recent legal consensus reached by the international community on the refugee context since the Refugee Convention (1951), stands in the basis of the importance to examine its approach to address the gender gaps within the refugee context. The Convention on the Elimination of All Forms of Discrimination Against Women (1979) is an international treaty which represents an important additional tool to understand the effectiveness, through its Committee's General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014), since it provides recommendations for States that ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to fulfil their obligations and protect all women and girls within the refugee context.

Therefore, the research question that gathers the important elements to elaborate this analysis, and that will be answered throughout the report is "How does the Global Compact on Refugees address gender-specific challenges and vulnerabilities within the refugee context, and to what extent does it represent an improvement over previous international legal instruments?". In order to answer this question, the report is divided in three parts, starting with a comprehensive analysis of feminism as a fundamental tool to support this research, and moving forward to the examination of the different stages of female asylum seekers' journey to obtain the refugee status, and subsequently their integration as refugee women into host communities.

¹ "The Global Compact on Refugees," UNHCR The UN Refugee Agency, accessed November 20, 2024, <https://www.unhcr.org/about-unhcr/overview/global-compact-refugees>.

² "The Global Compact on Refugees."

Firstly, feminism is a movement that advocates for the social, political, economic and cultural equality between the genders³, and understand this concept and its origins is important to underscore the relevance of its use as a theoretical tool. Assessing the GCR to understand its approach to gender-specific challenges and vulnerabilities is important to examine the several barriers female asylum seekers and refugee women face during their journey to obtain the refugee status and subsequent integration into host communities. Moreover, it should be noted that the absence of references to the term “asylum seekers” poses as a critical gap within the GCR, which fails to recognize such status, consequently failing to address the specific issues and vulnerabilities faced by women during their journey to obtain the refugee status.

Secondly, to understand how these challenges faced by female asylum seekers are related to their gender, is important to analyse the reasons and conditions under which they choose and travel through irregular pathways of migration, while sometimes aware of its own risks. Amongst those reasons, border control and detention centres appear as critical challenges that disproportionately affect these women. Understanding how the securitisation of borders affects female asylum seekers, through its discriminatory policies and practices that go from discriminatory screening procedures related to gender to family separation policies, is fundamental to understand whether the GCR addresses these gender-specific challenges. Moreover, it is also crucial to understand the importance of such approach by the GCR, since doing it through a feminist lens that recognizes the unique challenges these women face due to their gender is essential to understand how that shapes their experiences in different ways and impacts their positions within these border control’s methods and policies. Additionally, detention centres can pose serious barriers to female asylum seekers’ security and well-being, since they frequently fail to take into account and accommodate their gender-specific needs, such as their access to crucial reproductive and healthcare services, as well as their vulnerability to severe environments of, for example, sexual abuse.

Furthermore, the Refugee Status Determination (RSD) procedure, under which is evaluated if the person seeking international protection is or is not qualified to be considered a refugee, is an important subject of analysis under the GCR, in order to

³ “What is Feminism,” International Women’s Development Agency, accessed December 10, 2024, <https://iwda.org.au/learn/what-is-feminism/>.

understand the systemic ways in which female asylum seekers' access to protection is undermined and not legally well-protected. Barriers in interviews and credibility assessments carried out in the course of this procedure, such as the lack of gender-sensitive techniques to interview and consider female asylum seekers testimonies that are often jeopardized due to trauma and cultural-related reasons can lead to rejected asylum claims. Recommendation and guidance to eliminate these barriers are provided by the UNHCR's Handbook (2019) and by the CEDAW General Recommendation No. 32 (2014) and, therefore, it is important to analyse such recommendations to assess the GCR's feminist approach to ensure the fairness, inclusiveness, and gender-sensitiveness of the RSD procedure, while recognizing the unique challenges faced by female asylum seekers. Under this topic, it is also essential to examine gender-related persecution as a 'well-founded fear of persecution' and the importance of GCR explicitly recognizing it in the same way race, religion, nationality, or political opinion are listed under the Refugee Convention (1951), which would be aligned with the CEDAW General Recommendation No 32 (2014) and with a recent decision of the Court of Justice of the European Union (CJEU). To assess the importance of such explicit recognition under the GCR, some cases where gender-related asylum claims were rejected will be analysed, as they stand out as examples of this context and were taken into the court (some of them to the CJEU) of countries which were most affected by the significant increase in the movement of refugees in Europe in 2015.

In third place, and since women account for a large proportion of the world's refugees, it is important to understand these women's integration into host communities and the barriers that pose as a challenge to such integration into essential areas that are covered by the Sustainable Development Goals. One of the main barriers refugee women face is the access to education, where factors like educational costs, family responsibility, racial discrimination and social and cultural norms contribute to a high rate of refugee women with considerably lower levels of education in relation to men. Moreover, the access to employment is also subject to gender barriers, such as those related to language and persistent social and cultural barriers, that shape refugee women's experiences in a unique way and push them to lower employment positions and income. In addition, the access to healthcare poses as a critical barrier as well, due to structural barriers related to language and stigma, that places these women in extremely vulnerable positions when accessing such an important service to grant their physical and psychological well-being,

including in relation to sexual and reproductive health rights. A feminist approach by the GCR should recognize barriers such as gender, language, childcare systems, economic status or social and cultural norms, but also understand the root causes that are one the foundation of such barriers, which is the case of discrimination, stigma and stereotypes, that shape refugee women's experiences while integrating into host communities in a unique way, and represent considerable obstacles to access crucial services.

In this sense, the resettlement programs undertaken by the UNHCR are also a subject of examination in the analysis of this integration. Such programs transfer refugees to different countries in order to provide them a better protection for their needs and vulnerabilities, and refugee women and girls form one of the prioritizing categories to request resettlement, due to the unique risks they face. However, and since resettlement programs are identified by the GCR as durable solutions to address refugees' needs, it is important to analyse how some barriers to refugee women persist and represent a major limitation to their integration into new host communities, as well as how the GCR addresses such barriers in order to understand whether resettlement programs are or are not an improvement of such conditions.

Lastly, it is important to highlight that some gaps were found in the literature within the analysis of most of these issues at the international level and, specifically, within the GCR context. Consequently, the major literature regards case-studies in specific regions of the world, drawing attention to the importance of analysing and approaching such issues at an international level. Therefore, this comprehensive analysis aims to contribute to the ongoing debates on the rights of female asylum seekers and refugee women within the refugee context, recognizing their unique needs and vulnerabilities, while emphasizing the need for a more feminist approach by the Global Compact on Refugees under each step of their journey and further integration into host communities. However, it should not be forgotten that this is not a closed debate, since the gaps mentioned along the report demonstrate a concern towards the future of female asylum seekers and refugee women, in a world that is experiencing the ongoing international conflicts. This leaves the door open to continue the debate around a feminist approach to the GCR, as well as the importance of analysing it alongside with other concepts, such as the concept of intersectionality, in order to further improve female asylum seekers and refugee women's conditions and to protect their needs and vulnerabilities.

Chapter 1

Feminism as a theoretical tool to assess the Global Compact on Refugees

Feminism is a concept that aims to draw attention regarding the different experiences and identities of women, in order to empower them to recognize all their rights⁴. It can be understood as a mechanism to “[learn] and [understand] the ways that inequality affect women and men (...) [leaving] no one behind⁵”. In that sense, it is essential to go through a comprehensive analysis of this concept, which will serve as a theoretical tool to answer the research question of this Internship Report: How does the Global Compact on Refugees address gender-specific challenges and vulnerabilities within the refugee context, and to what extent does it represent an improvement over previous international legal instruments? At the same time, it is also important to analyse the Global Compact on Refugees (2018) as the legal document chosen as the focus of this Report, accessing its approach to the challenges and vulnerabilities faced by female asylum seekers and refugee women. This assessment presents itself as an important method to understand how much of an improvement the Global Compact on Refugees (GCR) shows comparing to previous international legal instruments.

1.1. The concept of feminism:

Feminism is a movement that aims to achieve the social, political, economic and cultural equality between the genders⁶, and understand its origins is important to explain the assessment of the GCR that will be carried throughout this report, through the analysis of female asylum seekers and refugee women’s challenges and vulnerabilities.

In a society where women were denied rights and opportunities granted to male citizens, feminism emerged as a response to these inequalities⁷, advocating for a more

⁴ “What is Feminism.”

⁵ “What is Feminism.”

⁶ Chimamanda Ngozi Adichie, “We should all be feminists,” TED Talk, December 2012, 27 min., 59 sec., https://www.ted.com/talks/chimamanda_ngozi_adichie_we_should_all_be_feminists/up-next/transcript?subtitle=en.

⁷ Haradhan Kumar Mohajan, “Four Waves of Feminism: A Blessing for Global Humanity,” *Paradigm Academic Press Studies in Social Science & Humanitie* 1, no.2 (2022): 2, <https://doi.org/10.56397/SSSH.2022.09.01>.

just and equitable world for all genders. The origin of the term itself can be attributed to Charles Fourier, a French philosopher “who understood so well that the essence of women's emancipation lay in eradicating their legal and economic subordination to men⁸”. The feminist movement can be typically divided into four waves, each one addressing diverse issues and expanding its scope: the first one, when it emerged in the late 19th in relation to legal issues such as the women's right to vote⁹ (typically known as women's suffrage); the second one, in the second half of the 20th century, that emerged after the World War II and was marked by the awareness raised regarding workplace equality and reproductive rights¹⁰; the third wave, which sought for more inclusiveness regarding race and gender, due to the influence of the concept of intersectionality¹¹; and the forth wave, that began around 2012 and is being marked by the use of digital platforms to promote feminism activism¹².

Some key authors made significant contributions to the feminist theories, and their critical examination of the social constructions and systems of oppression that women used to live (and still live in) help to explain why feminism is a concept so important to take into consideration under the refugee context.

Simone de Beauvoir was a French existentialist philosopher and writer, who made great contributions to the feminist theories, and whose theories served as foundations for the modern feminist theory. In her book named “The Second Sex” (1949), the author argues that women have historically been defined as the “Other” in relation to men, and seen as inferior and with a secondary status, which is nothing more than a social and cultural construction perpetuated by patriarchal structures¹³. De Beauvoir explains how throughout the history, the condition of the human male has been viewed as a standard condition, which means that, because of that, “a man would never question his “peculiar situation” because his situation has never been peculiar¹⁴”. These

⁸ Karen Offen, “On the French origin of the words feminism and feminist,” *Feminist Issues* 8, no.2 (1988): 45, <https://doi.org/10.1007/BF02685596>.

⁹ Kumar Mohajan, “Four Waves of Feminism,” 2.

¹⁰ Kumar Mohajan, “Four Waves of Feminism,” 2.

¹¹ Sarah Pruitt, “What Are the Four Waves of Feminism?,” *History*, November 14, 2024, <https://www.history.com/news/feminism-four-waves#third-wave-1990s>.

¹² Kumar Mohajan, “Four Waves of Feminism,” 2.

¹³ Hui Wong, “Simone de Beauvoir and the Other Woman,” *Apollon Undergraduate Ejournal*, May 6, 2022, <https://www.apollonejournal.org/apollon-journal//simone-de-beauvoir-and-the-other-woman>.

¹⁴ Hui Wong, “Simone de Beauvoir and the Other Woman,” *Apollon Undergraduate Ejournal*, May 6, 2022, <https://www.apollonejournal.org/apollon-journal//simone-de-beauvoir-and-the-other-woman>.

critiques made by Simone de Beauvoir were crucial for the assertion that women were ‘trapped’ in traditional roles that confined and restricted their ability to achieve personal autonomy and self-determination and which prevented them from fully realizing their potential as individuals¹⁵.

As mentioned before, feminism is a collection of theories, and it is worth mentioning that some theories can be more radical than others, drawing attention to the different spectrums that different people can have at the same concept. This is the example of Monique Wittig, a French philosopher and a writer, who had a radical critique of gender, being a key figure in the development of what can be called “materialist feminism”. In her essay “One Is Not Born a Woman” (2013), the author suggested that in order for women to achieve liberation, gender as a social construction needs to be abolished, as she wrote “[o]nce the class “men” disappears, “women” as a class will disappear as well, for there are no slaves without masters¹⁶”. The reason why Wittig believes in this need of annihilation of gender as a social construction is because in her line of thought it controls how women function in society and it’s the only way to “create a society where everyone has bodily autonomy and thus no constructs to restrict freedom¹⁷”, where women will achieve a true liberation.

Chimamanda Ngozi Adichie is a Nigerian author whose significant and continuous contribution to contemporary feminist discourse are also worth mentioning. The author advocates for a feminism that is accessible to everyone, criticizing the roles and expectations that society imposes on individuals from a young age¹⁸. On a TED Talk held in 2012, Adichie says “[t]he problem with gender, is that it prescribes how we should be rather than recognizing how we are¹⁹”, advocating for the advancement of women in leadership positions, not only because this is a human issue, but also because “women are human and make up half the world’s population and have historically been unfairly

¹⁵ Wong, “Simone de Beauvoir.”

¹⁶ Monique Wittig, “One Is Not Born a Woman,” in *Feminist Local and Global Theory Perspectives Reader*, ed. Carole R. McCann and Seung-Kyung Kim (Routledge, 2013), 249.

¹⁷ Rashad Khan, “One Is Not Born A Woman: Remembering Monique Wittig’s Feminism,” review of *One Is Not Born a Woman*, by Monique Wittig, *Feminism in India*, June 18, 2019, <https://feminisminindia.com/2019/06/18/monique-wittig-material-feminism/>.

¹⁸ Ngozi Adichie, “We should all be feminists,” at 12:07.

¹⁹ Ngozi Adichie, “We should all be feminists,” at 18:25.

excluded²⁰”.

Therefore, the arguments raised by Simone de Beauvoir, Monique Witting and Chimamanda Ngozi Adichie help us to understand the root causes of gender inequality and, as a consequence, the importance of feminism when addressing gender-specific challenges. These assertions are very important to the refugee context, because it is the way how these feminists shape the feminist theory that will also shape the analysis of how the GCR addresses gender-specific challenges and vulnerabilities within the refugee context.

As mentioned before, in its third wave, the feminist movement was influenced by the concept of intersectionality²¹, consequently reshaping the concept and praxis of feminism. In addition, although this analysis will solely adopt feminism as the theoretical tool to lead the discussion, it is important to make an initial examination of the concept of intersectionality, to understand how it impacted and shaped the understanding of feminism in its evolution period.

Intersectionality is a sociological analytical framework that helps us to understand how various forms of social stratification overlap and intersect, creating cumulative impacts on individuals and making their experience unique²². The Oxford English Dictionary describes it as “the interconnected nature of social categorizations such as race, class, and gender, regarded as creating overlapping and interdependent systems of discrimination or disadvantage²³” and this represents an acknowledgement that every individual has a unique experience.

The origins of intersectionality can be traced back to Black feminist scholarship, specifically from the idea that “oppression is not a singular process or a binary political relation, but is better understood as constituted by multiple, converging, or interwoven systems²⁴”. In fact, the term was first coined in 1989 by Kimberlé Crenshaw, a legal

²⁰ “Chimamanda Ngozi Adichie: Four ways to advance women in leadership positions”, *John Hopkins University*, October 24, 2023, <https://washingtondc.jhu.edu/news/chimamanda-ngozi-adichie-four-ways-to-advance-women-in-leadership-positions/>.

²¹ Pruitt, “Waves of Feminism.”

²² “Intersectionality,” Oxford English Dictionary, accessed July 9, 2024, https://www.oed.com/dictionary/intersectionality_n?tl=true.

²³ “Intersectionality.”

²⁴ Anna Carastathis, “The Concept of Intersectionality in Feminist Theory,” *Philosophy Compass* 9, no. 5 (2014): 304.

scholar and civil rights advocate. In her article “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics” (1989), the author used the concept of intersectionality to criticize how the legal frameworks regarding “sex discrimination tends to be based on the experiences of white women [and] the model of race discrimination tends to be based on the experiences of the most privileged Blacks²⁵”. Crenshaw argued that these legal frameworks don’t take into account the unique and personal experiences of Black women and other women of colour, who end up being marginalized in legal frameworks where the judicial system frequently fails to recognize these differences²⁶.

While using legal examples to illustrate this reality, Crenshaw addresses the so-called ‘single-issues’ that feminist and anti-racism movements focused on, arguing that discriminatory law operated on a “single-axis” model, because it dealt with race and gender as separate issues, rather than overlapping issues²⁷. One of the examples used by the author in her article to better understand this, is the case *DeGraffenreid v. General Motors*, where five Black women sued General Motors for discrimination against them, justifying that it was based both on their gender and race. The court rejected their claim, stating that Black women could not represent both gender and race claims, as Black men and white women were not similarly affected. With examples like these, the author argued that the court failed to consider both of these factors (race and gender) as intersected, noting the importance of recognizing that people face distinct forms of oppression, and their experiences can only be adequately addressed if we look at them together and not separately²⁸. Crenshaw notices that a specific type of discrimination, when different types of oppression are overlapped, will be qualitatively different from the discrimination faced by someone because of only one form of oppression²⁹. This argument helps explaining how women’s experiences are unique because they face different types of discrimination when comparing to men’s experiences.

Crenshaw goes further and expands the concept of intersectionality in another

²⁵ Kimberlé W. Crenshaw, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics,” *University of Chicago Legal Forum* (1989): 151.

²⁶ Crenshaw, “Demarginalizing the Intersection of Race and Sex,” 149.

²⁷ Crenshaw, “Demarginalizing the Intersection of Race and Sex,” 139-40.

²⁸ Crenshaw, “Demarginalizing the Intersection of Race and Sex,” 144.

²⁹ Crenshaw, “Demarginalizing the Intersection of Race and Sex,” 144.

important article named “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color” (1991), where she analyses how women of colour experience gender-based violence differently from white women, not only because of their race, but because of the intersection of it with other factors like class, gender and immigration status³⁰. According to the author, the intersection of these factors, amplify their vulnerability and expands the difficulty in accessing services and support systems³¹. In this article, Crenshaw criticizes again the ‘single-issues’ addressed by feminist and anti-racist movements at that time, where feminist movements were centred on the experiences of white women, and anti-racism movements were centred on the experiences of Black men³². Therefore, in order for these women to have the necessary access to support systems, these problems (like domestic violence, rape and other) need to be addressed while taken into account the experiences of women who face multiple types of oppression overlapped, otherwise the “intervention strategies based on those experiences will be of limited help to women who face different obstacles³³”. This argumentation helps to understand how intersectionality can influence the concept of feminism, drawing attention to the importance of taking into consideration the challenges face by women because of their gender, race, religion, socio-economic status, disability (if applied), sexual orientation, and other factors that shape their needs and vulnerabilities in a unique way.

On a more recent scholarship, this argument was reinforced by Nira Yuval-Davis who argues that “[t]here has been a gradual recognition of the inadequacy of analysing various social divisions, but especially race and gender, as separate, internally homogeneous, social categories resulting in the marginalization of the specific effects of these, especially on women of colour³⁴”. To the author, it is important to understand the way in which different axes of identity and oppression intersect and shape the individual experiences of women, because “the interlinking grids of differential positionings in terms of class, race and ethnicity, gender and sexuality, ability, stage in the life cycle and other social divisions, tend to create, in specific historical situations,

³⁰ Kimberlé Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color," *Stanford Law Review* 43, no. 6 (1991): 1242.

³¹ Crenshaw, "Mapping the Margins," 1249.

³² Crenshaw, "Mapping the Margins," 1242.

³³ Crenshaw, "Mapping the Margins," 1246.

³⁴ Nira Yuval-Davis, "Intersectionality and Feminist Politics," *European Journal of Women's Studies* 13, no. 3 (2006): 206. <https://doi.org/10.1177/1350506806065752>.

hierarchies of differential access to a variety of resources – economic, political and cultural”³⁵. This analysis is aligned with the third wave of the feminist movement, where it started to be recognized that neither all women face the same type of oppression nor they face it in the same ways.

Chandra Talpade Mohanty used the example of women from the Global South to criticize how the Western feminism portrayed them as the “Third World women”, as an oppressed group saying that “western feminist scholarship cannot avoid the challenge of situating itself and examining its role in such a global economic and political framework³⁶”. The author argues that this victimization reinforces colonial attitudes and gives an idea of Western superiority, once it denies the agency, diversity, and complexity of women in the Global South³⁷. This assertion demonstrates how women’s vulnerabilities and realities are distinct, according to the different regions they live in.

Through the arguments of Kimberlé Crenshaw, Chandra Talpade Mohanty and Nira Yuval-Davis it can be understood that, once feminism traditionally focuses on promoting gender equality, intersectionality shapes its scope through the recognition that women’s experiences of oppression are not uniform. In that sense, intersectionality seems to challenge the feminist theory when addressing ‘single-issues’ (those that focus only on gender) drawing attention for the need to consider not only the intersection of multiple factors, such as race, class, disability, sexuality or other identities, but also the unique experiences that arise out of that same intersection.

Using feminism as a theoretical tool for this analysis is a key method to understand the several issues faced by female asylum seekers and refugee women during their journey. After a careful analysis of the Refugee Convention (1951) it can be concluded that the refugee international legal protection system was initially designed with a major focus on the vulnerabilities of asylum seekers and refugees in general, without focusing on gender equality. In order to achieve that, it needs to take into consideration the vulnerabilities and challenges faced by female asylum seekers and refugee women due to, amongst other factors, their gender. In that sense, because it reflects the most recent

³⁵ Yuval-Davis, "Intersectionality and Feminist Politics," 199.

³⁶ Chandra Talpade Mohanty, "Under Western Eyes: Feminist Scholarship and Colonial Discourses," *boundary 2* 12, no. 3 (1984): 336.

³⁷ Mohanty, "Under Western Eyes," 352.

legal consensus reached by States on refugees since the Refugee Convention, the GCR presented a great opportunity to integrate gender and the particular challenges and vulnerabilities of women, ensuring them a proper protection.

1.2. Female asylum seekers and refugee women's challenges:

Female asylum seekers and refugee women are a vulnerable group of people that face several challenges in the context of forced displacement phenomenon, and addressing these challenges is essential for the development and implementation of effective policies that take into consideration their experiences and, ultimately, promote their well-being, safety, and empowerment. Amongst these challenges, there are three which stand out: gender-based violence, access to sexual and reproductive health services, access to leadership and decision-making positions.

Gender-based violence is a persistent challenge that female asylum seekers are particularly highly exposed to³⁸, and it can include sexual assault, domestic violence, human trafficking, and forced marriage. Including in refugee camps and informal settlements, which often lack adequate security measures, women and girls are exposed to these harms³⁹. The United Nations High Commissioner for Refugees (UNHCR) recognizes gender-based violence as a critical issue for female asylum seekers, and in consequence, a serious violation of human rights⁴⁰, estimating that “one in three women will experience sexual or physical violence in their lifetime⁴¹”. According to the UN Refugee Agency, “[i]t is estimated that one in three women will experience sexual or physical violence in their lifetime⁴²”. Gender-based violence can include sexual, physical, mental and economic harm inflicted in public or in private, and it also includes threats of violence, coercion and manipulation. This can take many forms such as intimate partner violence, sexual violence, child marriage, female genital mutilation and

³⁸ “Global Report 2023 Gender-based violence,” UNHCR The UN Refugee Agency, accessed August 20, 2024, <https://reporting.unhcr.org/global-report-2023/outcome-areas/gender-based-violence>.

³⁹ World Future Council, “Protecting refugees Women and Girls from Violence,” *World Future Council*, December 16, 2016, <https://www.worldfuturecouncil.org/protecting-refugee-women-and-girls-from-violence/>.

⁴⁰ “Gender-based violence,” UNHCR The UN Refugee Agency, accessed August 20, 2024, <https://www.unhcr.org/what-we-do/protect-human-rights/protection/gender-based-violence>.

⁴¹ “Gender-based violence.”

⁴² “Gender-based violence.”

the so-called “honour crimes”.

Another critical aspect that female asylum seekers and refugee women come across is the lack of access to sexual and reproductive healthcare services. In displacement situation, women and girls usually are left without access to essential services, such as prenatal care, safe child birth and contraception⁴³, which can have severe consequences for their health, well-being, and dignity. In fact, at the “World Bank classified low-income countries (...) women’s health services, particularly preventive [sexual and reproductive healthcare] including contraception, cervical and breast cancer screening and human papilloma virus (HPV) vaccination is often not available or not of a quality that meets the World Health Organisation framework for human rights standards⁴⁴”. Moreover, health facilities in refugee camps and urban settlements are often underfunded, particularly in conflict zones and low-income countries, and basic reproductive health services, such as prenatal and postnatal care, family planning, and safe delivery, are frequently unavailable⁴⁵. These barriers to sexual and reproductive health care services are often associated to “a variety of factors, including appropriateness of services, inflexibility of local systems, language barriers, and lack of transportation⁴⁶”.

Regarding the access to leadership and decision-making positions, refugee women face serious barriers to access it in their own communities, due to “[p]atriarchal cultures, gender norms, discriminatory practices and limited levels of education often lead to women’s exclusion from leadership positions⁴⁷”. At the parallel high-level event of the 2023 Refugee Forum, under the theme “Gender Equality and Protection from Gender-Based Violence”, Faridah Luanda (Gender and Diversity Coordinator, GRYN and Executive Director of Refugee Youth and Women Group

⁴³ International Confederation of Midwives, “Care of Migrant and Refugee Women and their Families,” Statement Adopted at Toronto Council meeting, 2017 (2017): 1.

⁴⁴ Natasha Davidson, Karin Hammarberg, Lorena Romero and Jane Fisher, “Access to preventive sexual and reproductive health care for women from refugee-like backgrounds: a systematic review,” *BMC Public Health* 22 (2022): 2, <https://doi.org/10.1186/s12889-022-12576-4>.

⁴⁵ “Access to Healthcare in Refugee Camps,” Palestine Children’s Relief Fund, accessed August 20, 2024, <https://www.pcrf.net/information-you-should-know/item-1695239829.html>.

⁴⁶ Annette Floyd and Dikaïos Sakellariou, “Healthcare access for refugee women with limited literacy: layers of disadvantage,” *International Journal for Equity in Health* 16 (2017): 1, <https://doi.org/10.1186/s12939-017-0694-8>.

⁴⁷ MUN Refugee Challenge, “Protecting the Rights of Refugee Women,”: 3, <https://www.unhcr.org/sites/default/files/legacy-pdf/5fc126314.pdf>.

Division in Kyaka II Refugee Settlement, Uganda) said the following:

“Change starts at home. We need to look at the communities. We need to help men and boys learn how to change their mindset and to share the responsibilities, power, and leadership in a sustainable way⁴⁸”.

This underscores the importance of recognizing the role refugee women play in their communities, instead of only seeing them as victims⁴⁹, since they are the ones who are affected by these challenges and their insights will surely make a great difference and ensure that measures will be culturally appropriated to meet their needs.

Understanding these main challenges of female asylum seekers and refugee women, such as gender-based violence, access to sexual and reproductive healthcare services, and access to leadership and decision-making positions help to explain the significance of a feminist approach under the GCR. Therefore, in order to effectively address these main challenges, it becomes imperative that international legislation within the refugee context, including the GCR, prioritize the inclusion of provisions that grant women, among several other important challenges, the adequate access to healthcare, legal support and leadership.

1.3. A feminist approach to the Global Compact on Refugees:

At the 71st session of the United Nations General Assembly, Member States unanimously adopted the New York Declaration for Refugee and Migrants (2016), where they agreed upon the elaboration of the Global Compact on Refugees (GCR) and its core elements. Amongst other commitments, in the New York Declaration (2016), the following commitment can be found under paragraph 31:

“We will ensure that our responses to large movements of refugees and migrants mainstream a gender perspective, promote gender equality and the empowerment of all women and girls and fully respect and protect the

⁴⁸ Global Compact on Refugees, “Empowering refugee women: Insights from the Global Refugee Forum,” accessed in August 20, 2024, <https://globalcompactrefugees.org/news-stories/empowering-refugee-women-insights-global-refugee-forum>.

⁴⁹ MUN Refugee Challenge, “Protecting the Rights of Refugee Women,” 1.

human rights of women and girls. We will combat sexual and gender-based violence to the greatest extent possible. We will provide access to sexual and reproductive health-care services. We will tackle the multiple and intersecting forms of discrimination against refugee and migrant women and girls. At the same time, recognizing the significant contribution and leadership of women in refugee and migrant communities, we will work to ensure their full, equal and meaningful participation in the development of local solutions and opportunities. We will take into consideration the different needs, vulnerabilities and capacities of women, girls, boys and men.⁵⁰”

Through this commitment, and because it reflects the most recent legal consensus reached by the international community on the refugee context since the Refugee Convention (1951), the creation of the GCR represented an important opportunity to address the gender gaps in the approaches to the large movements of refugees. Amongst the several international legal documents regarding the refugee context, neither the Refugee Convention (1951) and its Protocol (1967), the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (1959), nor the Cartagena Declaration on Refugees (1984) make any mention to the gender approach in relation to refugees. Those mentions can only be found in the Guiding Principles on Internal Displacement (1998) and the Kampala Convention (2009), but it should be taken into account that the first one applies only to internally displaced persons, and the second is a regional legal framework that addresses the issue of internal displacement within the African continent.

The Convention on the Elimination of All Forms of Discrimination Against Women (1979) is an international treaty adopted by the United Nations General Assembly that should be also mentioned. Both the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the GCR share the goal of promoting and protecting human rights, including the rights of women, even though the CEDAW provides a comprehensive framework for addressing gender-based discrimination in all areas of life. The Committee on the Elimination of Discrimination

⁵⁰ United Nations General Assembly, *New York Declaration for Refugees and Migrants*, 71st Session, A/RES/71/1 (3 october 2016): 1.

Against Women (CEDAW) addresses international refugee law issues through the General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014), where it provides recommendations for States to fulfil their obligations under the CEDAW (1979) to protect all women and girls within the refugee context.

“The assertion that the refugee determination process should be expanded to include the experiences of women has occurred at an international level only within the last two decades⁵¹”, with Canada being the first country in 1993 to “produce a comprehensive set of guidelines on the inclusion of gender as a ‘social group’ under the 1951 Convention⁵²”. This precedent created by Canada was then followed by other countries which, however, “have chosen not to amend existing legislation to include ‘sex’ or ‘gender’ as a social group, but rather to issue non-binding regulations on how officials might evaluate claims of gender persecution⁵³”.

Amongst her several arguments, Jane Freedman argued that “differences in the material circumstances of men and women who arrive to seek asylum may mean in effect that the implications of these policies are deeply gendered⁵⁴”. This means that female asylum seekers often face other forms of persecution that are specific to their gender⁵⁵, such as sexual violence and forced marriages, which was not adequately recognized in the Refugee Convention (1951) and its Protocol (1967). As it will be later subject of analysis, Freedman also highlighted how female asylum seekers frequently faced stereotypes that undermined the credibility of their claims⁵⁶, which in a first analysis urges for more gender-sensitive procedures in the asylum process. The author also highlights that, according to statistics on asylum applications, “success by female asylum seekers do not mean that the process of gaining asylum is more accessible for women⁵⁷”. According to the author, even though some countries (like the United States, Australia)

⁵¹ Nahla Vaiji, Lee Anne de la Hunt and Helen Moffet, “Where are the women? Gender discrimination in refugee policies and practices,” *Agenda* 55 (2003): 63.

⁵² Vaiji and Mofet, “Where are the women?,” 63.

⁵³ Vaiji and Mofet, “Where are the women?,” 63.

⁵⁴ Jane Freedman, “Women’s Right to Asylum: Protecting the Rights of Female Asylum Seekers in Europe?,” *Human Rights Review* 9, no. 4 (2008): 413, <https://doi.org/10.1007/s12142-008-0059-1>.

⁵⁵ Freedman, “Women’s Right to Asylum,” 413.

⁵⁶ Freedman, “Women’s Right to Asylum,” 423.

⁵⁷ Brandy Cochrane, “Reviews J. Freedman, *Gendering the International Asylum and Refugee Debate*, by Jane Freedman, *State Crime Journal*, April 1, 2017.

and the European Union place some restrictions on asylum access and strengthen the borders control, “there is very compelling evidence that have a highly negative effect, especially for women⁵⁸”. These are important arguments that support the assertion that the GCR should address gender-specific challenges and vulnerabilities within the refugee context, including through the inclusion of gender-persecution as one of the grounds of a “well-founded fear of persecution”.

Through a careful analysis of GCR it can be noted that it has some provisions where it addresses some of the specific needs and vulnerabilities of female asylum seekers and refugee women. On paragraph 9, we can find the Principle of Non-discrimination, that calls States out to end all forms of discrimination, including on the basis of sex and therefore to promote gender equality⁵⁹. Between paragraphs 13 and 15, it is mentioned the need for empowerment and inclusion, stressing out the importance of promoting gender equality and empowering female asylum seekers and refugee women⁶⁰. On paragraphs 68 and 69, the topic of education is brought up, recognizing the specific barriers faced by female asylum seekers and refugee women in accessing education and calls for efforts to eliminate gender disparities and promote equal access to quality education⁶¹. On paragraph 71, regarding livelihoods and economic empowerment, it is recognized the need for gender-responsive approaches to enhance economic empowerment, taking into account the specific challenges faced by female asylum seekers and refugee women⁶². On paragraph 72, regarding health, the GRC draws attention to the specific health needs of women and girls, including reproductive health services and calls for measures to prevent and respond to gender-based violence⁶³. Lastly, on paragraph 74 and 75, we can find the provision regarding meaningful participation, that encourages the adoption of community-based and gender-sensitive approaches in refugee response, ensuring the meaningful participation

⁵⁸ Cochrane, “Reviews J. Freedman.”

⁵⁹ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 4, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

⁶⁰ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 6, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

⁶¹ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 26, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

⁶² United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 27, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

⁶³ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 27, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

of women and girls in community decision-making processes⁶⁴.

The GCR foresees the realization of the Global Refugee Forum, which is held every two years, and where United Nations Member States and other relevant stakeholders announce pledges and contributions to achieve the objectives of the GCR⁶⁵. This allows the possibility of, in every two years, understanding the international community priorities regarding the refugee context and, particularly, the inclusion and compliance of a gender perspective into this scope. According to the UNHCR, regarding gender equality and gender-based violence, at the Global Refugee Forum held in 2023, 166 pledges were made⁶⁶, what was revealed to be “a more than threefold increase in commitments from 50 pledges in 2019⁶⁷”. These multi-stakeholders’ pledges were co-led by Australia, Chile, Germany, the United Kingdom, the Action Network on Forced Displacement and women refugee-led organizations (pledge on gender equality and protection from gender-based violence) and by France (pledge “Avec Elles”)⁶⁸.

It should be noted that an initial critical gap can be found within the GCR, regarding the absence of the recognition of the ‘asylum seekers’ status within its framework. Throughout the text, there is no reference to such status in order to distinct it from the ‘refugee’ status, merely referring to it as “those seeking protection as refugees⁶⁹”, “those seeking and in need of international protection as refugees⁷⁰” or “others on the move⁷¹”, in only few occasions.

As it will be demonstrated, the absence of such distinction is the main reason behind the insufficient feminist approach done by the GCR regarding the female asylum seekers’ journey to obtain the refugee status, since by not recognizing such status, it fails

⁶⁴ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 28, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

⁶⁵ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 7, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

⁶⁶ “Global Report 2023 Gender-based violence.”

⁶⁷ “Global Report 2023 Gender-based violence.”

⁶⁸ “Global Report 2023 Gender-based violence.”

⁶⁹ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 44, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

⁷⁰ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 50, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

⁷¹ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 6, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

to address the specific issues and vulnerabilities faced by women under this part of their journey and, thus, failing to properly protect them. Such distinction cannot also be found under the Refugee Convention (1951) and its Protocol (1967), which refers only to the ‘refugee status’ as declaratory of a preexisting situation, namely the inability and unwillingness of someone “to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion⁷²”.

The recognition of the ‘asylum seeker’ status can be found within the European Union law, which expressly refers to this status under the Directive 2013/33/EU Of the European Parliament and of the Council of 26 June 2013. In fact, the first recognition of such status occurred in 2011 through the delivery of the European Court of Human Rights’ judgment under the case *M.S.S. v. Belgium and Greece*⁷³, “in which the Court recognized for the first time that asylum seekers constitute ‘a particularly underprivileged and vulnerable population group in need of special protection’⁷⁴”. Therefore, an asylum seeker can be defined as “a person who seeks protection from persecution or serious harm in a country other than their own and awaits a decision on the application for refugee status under relevant international and national instruments⁷⁵”.

In this sense, and despite the absence of such distinction by the GCR, the term ‘female asylum seeker’ will be used along this report to refer to women who flee their countries of origin to seek protection in other countries and, consequently, apply for the refugee status, and the term ‘refugee women’ to refer to women who obtained that same refugee status and are entitled to protection under international, national or regional law.

In view of this comprehensive analysis, and in order to allow a more detailed analysis throughout the Report, the research question can be divided into two separate questions (1) How does the Global Compact for Refugees address gender-specific challenges and vulnerabilities within the refugee context? (2) To what extent does the

⁷² United Nations High Commissioner for Refugees (UNHCR), *Convention Relating to the Status of Refugees* (1951): 3, <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees>.

⁷³ Katarzyna Gałka, “Vulnerabilidade e suas implicações: alguns comentários à luz da jurisprudência de Estrasburgo sobre os requerentes de asilo,” *Espaço Jurídico Journal of Law* 22, no. 2 (2021): 286, <https://doi.org/10.18593/ejil.29950>.

⁷⁴ Gałka, “Vulnerabilidade e suas implicações,” 286.

⁷⁵ “asylum seeker,” European Commission, accessed December 12, 2024, https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/asylum-seeker_en.

Global Compact for Refugees represent an improvement over previous international legal instruments?

As mentioned, the GCR addresses the specific needs and vulnerabilities of female asylum seekers and refugee women in some of its provisions. However, in a preliminary analysis the recognition and fulfilment of a feminist approach by the GCR seems to be broad and lack detailed provisions and specific guidelines on how to operationalize feminist policies in the context of female asylum seekers' journey to obtain the refugee status and the refugee women's integration in the country of destination. Therefore, this draws attention to the importance of looking at these two phases separately and analyse the recognition of the different nature of these women's experiences by the GCR and, consequently, answer both questions that integrate the research question. Lastly, it is therefore important to make a feminist approach in the context of the GCR, so these gender-sensitive provisions ensure the protection and well-being of every female asylum seeker and refugee woman, leaving no one behind.

Chapter 2

From the beginning of Female Asylum Seekers' journeys to their Refugee Status Determination: the absence of a feminist approach by the Global Compact on Refugees

Taking into account the theoretical insights developed above, as well as the purpose of studying the GCR as a tool to address gender-specific challenges and vulnerabilities within the refugee context, this chapter will go through the different stages of displacement during the female asylum seekers' journey to obtain the refugee status. Firstly, it is important to understand if the GCR takes into account the reasons that make women choose these irregular paths and the risks they face to reach the country of destination, including the militarization and the securitisation of borders by States, through the reinforcement of border control and detention centres. Secondly, the focus will shift for the gender approach provides by the GCR regarding the process of the Refugee Status Determination (RSD), in order to identify the legal and procedural gaps of this procedure, which often results in unfair results for female asylum seekers.

2.1. The choice of irregular pathways of migration:

Women flee their countries of origin due to terrible conditions under which they were living, in order to be safe and, in many occasions, to provide a safer environment for their children to live⁷⁶. Under these circumstances, they often choose dangerous paths to reach another country⁷⁷, while well aware of its own risks, and understand why they make this choice is important to underscore the importance of a feminist approach, that takes into account their experiences. After a careful analysis of the GCR, it is understood that it does not explicitly address the structural reasons that drive women to undertake irregular migration, and without doing so, it fails an important step to take into account

⁷⁶ Heidi Cerneka, "The Search for Safety: Why Women Flee their Countries of Origin," *Jesuits Central and Southern*, February 10, 2021, <https://www.jesuitscentralsouthern.org/stories/the-search-for-safety-why-women-flee-their-countries-of-origin/>.

⁷⁷ Cerneka, "The Search for Safety."

their backgrounds and how gender shape their lives in different ways from those compared to men.

Irregular migration can both empower and undermine women⁷⁸, since some of them “choose to migrate in search of better educational, labour and economic opportunities⁷⁹”, but, on the other side, they can be “vulnerable to exploitation particularly during irregular migration journeys⁸⁰”. Since for the “majority of the women globally there is no opportunity for legal migration from the Global South to the Global North⁸¹”, the most common methods adopted by asylum seekers to cross borders are by foot, by boat and hiding in transportation vehicles⁸². All these travel methods are usually organised by smugglers and are regularly overcrowded⁸³, creating their own risks. These methods can be life-threatening, since it is commonly reported that “women and children are more likely to be left behind by guides if they cannot keep up⁸⁴”, as well as the fact that “women are more likely to die during an irregular migration journey at sea or in remote locations such as jungles, deserts, or other uninhabited areas⁸⁵”. However, besides these life-threatening risks, during this journey female asylum seekers face a lot of particular risks⁸⁶, as sexual violence⁸⁷, which turns out to be “both a driver and a consequence of women’s irregular migration and has been well documented as a gendered migration vulnerability⁸⁸”, especially if they are traveling alone or in isolated conditions. The journey of a female asylum seeker can be physically and psychologically demanding, as they struggle to get access to, for example, menstrual health supplies and adequate sanitation, which is vital for their health and dignity during these long journeys. Women

⁷⁸ Sharon Pickering and Rebecca Powell, “State of evidence: Women and irregular migration. Migration displacement & briefing note series I,” *Oxfam-Monash Partnership* (2018): 3. <https://doi.org/10.26180/5bb42024af713>.

⁷⁹ Pickering and Powell, “State of evidence,” 3.

⁸⁰ Pickering and Powell, “State of evidence,” 3.

⁸¹ Sharon Pickering and Brandy Cochrane, “Irregular border-crossing deaths and gender: Where, how and why women die crossing borders,” *Theoretical Criminology* 17, no. 1 (2013): 32, <https://doi.org/10.1177/1362480612464510>.

⁸² “Migratory Routes,” Frontex, accessed September 18, 2024, <https://www.frontex.europa.eu/what-we-do/monitoring-and-risk-analysis/migratory-routes/migratory-routes/>.

⁸³ “Migratory Routes.”

⁸⁴ Pickering and Cochrane, “Irregular border-crossing deaths and gender,” 34.

⁸⁵ Pickering and Powell, “State of evidence,” 9.

⁸⁶ Women in Migration Network, “Women in Migration Version for input in the third thematic consultations on the Global Compact on Migration Geneva, 19th and 20th June 2017,” (2017): 6.

⁸⁷ Marta Sánchez Dionis, Moska Timar and Anke Domscheit-Berg, “Protecting Refugee Women and Girls from Violence. A Collection of Good Practices,” World Future Council (2018): 4.

⁸⁸ Pickering and Powell, “State of evidence,” 6.

may also suffer from severe psychological trauma⁸⁹, due to, for example, threats, violence, and prolonged uncertainty. Plus, many female asylum seekers flee their countries of origin with children, and often as a sole caregiver⁹⁰, adding another layer of vulnerability to their journey, since it may include other scenarios, like “responsibilities for ‘saving’ their children if a drowning tragedy should occur which can be incredibly difficult if the mother cannot swim or where there are many children to save⁹¹”, or to “sacrifice food and water rations during irregular migration journeys, choosing instead to give these to their children⁹²”. Pregnancy can be a “motivating factor for fleeing situations where there is a heightened risk of sexual violence⁹³”, but it is another condition that can be a factor of unsafety for these journeys, as well as “inimically linked to heightened levels of sexual violence in borderland regions⁹⁴”.

Due to legal barriers and “to a lack of financial and other resources, women are often unable to travel, especially alone⁹⁵”, forcing them to choose irregular pathways, as they see a limited window of opportunity to flee their countries of origin in a desperate and hopeless attempt to escape immediate threats⁹⁶ (for example, gender-based violence). And since they may have to leave their homes without many belongings⁹⁷, namely their identification documents, women are also afraid of being detained and deported once they attempt to entry through a legal border checkpoint. It is important to understand that the lack of funds and options is amongst the reasons why women end up relying on

⁸⁹ Gisselle Lopez Hernandez, "From Mexico to the USA: Mental Trauma Throughout the Migrant Journey" (M.Sc diss., University of Northern Colorado, 2022), 6.

⁹⁰ Pickering and Powell, “State of evidence,” 8.

⁹¹ Pickering and Powell, “State of evidence,” 8.

⁹² Pickering and Powell, “State of evidence,” 8.

⁹³ Pickering and Cochrane, “Irregular border-crossing deaths and gender,” 34.

⁹⁴ Pickering and Cochrane, “Irregular border-crossing deaths and gender,” 34.

⁹⁵ Pickering and Cochrane, “Irregular border-crossing deaths and gender,” 32.

⁹⁶ Heidi Cerneka and Jannick Eggerman, “The Search for Safety: Why Women Flee their Countries of Origin,” *Jesuits Central and Southern*, February 10, 2021, <https://www.jesuitscentralsouthern.org/stories/the-search-for-safety-why-women-flee-their-countries-of-origin/>.

⁹⁷ “Why Women Flee,” Women for Women International, accessed September 18 2024, <https://www.womenforwomen.org/blogs/why-women-flee>.

smugglers⁹⁸, who often give false promises or information⁹⁹, misleading them to improper conditions of travel.

Through an analysis of the GCR, it cannot be found any reference to address the structural factors that force women to choose irregular pathways of migration, neither the recognition of the risks they face during their journey. There is a reference to the root causes factor under paragraph 9, where the GCR calls “[a]ll States and relevant stakeholders (...) to tackle the root causes of large refugee situations¹⁰⁰”, but there is no mention to a gender-sensitive approach to that recommendation, that highlights how those root causes can be different when analysed through a gender lens. The are also mentions concerning this issue are under paragraph 13 and paragraph 57, through an appeal to prevent and end “all forms of sexual and gender-based violence, trafficking in persons, sexual exploitation and abuse, and harmful practices¹⁰¹”, without specifying the moment in which those practices can occur. A feminist approach by the GCR to this issue would allow to underscore the gender-related reasons for female asylum seekers to choose irregular pathways of migration to flee their countries, as well as the gender-related challenges and risks they can face during their journey.

2.1.1. The Role of border control in female asylum seekers’ journey:

Some aspects of border control and its reinforcement are amongst the reasons that force women choose irregular pathways¹⁰² and rely on smugglers, as a consequence, to make this crossing, and it is important to analyse its discriminatory practices, in order to understand how this impact female asylum seekers and how a feminist approach by the GCR could addresses these specific-challenges.

⁹⁸ International Organization for Migration and United Nations Population Fund, “Female Migrants: Bridging the Gaps Throughout the Life Cycle. Selected Papers of the UNFPA-IOM Expert Group Meeting” (2006): 98.

⁹⁹ Melita H. Sunjic, “External contribution: Refugees: When human smuggling becomes human trafficking Online,” in *2017 Annual Report Trafficking and smuggling of human beings*, ed. Stef Janssens and Patricia Le Cocq (Myria Federal Migration Centre, 2018), 66.

¹⁰⁰ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 4, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

¹⁰¹ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 6, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

¹⁰² Pickering and Powell, “State of evidence,” 5.

The securitisation of the borders is a growing phenomenon by which States systematically intensify the military presence, resources and security measures in their borders, through armed personnel, surveillance technology, physical barriers and other defensive infrastructure^{103 104}. Although “border has been effectively policed across time and space in ways previously unimagined¹⁰⁵”, it can be understood that this securitisation of the borders is used by States to control the flow of migrants and asylum seekers attempting to enter their country¹⁰⁶, ending up forcing them to use more dangerous routes to dissuade them from crossing their borders at all¹⁰⁷. Remembering Jane Freedman argument mentioned in the previous chapter, although border control is used by States to limit asylum access “there is very compelling evidence that have a highly negative effect, especially for women¹⁰⁸”. Moreover, borders are places where factors like classification and exclusion predictably result in harm, including deaths¹⁰⁹, which “raise[s] serious questions concerning state obligations, at least in relation to the foreseeability of these deaths, if not also in connection to state culpability in and the legality of border control efforts that directly or indirectly result in deaths¹¹⁰”.

Amongst the several methods used to increase border control, it is important to analyse the methods that impact female asylum seekers, which can help explaining their choice over irregular pathways and the reason why this should be a concern addressed by the GCR.

Even though these are important tools to identify people, biometric systems can pose as a challenge that female asylum seekers face. It is important to note that, due to cultural reasons and religious, biometric screening can be a violation for female asylum seekers who, for example, wear hijabs or niqabs and are required to remove them. It should also be noted that there has been evidence that shows that biometric systems are often less accurate for women with darker skin tones due to the way algorithms are

¹⁰³ “Border Militarization Policy,” NNiRR, accessed 20 September 2024, <https://nnirr.org/programs/seeking-border-justice/border-militarization-policy/>.

¹⁰⁴ Pickering and Cochrane, “Irregular border-crossing deaths and gender,” 29.

¹⁰⁵ Pickering and Cochrane, “Irregular border-crossing deaths and gender,” 28.

¹⁰⁶ Pickering and Cochrane, “Irregular border-crossing deaths and gender,” 28.

¹⁰⁷ Kristina Korte, “So, if you ask whether fences work: they work”—the role of border fortifications for migration control and access to asylum. Comparing Hungary and the USA,” *Comparative Migration Studies* 11 (2023): 6, <https://doi.org/10.1186/s40878-023-00352-1>.

¹⁰⁸ Cochrane, “Reviews J. Freedman.”

¹⁰⁹ Pickering and Cochrane, “Irregular border-crossing deaths and gender,” 29.

¹¹⁰ Pickering and Cochrane, “Irregular border-crossing deaths and gender,” 28.

trained, leading to higher rates of misidentification or to the exclusion of female asylum seekers^{111 112}, which can delay their refugee status application. For example, a study made by Joy Boulamwini and Timnit Gebru analysed the performance of commercial facial recognition systems and concluded that “darker-skinned females are the most misclassified group (with error rates of up to 34.7%)¹¹³”, and that these systems are more accurate to lighter-skinned males, where the “maximum error rate (...) is 0.8%¹¹⁴”. Another study made by the National Institute of Standards and Technology, that evaluates 189 recognition algorithms found out that these systems have “higher rates of false positives for Asian and African American faces relative to images of Caucasians¹¹⁵”, with “differentials often ranged from a factor of 10 to 100 times¹¹⁶”.

There are also some border control policies and practices that separate families, which disproportionately impact women, particularly mothers traveling with children and, in many cases, alone. The Zero Tolerance policy (2018), adopted in the United States is a particular controversial example worth to be mentioned, due to its intentionality, scale and widespread perception that it disregarded basic human rights. While there are other examples of policies that implemented family-separation policies, the Zero Tolerance policy in the United States was a case that raised a lot of attention in the media and concerns within the international community, being reported that “separated 2,816 children (...) from their parents or guardians¹¹⁷” during the 6 weeks that was in effect. There is another example which took place in Röszke (Hungary), in 2015, when Europe experienced a significant increase movement of refugees. This was the case of nine people (including four children) who broke a border fence and ended up separated from their families and whose location was after unknown¹¹⁸. These family separation policies and

¹¹¹ Joy Boulamwini and Timnit Gebru, “Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification,” *Proceedings of Machine Learning Research* 81 (2018): 2.

¹¹² N. Hanacek, “NIST Study Evaluates Effects of Race, Age, Sex on Face Recognition Software,” *National Institute of Standards and Technology*, December 19, 2019, <https://www.nist.gov/news-events/news/2019/12/nist-study-evaluates-effects-race-age-sex-face-recognition-software>.

¹¹³ Boulamwini and Gebru, “Gender Shades,” 1.

¹¹⁴ Boulamwini and Gebru, “Gender Shades,” 1.

¹¹⁵ Hanacek, “NIST Study.”

¹¹⁶ Hanacek, “NIST Study.”

¹¹⁷ William A. Kandel, “The Trump Administration’s “Zero Tolerance” Immigration Enforcement Policy,” *Congressional Research Service* (2021): 2.

¹¹⁸ Amnesty International, “Hungary: Children separated from families by police amid border chaos,” *Amnesty International*, September 21, 2024, <https://www.amnesty.org/en/latest/news/2015/09/hungary-children-separated-from-families-by-police-amid-border-chaos/>.

practices are extremely harmful to female asylum seekers, and are connected with high rates of depression, posttraumatic stress disorder (PTSD) and anxiety¹¹⁹.

Through a detailed analysis of the GCR, it can be noted that the document does not address issues regarding the practices and methods used by border control, nor regarding separation policies. Nevertheless, the GCR does place emphasis on principles that advocate for children rights under these circumstances. Under paragraph 76, is stated that “States and relevant stakeholders will contribute resources and expertise towards policies and programmes that take into account the specific vulnerabilities and protection needs of (...) unaccompanied and separated children¹²⁰”, and paragraph 60 advocates for States to create mechanisms for the identification, screening and referral of people with specific need, “including unaccompanied and separated children, to best interests assessment and/or determination, together with appropriate care arrangements or other services¹²¹”. However, it is important to note that, not even in the case, the GCR addresses these children’s situations under the possibility of have being left unaccompanied because of family separation policies.

It should also be highlighted that, under the CEDAW Recommendation no 32 there is a provision which call States to “establish adequate screening mechanisms for the early identification of women asylum seekers with specific protection and assistance needs, including (...) victims of trauma, victims of trafficking and/or forced prostitution, victims of sexual violence and victims of torture and/or ill-treatment¹²²”.

Therefore, by not recognizing how the securitisation of borders treats female asylum seekers as threats, disregarding their reasons for choosing irregular pathways of migration, and by not mentioning the borders securitisation policies to restrict migration,

¹¹⁹ Belinda J. Liddell, Nicole Batch, Sarah Hellyer, Marta Bulnes-Diez, Anjali Kamte, Christina Klassen, Joshua Wong, Yulisha Byrow and Angela Nickerson, “Understanding the effects of being separated from family on refugees in Australia: a qualitative study,” *Australian and New Zealand Journal of Public Health* 46 no.5 (2022): 647. <https://doi.org/10.1111/1753-6405.13232>.

¹²⁰ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 29, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

¹²¹ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 22, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

¹²² Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women*, CEDAW/C/GC/32, November 5, 2014: 15, <https://www.refworld.org/legal/general/cedaw/2014/en/102146>.

the GCR fails to integrate a feminist approach, overlooking critical issues regarding biometric systems and family separation. Firstly, addressing screening methods is important to recognize how gender (and also other factors like race) create specific vulnerabilities for female asylum seekers subjected to these procedures, and mislead identifications, as previously exemplified. Secondly, it is also essential to address family separation policies, in order to understand how female asylums seekers, who are often primary caregivers, are being disproportionately affected when considering the harmful psychological consequences of the respective separation upon their personal identity, namely the social expectation and personal responsibility towards them. Thus, only through a feminist approach the GCR can address these needs and vulnerabilities of female asylum seekers under such circumstances, because it would then recognize how gender shape their experiences in a unique way and places them into discriminatory positions within these methods and policies used by border control.

2.1.2. The risks of detention centres for female asylum seekers:

Some countries with strict immigration control and polices use detention centres policies as a mean to manage migration flows, access refugee claims, and to ensure compliance with asylum and/or deportation processes. While crossing a border to another country, female asylum seekers face the risk of detention, being temporary placed in detention centres while waiting for their asylum claim to be processed. This is an aspect important to be taken into consideration when analysing female asylum seekers' journey to obtain the refugee status at the country of destination, since detention centre policies frequently fail to take into account a gender perspective and, as a consequence, fail to accommodate and neglect the specific needs and vulnerabilities of female asylum seekers¹²³.

Detention centres are facilities where female asylum seekers can be “rendered vulnerable to physical and sexual abuse¹²⁴”, both from male detainees or even from

¹²³ Women's Refugee Commission, “Prison for Survivors. The Detention of Women Seeking Asylum in the United States,” Women's Refugee Commission (2017): 27.

¹²⁴ Victoria Cannin, “Women, asylum and the harms of detention,” *Criminal Justice Matters* 98, no 1 (2014): 10. <https://doi.org/10.1080/09627251.2014.984535>.

security personnel¹²⁵, adding the fact that the longer they stay in detention, “the more likely they were to have been victims of abuse, assault and other forms of violence¹²⁶”. These policies often fail to implement robust safeguards against sexual and gender-based violence, through proper staff training or mechanisms to report these incidents¹²⁷, creating an “unequal distribution of power between those [detained] and those charged with the task of securing them¹²⁸”. Through a careful research on sexual-abuse data in detention centres, it can be predominantly found studies regarding the United States immigration detention facilities. In 2017, the Community Initiatives for Visiting Immigrants in Confinement (CIVIC) filed a federal complaint describing the “prevalence of reports of sexual abuse, assault, and harassment in U.S. immigration detention facilities and the lack of adequate government investigation into these reports¹²⁹”. In the complaint, CIVIC reported 27 sexual-abused related complaints in immigration detention¹³⁰, where “[m]ost of these individuals have not been in a position to file formal grievances or complaints because of fear of retaliation¹³¹”. CIVIC also noted that, at least 1,016 “under the custody of the Department of Homeland Security (DHS) in detention have submitted sexual abuse-related complaints (...) since 2010¹³²”, adding that “sexual assault has been documented at 76 immigration detention facilities¹³³”. Moreover, Futuro Investigates data shows that there is “a systemic pattern of abuse by detention officers, contractual guards, and ICE employees, accused of sexually assaulting the individuals they are meant to protect¹³⁴”.

In addition, these facilities are designed with a "one-size-fits-all" approach¹³⁵, treating all detainees as a homogenous group and without considering the specific physical, emotional, and social needs and vulnerabilities of female asylum seekers. While

¹²⁵ Cannin, “Women, asylum and the harms of detention,” 10.

¹²⁶ Zeba Warsi, “Hundreds of immigrants have reported sexual abuse at ICE facilities. Most cases aren’t investigated,” *PBS News*, July 21, 2023, <https://www.pbs.org/newshour/nation/hundreds-of-immigrants-have-reported-sexual-abuse-at-ice-facilities-most-cases-arent-investigated>.

¹²⁷ Cannin, “Women, asylum and the harms of detention,” 10.

¹²⁸ Cannin, “Women, asylum and the harms of detention,” 10.

¹²⁹ “Widespread Sexual Assault,” *Freedom for Immigrants*, accessed September 20, 2024, <https://www.freedomforimmigrants.org/sexual-assault>.

¹³⁰ “Widespread Sexual Assault.”

¹³¹ “Widespread Sexual Assault.”

¹³² “Widespread Sexual Assault.”

¹³³ “Widespread Sexual Assault.”

¹³⁴ Warsi, “Hundreds of immigrants have reported sexual abuse at ICE facilities.”

¹³⁵ Megan Crossley, “Immigration detention centres and the women they harm,” *Transforming Society*, September 20, 2024, <https://www.transformingsociety.co.uk/2024/01/04/immigration-detention-centres-and-the-women-they-harm/>.

detained, female asylum seekers lack access to proper healthcare services, including reproductive health care, such as prenatal care, postnatal care, or even access to contraception¹³⁶¹³⁷. This may be a particular challenge for pregnant women or women traveling with children, who may face complications due to inadequate medical attention. Access to psychological counselling is another main issue inside detention centres, where they are often underfunded or unavailable, leaving female asylum seekers unable to access trauma-informed care¹³⁸. This can be specially concerning towards survivors of trauma, particularly sexual violence, since these women can be retraumatized by a lack of counselling and mental health support.

Within the GCR the only mention that can be found regarding the aspect of asylum seekers' detention is under paragraph 60, where it encourages States to prioritize the "development of non-custodial and community-based alternatives to detention"¹³⁹. However, there is no mention regarding the conditions female asylum seekers face under detention, and by only appealing to other alternatives to detention this approach can be seen as avoiding the problem instead of going through its foundations.

In addition, CEDAW Recommendation No 32 calls for the non-detention of pregnant women and nursing mothers¹⁴⁰, as well as for the separation of male and female detainees "for the purposes of avoiding violence against women (...) unless in family units, and alternatives to detention are to be made available¹⁴¹".

Without addressing gender-related issues in detention centres, such as sexual abuse and lack of access to healthcare services, the GCR fails to understand the

¹³⁶ Women's Refugee Commission, "The Detention of Women Seeking Asylum in the United States" (2017): 27

¹³⁷ Crossley, "Immigration detention centres and the women they harm."

¹³⁸ Cannin, "Women, asylum and the harms of detention," 1.

¹³⁹ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 22, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

¹⁴⁰ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women*, CEDAW/C/GC/32, November 5, 2014: 12, <https://www.refworld.org/legal/general/cedaw/2014/en/102146>.

¹⁴¹ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women*, CEDAW/C/GC/32, November 5, 2014: 15, <https://www.refworld.org/legal/general/cedaw/2014/en/102146>.

circumstances under which female asylum seekers are left in extremely vulnerable positions, where sometimes they do not report such crimes due to fear.

2.2 The Refugee Status Determination:

The Refugee Status Determination (RSD) is a legal and administrative procedure, through which it is evaluated if a person, who is seeking international protection, is qualified to be considered a refugee and therefore entitled to protection, assistance and rights under international, national or regional law¹⁴². Addressing this procedure through the lens of a gender approach is essential, especially in the context of the GCR, because it highlights the systemic ways in which female asylum seekers' access to protection is undermined and not legally well-protected.

The RSD process is a complex procedure that varies according to the legal framework of each country¹⁴³ and, even though is the primary responsibility of States, can also be conducted by the UNHCR “under its mandate when a state is not a party to the 1951 Refugee Convention and/or does not have a fair and efficient national asylum procedure in place¹⁴⁴”. Normally, it follows the guidelines of the Refugee Convention (1951) and its Additional Protocol (1967)¹⁴⁵, which defines the criteria through which a person qualifies as a refugee. This definition is legally binding for the States that ratified the Convention and its Additional Protocol.

It is worth to mention that, in its paragraph 61, the GCR states that “[m]echanisms for the fair and efficient determination of individual international protection claims provide an opportunity for States to duly determine the status of those on their territory¹⁴⁶”. This highlights the importance of timely and quality decision-making to protect the rights of asylum seekers and ensure that they are granted refugee status. The

¹⁴² “Refugee Determination,” UNHCR The UN Refugee Agency, accessed September 24, 2024, <https://www.unhcr.org/what-we-do/protect-human-rights/protection/refugee-status-determination>.

¹⁴³ Daniel Ghezelbash, “Refugee Status Determination Procedure,” *UNSW Law & Justice Research Series*, Research Paper No. 24-16 (2024): 1.

¹⁴⁴ “Refugee Determination.”

¹⁴⁵ Ghezelbash, “Refugee Status Determination Procedure,” 1.

¹⁴⁶ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 23, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

GCR also encourages the adoption of complementary pathways in addition to regular resettlement, like humanitarian visas¹⁴⁷.

2.2.1. Discriminatory practices under the Refugee Status Determination (RSD) towards female asylum seekers:

The RSD process is a procedure that “in its simplest form, (...) involves no more than the application of a legal formula to a particular set of facts¹⁴⁸”. However, during this process women can face several forms of discrimination that might jeopardise their access to the refugee status and, in several cases, their safety. Through a comprehensive analysis of the GCR, it can be noticed that it mentions some principles to encourage States to improve their RSD process, focusing on enhancing fairness, efficiency and accessibility when attributing someone the refugee status. Yet, these references seem to lack an appropriate feminist approach that addresses the specific challenges female asylum seekers face under this process. In this sense, to better understand the importance of a feminist approach, it is important to analyse the challenges that can occur to female asylum seekers while the RSD is ongoing, namely during the interview phase (a), and during the credibility assessment (b).

(a) Interview:

The main purpose for the interview is for the asylum seeker to provide as much detailed evidence as possible about their “reasons for leaving, or refusing to return to, his or her country of origin¹⁴⁹”. Interviews conducted by male officers can be a barrier to

¹⁴⁷ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 37, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

¹⁴⁸ Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, 3rd ed. (Oxford University Press, 2007), 543. <https://doi.org/10.1093/law/9780199207633.001.0001>.

¹⁴⁹ Goodwin-Gill and McAdam, *The Refugee in International Law*, 544.

women freely share their experiences¹⁵⁰¹⁵¹, especially if they have suffered from gender-based violence, such as rape or domestic violence. In interviews where women can be asked to provide specific details about such incidents, can make them feel uncomfortable and struggle to fully share their experiences and disclose their claims, discouraging them from providing a full account of their persecution¹⁵² and increasing the risk “of both jeopardizing psychological stability and well-being and of re-traumatization”¹⁵³. These consequences can even have a worst impact if the asylum applicant “is suffering from PTSD and/or is currently undergoing the phases of recovery from trauma”¹⁵⁴. On this regard, UNHCR’s Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol relating to the status of refugees (2019) recommends that “[c]laimants should be informed of the choice to have interviewers and interpreters of the same sex as themselves, and they should be provided automatically for women claimants¹⁵⁵”, which is also reiterated by CEDAW Recommendation No 32¹⁵⁶. These recommendations go further, recommending that interviewers are sensitive to aspects regarding culture,

¹⁵⁰ Office of the United Nations High Commissioner for Refugees (UNHCR), *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/1P/4/ENG/REV.4, 2019: 90, <https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967>.

¹⁵¹ Office of the United Nations High Commissioner for Refugees (UNHCR), *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/1P/4/ENG/REV.4, 2019: 143, <https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967>.

¹⁵² Maša Vukčević Marković, Nikola Kovačević and Jovana Bjekić, “Refugee Status Determination Procedure and Mental Health of the Applicant: Dynamics and Reciprocal Effects,” *Frontiers in Psychiatry* 11 (2021): 2, <https://doi.org/10.3389/fpsy.2020.587331>.

¹⁵³ Vukčević Marković, Kovačević and Bjekić, “Refugee Status Determination Procedure and Mental Health,” 2.

¹⁵⁴ Vukčević Marković, Kovačević and Bjekić, “Refugee Status Determination Procedure and Mental Health,” 2.

¹⁵⁵ Office of the United Nations High Commissioner for Refugees (UNHCR), *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/1P/4/ENG/REV.4, 2019: 90, <https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967>.

¹⁵⁶ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women*, CEDAW/C/GC/32, November 5, 2014: 15, <https://www.refworld.org/legal/general/cedaw/2014/en/102146>.

religion and other personal factors like age and level of education^{157 158}, as well as they should be neutral and compassionate while proceeding the interview¹⁵⁹. Moreover, and also in harmony with the CEDAW Recommendation No 32¹⁶⁰, the Handbook (2019) also suggests that female asylum seekers are interviewed in separate, without any male family member being present¹⁶¹, “in order to ensure that they have an opportunity to present their case¹⁶²”.

Under an analysis of the GCR, only one reference to this interview process can be found, in its paragraph 62 where it encourages the “sharing of good practices between States on all aspects of asylum systems¹⁶³”, including interview techniques. However, the GCR does not call for the importance of taking into account the specific vulnerabilities and backgrounds of many female asylum seekers, which would underscore the need for states to make a feminist approach in the use of these interviewing techniques. An example of such approach is the UNHCR’s Handbook (2019), which provides gender-sensitive recommendations on the selection of interviewers in order to provide a fairer process to these women.

¹⁵⁷ Office of the United Nations High Commissioner for Refugees (UNHCR), *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/1P/4/ENG/REV.4, 2019: 90, <https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967>.

¹⁵⁸ Office of the United Nations High Commissioner for Refugees (UNHCR), *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/1P/4/ENG/REV.4, 2019: 129, <https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967>.

¹⁵⁹ Office of the United Nations High Commissioner for Refugees (UNHCR), *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/1P/4/ENG/REV.4, 2019: 90, <https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967>.

¹⁶⁰ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women*, CEDAW/C/GC/32, November 5, 2014: 5, <https://www.refworld.org/legal/general/cedaw/2014/en/102146>.

¹⁶¹ Office of the United Nations High Commissioner for Refugees (UNHCR), *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/1P/4/ENG/REV.4, 2019: 90, <https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967>.

¹⁶² Office of the United Nations High Commissioner for Refugees (UNHCR), *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/1P/4/ENG/REV.4, 2019: 90, <https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967>.

¹⁶³ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 23, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

(b) Credibility assessment:

The credibility assessment is the process under which is determined if, “in light of all the information available to the decision maker, the statements of the applicant relating to material elements of the claim can, on balance, be accepted as having been truthfully given for the purpose of determining refugee status eligibility¹⁶⁴”,

Female asylum seekers can face several challenges in this assessment, which can negatively impact their asylum protection. In cases where female asylum seekers cannot deliver documentary evidence to support her case, her credibility and consistency of her testimony can play a significant role to determine her refugee status. However, the lack or irregularity of the documentation should not affect the credibility of female asylum seekers during the RSD process¹⁶⁵. Another challenge is trauma-related barriers during the interviews phase, since women can be reluctant to discuss their experiences when they are related to traumatic gender-based violence or domestic abuse. By revisiting these traumatic memories, women can experience levels of emotional distress that can affect their ability to provide a clear and coherent account of their experiences, but should not affect their credibility¹⁶⁶.

It is also important to emphasise that credibility assessments can also be affected by cultural and languages barriers, ideologies, anxiety¹⁶⁷, “as well as the unconscious biases of decision-makers¹⁶⁸”. The different backgrounds of female asylum seekers can raise several issues, which can be obvious but also affected by the level of knowledge of the decision-maker has regarding it¹⁶⁹. Therefore, the UNHCR’s Handbooks highlights

¹⁶⁴ Office of the United Nations High Commissioner for Refugees (UNHCR), *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/1P/4/ENG/REV.4, 2019: 200, <https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967>.

¹⁶⁵ Goodwin-Gill and McAdam, *The Refugee in International Law*, 384.

¹⁶⁶ Office of the United Nations High Commissioner for Refugees (UNHCR), *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/1P/4/ENG/REV.4, 2019: 91, <https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967>.

¹⁶⁷ Ghezelbash, “Refugee Status Determination Procedure,” 4.

¹⁶⁸ Ghezelbash, “Refugee Status Determination Procedure,” 4.

¹⁶⁹ Goodwin-Gill and McAdam, *The Refugee in International Law*, 547.

that, even though it is not the primary objective of the credibility assessment, the “knowledge of conditions in the applicant’s country of origin (...) is an important element in assessing the applicant’s credibility¹⁷⁰”. Moreover, and regarding to the credibility question, the CEDAW Recommendation No 32 calls States to “not deem that a woman asylum seeker lacks credibility for the mere reason of lack of documentation to support her asylum claim¹⁷¹”, underscoring the importance of States taking into account that “in many countries [women] do not possess documentation in their respective countries of origin and seek to establish credibility by other means¹⁷²”.

Under an analysis of the GCR it can be noted that there are no references neither to the conduction of the credibility assessment during the RSD procedure, nor to the gender-related challenges that female asylum seekers face, failing to incorporate a feminist approach that is able to safeguard the fair outcomes of this assessment. Firstly, it would be essential that the GCR addressed the reliance on documentary evidence to support female asylum seekers case, recognizing the conditions under which they flee their countries, as well as the cultural and social barriers that often prevent them from obtaining evidence of, for example, cases of domestic violence. Moreover, trauma-related barriers that prevent female asylum seekers from providing detailed information of their claims should be addressed as a gender-related challenge, recognizing how their previous experiences and social and cultural norms and values can prevent them from disclosing specific information due fear of stigma, shame or stereotypes. Secondly, it would be important that the GCR called out the linguistic barriers that can lead to mistranslations or misinterpretations, affecting women from ethnic minorities who speak less-common dialects. Moreover, this approach should go further and advocate for the importance of a

¹⁷⁰ Office of the United Nations High Commissioner for Refugees (UNHCR), *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/1P/4/ENG/REV.4, 2019: 20, <https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967>.

¹⁷¹ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women*, CEDAW/C/GC/32, November 5, 2014: 14, <https://www.refworld.org/legal/general/cedaw/2014/en/102146>.

¹⁷² Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women*, CEDAW/C/GC/32, November 5, 2014: 14, <https://www.refworld.org/legal/general/cedaw/2014/en/102146>.

gender-sensitive performance by the interpreters, in order to avoid less accurate testimonies from female asylum seekers belonging to marginalized groups.

Therefore, a feminist approach of this assessment can ensure the proper fairness, inclusiveness, and gender-sensitiveness of the RSD procedure, recognizing the gender-specific challenges faced by female asylum seekers. In addition, by taking this approach, the GCR would be more aligned with its broader goals of enhancing protection, fostering inclusion, and upholding international human rights standards.

2.2.2. Gender-related persecution as a well-founded fear of persecution:

The Refugee Convention (1951) has a framework mainly focused on the male perspective and his experience, without acknowledging that women's experiences can be completely different¹⁷³, thus failing to take gender into consideration and adequately attribute the refugee status. In its Article 1, the Refugee Convention determines that the term refugee is applied to someone who is “outside the country of his nationality and is unable or (...) unwilling to avail himself of the protection of that country¹⁷⁴”, due to a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion¹⁷⁵”. Even though it is “an established principle that the refugee definition as a whole should be interpreted with an awareness of possible gender dimensions in order to determine accurately claims to refugee status¹⁷⁶”, this article fails to explicitly recognize gender-related persecution, which are “forms of persecution that are directed against a woman because she is a woman

¹⁷³ United Nations High Commissioner for Refugees (UNHCR), *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* (2002): 2, <https://www.unhcr.org/media/guidelines-international-protection-no-1-gender-related-persecution-within-context-article-1a>.

¹⁷⁴ United Nations High Commissioner for Refugees (UNHCR), *Convention Relating to the Status of Refugees* (1951): 14, <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees>.

¹⁷⁵ United Nations High Commissioner for Refugees (UNHCR), *Convention Relating to the Status of Refugees* (1951): 14, <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees>.

¹⁷⁶ Office of the United Nations High Commissioner for Refugees (UNHCR), *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/1P/4/ENG/REV.4, 2019: 84, <https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967>.

or that affect women disproportionately¹⁷⁷”, as one of the grounds of a well-founded fear of persecution. Amongst the several gender-based claims, the main ones are domestic violence, female genital mutilation, forced marriages, sexual violence, trafficking for sexual exploitation and punishment for transgression of social mores¹⁷⁸.

According to Anthea Roberts, there is a relation between ‘gender-specific harms’ and ‘gender-related persecution’, being the first ones frequently “trivialised and relegated to the private sphere¹⁷⁹”. The author goes further and explains that, in order to understand if a ‘gender-specific harm’ and a ‘gender-related persecution’ overlap, we need to analyse the “role that the victim’s gender played in the persecution¹⁸⁰”. Therefore, if the persecutor would not have persecuted the victim if the victim was a man, then we can conclude that gender was then one motivation for the persecution¹⁸¹ and, in that sense, both ‘gender-specific harm’ and ‘gender-related persecution’ might not be “necessarily related, but there is often a link between the two¹⁸²”.

There are international guidelines regarding gender-related persecution within the refugee context, and usually there is a general acceptance by the international community through the approval of such guidelines. However, these international guidelines are commonly non-binding, meaning that they can be a policy instrument from which States can withdraw at any time, which shows that even though “gender is relevant to the question of who is a refugee, there is evidence that States have failed to adequately undertake the process of gender-sensitive interpretation¹⁸³”. Thus, it should be also noted that, even with these comprehensive guidelines, the interpretation of gender-related persecution still depends on the interpretation made by each State, which often see claims regarding domestic violence, sexual assault, or forced marriage as private or cultural

¹⁷⁷ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women*, CEDAW/C/GC/32, November 5, 2014: 5, <https://www.refworld.org/legal/general/cedaw/2014/en/102146>.

¹⁷⁸ United Nations High Commissioner for Refugees (UNHCR), *Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* (2002): 2, <https://www.unhcr.org/media/guidelines-international-protection-no-1-gender-related-persecution-within-context-article-1a.2>

¹⁷⁹ Anthea Roberts, “Gender and Refugee Law,” *The Australian Year Book of International Law Online* 22, no. 5 (2002): 16. <https://doi.org/10.22145/aybil.22.5>.

¹⁸⁰ Roberts, “Gender and Refugee Law,” 14.

¹⁸¹ Roberts, “Gender and Refugee Law,” 16.

¹⁸² Roberts, “Gender and Refugee Law,” 16.

¹⁸³ Christel Querton, “Gender and the Boundaries of International Refugee Law: Beyond the Category of ‘Gender-Related Asylum Claims’,” *Netherlands Quarterly of Human Rights* 37, no. 4 (2019): 379, <https://doi.org/10.1177/092405191988476>.

matters that does not meet the criteria to fulfil the asylum request. An example to understand these interpretations is the case *Minister for Immigration and Multicultural Affairs v Khawar (2002)*, which involved a Pakistani woman who applied for refugee status for her and her children in Australia, claiming that she was subjected to domestic violence in Pakistan, and that the authorities to whom she repeatedly made complaints to, were unwilling to protect them. The Australian Refugee Review Tribunal denied her application, assuming that, since the harm was only motivated by personal circumstances related to her marriage, there was not “a well-founded fear of persecution under the Convention Relating to the Status of Refugees as the husband was not targeting her due to her membership of a particular social group¹⁸⁴”. The case was then brought to the Federal Court, which identified the applicant’s membership of a particular social group, and determined that the Tribunal should have understood “her treatment in the context of the status of women and social attitudes towards domestic violence in Pakistan, and to find that she had a well-founded fear of persecution in that context¹⁸⁵”, granting them the refugee status.

Through an analysis of the GCR, it can be noted that there is no explicit recognition of gender-based persecution within the document. Therefore, the GCR remains tight to the Refugee Convention in this approach, which does not explicitly list gender as one of the grounds of a well-founded fear of persecution. It can be found, under paragraph 9, an appeal to end gender discrimination, where the GCR calls States to “end (...) discrimination of any kind on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, age, or other status¹⁸⁶”. Yet, even though gender is integrated into a ‘membership of a particular social group’ as a reason of a ‘well-founded fear of being persecuted’¹⁸⁷ within the Refugee Convention (1951), the absence of its explicit recognition in the same way race, religion, nationality, or political opinion is listed, is a critical gap in the GCR, and, as a consequence, within the refugee protection system, since to acknowledge the specific needs and vulnerabilities of female asylum seekers is, amongst other things, to expressly

¹⁸⁴ “*Khawar v Minister for Immigration and Multicultural Affairs* [1999] FCA 1529 (5 November 1999) Federal Court: Branson,” Australian Feminist Judgments Project Immigration Law, accessed September 27, 2024, <https://law.uq.edu.au/australian-feminist-judgments-project/mapping/immigration-law>.

¹⁸⁵ “*Khawar v Minister for Immigration and Multicultural Affairs*.”

¹⁸⁶ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 5, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

¹⁸⁷ United Nations High Commissioner for Refugees (UNHCR), *Convention Relating to the Status of Refugees* (1951): 14, <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees>.

acknowledge that they can be persecuted because of their gender. In fact, the recognition of gender as a well fear of persecution aligns with the CEDAW General Recommendation No 32, which explicitly recognizes gender-related persecution and recalls the States' obligation to "ensure that no woman will be expelled or returned to another State where her life, physical integrity, liberty and security of person would be threatened, or where she would risk suffering serious forms of discrimination, including serious forms of gender-based persecution or gender-based violence¹⁸⁸". Moreover, this recognition would also align with a recent decision of the Court of Justice of the European Union (CJEU) regarding Joined Cases C-608/22 and C-609/22 (which will subsequently be analysed), where it stated that "regarding the individual examination of an application for asylum of a woman of Afghan nationality, (...) [and] the situation of women under the current Taliban regime (...) the competent authorities of the Member States are entitled to consider that it is unnecessary to establish that there is a risk that the applicant will actually and specifically be subject to acts of persecution if she returns to her country of origin¹⁸⁹", being "sufficient to take into account her nationality and gender alone¹⁹⁰".

2.2.3. Appeals made by female asylum seekers regarding their RSD decisions:

In the course of time, we can witness that "as refugee law matures, judicial bodies, including states' highest courts, are reviewing more refugee cases¹⁹¹", many of which start "considering other forms of violence against women-including forced marriage, forced sterilization, forced abortion, forced prostitution, bride burning, and honour killings-and in gender, as well as other contexts, discriminatory denials of education, employment and health care¹⁹²".

¹⁸⁸ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women*, CEDAW/C/GC/32, November 5, 2014: 8, <https://www.refworld.org/legal/general/cedaw/2014/en/102146>.

¹⁸⁹ Court of Justice of the European Union, "Discriminatory measures adopted in respect of women by the Taliban regime constitute acts of persecution," Press Release No 167/24, October 4, 2024.

¹⁹⁰ Court of Justice of the European Union, "Discriminatory measures adopted in respect of women by the Taliban regime constitute acts of persecution."

¹⁹¹ Deborah E. Anker, "Refugee Law, Gender, and the Human Rights Paradigm," *Harvard Human Rights Journal* 15 (2002): 135.

¹⁹² Anker, "Refugee Law, Gender, and the Human Rights Paradigm," 150.

In 2015, Europe experienced a significant increase movement of refugees, with the United Kingdom, Austria and the Netherlands amongst the European countries with most asylum applications¹⁹³. In that sense three cases (three of them taken into the CJEU) outstand as examples for this context due to its relevance and pertinence.

The case *Fornah v. Secretary of State for the Home Department (2006)*¹⁹⁴ involved a 15 years old women from Sierra Leone, who sought asylum in the United Kingdom, in 2003, to escape the threat of being subjected to Female Genital Mutilation (FGM). She claimed that FGM was practiced by her ethnic group and supported by her family, from which the authorities were unwilling or unable to protect her from. The Secretary State rejected her claim to asylum protection, but granted her a limited leave to enter the country and remain there for 3 years. The Secretary of State refused her application claiming that FGM was not included in the definition of persecution under the Refugee Convention “because girls at risk of circumcision in Sierra Leone did not form a “particular social group” within Article 1A(2) of the Convention¹⁹⁵”, and that “the authorities in Sierra Leone had a will to challenge the practice¹⁹⁶”, reason why “should she turn to them for protection¹⁹⁷”.

The applicant appealed first appealed to the Court of Appeal, that, even though recognized that FGM constituted a torture or inhuman or degrading treatment, and that her removal from the UK would violate Article 3 of the European Convention on Human Rights, held that “the young women facing it could not bring themselves within the definition of refugee, since the only relevant group was ‘young women at risk of female genital mutilation’, and the rule could not be defined by the persecution its members feared¹⁹⁸”. However, the House of Lords (now Supreme Court of the United Kingdom), dismissed this conclusion and unanimously recognized her as a refugee, ruling that “women in societies which practised female genital mutilation were ‘members of a

¹⁹³ The New York Times, “Countries Under the Most Strain in the European Migration Crisis,” *The New York Times*, December 22, 2015, <https://www.nytimes.com/interactive/2015/08/28/world/europe/countries-under-strain-from-european-migration-crisis.html>.

¹⁹⁴ “Zainab Esther Fornah v. Secretary of State for the Home Department,” Royal Courts of Justice Strand, London, WC2A 2LL, June 9, 2025, <https://www.refworld.org/jurisprudence/caselaw/gbrcaciv/2005/en/16772>.

¹⁹⁵ “Zainab Esther Fornah v. Secretary of State for the Home Department,” 1.

¹⁹⁶ “Zainab Esther Fornah v. Secretary of State for the Home Department,” 1.

¹⁹⁷ “Zainab Esther Fornah v. Secretary of State for the Home Department,” 1.

¹⁹⁸ Garden Court Chambers, “House of Lords victory: Fornah v Secretary of State for the Home Department,” Garden Court Chambers, October 18, 2026, <https://gardencourtchambers.co.uk/house-of-lords-victory-fornah-v-secretary-of-state-for-the-home-department/>.

particular social group’ for the purposes of the Refugee Convention¹⁹⁹”. This case was another landmark decision that strengthened the recognition of women’s rights within refugee law, affirming that such harmful traditional practices could also qualify for asylum, since their countries of origin are unable to protect them.

The case *X, Y and Z v. Minister voor Immigratie, Integratie en Asiel* (2013)²⁰⁰, involved three asylum seekers, nationals of Sierra Leone, Uganda and Senegal, who claimed asylum in the Netherlands, arguing that they faced persecution in their countries of origin due to their sexual orientation, which put them at risk of being subjected to serious harm, including imprisonment or violence. The Netherlands refused to grant refugee status to the applicants, arguing that they could avoid persecution if they remained discreet about their sexual orientation, deciding that their situation did not meet the criteria for refugee status. The case was brought to the Court of Justice of the European Union (CJEU), that determined that LGBTQIA+ individuals “must be regarded as forming a particular social group²⁰¹” and that “the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation²⁰²”. The applicants were thus eligible for refugee protection under the law, affirming the existence of persecution due to sexual orientation.

However, it should be noted that the CJEU stated that “the criminalisation of homosexual acts per se does not constitute an act of persecution²⁰³”, but once enforced, leading to imprisonment or other forms of serious harm, it can be considered persecution. In this sense, the Court missed an importance opportunity to “state that these laws, even when they are not enforced in the sense that there exists a recent record of enforcement through the actual imposition of terms of imprisonment, have a persecutory effect, as they criminalize an essential characteristic of one’s identity²⁰⁴”.

¹⁹⁹ Garden Court Chambers, “*Fornah v Secretary of State for the Home Department*.”

²⁰⁰ “*Minister voor Immigratie en Asiel v X and Y and Z v Minister voor Immigratie en Asiel*,” EUR-Lex, accessed November 16, 2024, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62012CJ0199>.

²⁰¹ “*Minister voor Immigratie en Asiel v X and Y and Z v Minister voor Immigratie en Asiel*.”

²⁰² “*Minister voor Immigratie en Asiel v X and Y and Z v Minister voor Immigratie en Asiel*.”

²⁰³ International Commission of Jurists, “X, Y and Z: a glass half full for “rainbow refugees”?” *International Commission of Jurists*, June 3, 2014, <https://www.icj.org/x-y-and-z-a-glass-half-full-for-rainbow-refugees/>.

²⁰⁴ International Commission of Jurists, “X, Y and Z?”

The case *AH, FN, v. Bundesamt für Fremdenwesen und Asyl*, involved AH, an Afghan woman who sought asylum in Austria in 2015, claiming she fled her country with her mother after her father wanted to sell her, and FN, also an Afghan woman who sought asylum in Austria because she did not have a residence permit in Iran (where she lives) and therefore was not able to attend school nor to live freely with the same rights as men²⁰⁵. The Federal Office for Immigration and Asylum decided that “that AH’s account was not credible and that FN did not face a real risk of persecution in Afghanistan and refused, in both cases, to recognise their refugee status²⁰⁶”, granting them subsidiary protection status. The defendants brought an action against those refusals to the Austrian Federal Administrative Court, “claiming (...) that they had adopted Western values and a Western-inspired lifestyle and, moreover, that, after the Taliban seized power in the summer of 2021, the situation in Afghanistan had changed in such a way that women now faced widespread persecution²⁰⁷”. The Court dismissed their appeals, finding that “in view of AH and FN’s living conditions in Austria, they had not adopted a ‘Western’ lifestyle that had become such an essential part of their identity that it was impossible for them to renounce it in order to escape the threat of persecution in their country of origin²⁰⁸. AH and FN appealed these decisions to the Austrian Supreme Administrative Court “arguing that the situation of women under the new Taliban regime alone justified their being granted refugee status²⁰⁹”.

The Supreme Administrative Court referred the CJEU several questions to establish whether the measures taken by the Taliban in respect of women are sufficiently serious to be classified as an ‘act of persecution’²¹⁰. The CJEU ruled that “an accumulation of discriminatory measures in respect of women (...) adopted or tolerated by an ‘actor of persecution’ (...) comes within the concept of ‘act of persecution’, since those measures, by their cumulative effect, undermine human dignity²¹¹”, as well as that the competent national authority is not required “to take into consideration, (...) factors

²⁰⁵ European Union: Court of Justice of the European Union, “AH, FN, v Bundesamt für Fremdenwesen und Asyl, C-608/22 and C-609/22,” 4 October 2024, 6, <https://www.refworld.org/jurisprudence/caselaw/ecj/2024/en/148774>.

²⁰⁶ Court of Justice of the European Union, “AH, FN, v Bundesamt für Fremdenwesen und Asyl,” 6.

²⁰⁷ Court of Justice of the European Union, “AH, FN, v Bundesamt für Fremdenwesen und Asyl,” 6.

²⁰⁸ Court of Justice of the European Union, “AH, FN, v Bundesamt für Fremdenwesen und Asyl,” 6.

²⁰⁹ Court of Justice of the European Union, “AH, FN, v Bundesamt für Fremdenwesen und Asyl,” 6.

²¹⁰ Court of Justice of the European Union, “AH, FN, v Bundesamt für Fremdenwesen und Asyl,” 7.

²¹¹ Court of Justice of the European Union, “AH, FN, v Bundesamt für Fremdenwesen und Asyl,” 12.

particular to her personal circumstances other than those relating to her gender or nationality²¹²”.

These cases are relevant to underscore the relevance of a feminist approach within the refugee context, since they provide important jurisprudence under international law which highlights the importance of consider gender-related persecution as a fundamental aspect of female asylum seekers’ protection.

There were several other cases that were brought into the CEDAW. In 2017, Y.C. brought the refusal of her asylum application in Canada, due to fear of persecution by forced sterilization in China, under their former one-child policy. In 2020, A.F. brought the refusal of her asylum application in France, due to fear of domestic violence and societal oppression in Afghanistan, as a divorced woman. In 2021, A.A. brought the refusal of her asylum application in Sweden, due to fear of gender-based violence from her family and society in Afghanistan. In all these cases, the CEDAW underscored the importance of gender-sensitive assessments in these claims, ruling in favour of the applicants and finding that the countries of destination failed to adequately consider the gender-specific challenges and risks these women faced and, in some cases, even violated its international obligations under the Convention on the Elimination of All Forms of Discrimination Against Women.

2.3. Interim Conclusions:

Considering the comprehensive analysis elaborated along this chapter, it can be now concluded that the GCR lacks a gender-based approach to the challenges and vulnerabilities faced by female asylum seekers during their course to obtain the refugee status, which can be generically explained by the notorious absence of references to the “asylum seekers” and its own distinction from the term “refugees”, thus failing to properly recognize the need for protection under this particular and vulnerable phase of seeking asylum.

²¹² Court of Justice of the European Union, “AH, FN, v Bundesamt für Fremdenwesen und Asyl,” 12.

Firstly, the absence of references to the importance of a gender-sensitive approach to the root causes of irregular pathways through a gender lens hinders the proper protection of the specific needs of female asylum seekers. It is essential that the GCR ensures a feminist approach of this issue, by understanding their background, their reasons and the challenges they face because of their gender, which shape their experiences in a single way. Addressing border control and detention centres discriminatory practices towards female asylum seekers is also a key step to understand the reason why they choose irregular pathways of migration and to protect their specific need during those processes. The lack of emphasis on border control practices and policies by the GCR is a barrier to call States into increasing their gender-approach and address the specific vulnerabilities and challenges of female asylum seeker, which are not the same as those from asylum seekers in general. Regarding detention centres, the GCR seems to be lacking stronger language to address this issue, in order to ensure equal access of female asylum seekers to resources and services and to mitigate gender-specific risks, such as sexual and gender-based violence, instead of only encouraging the development of alternatives to detention. The use of stronger language would allow to strong feminist approach to address the inequalities and harm female asylum seekers perpetuated by these practices, which violates international human rights standards.

Secondly, even though the GCR recommends that the RSD process should be fair and emphasizes the importance of a gender-sensitive approach to refugee provisions, it does not seem to provide a detailed orientation on how such approach should be done during each step. A proper feminist approach to the RSD procedure should recognize the gender-specific challenges that female asylum seekers face during this procedure, as well as provide guidelines on the use of gender-sensitive techniques that allows them to reach fairer to outcomes.

It is crucial to understand how gender can influence the process and the criteria to qualify someone as a refugee, and it would be extremely important that the GCR explicitly recognized how experiences of persecution and displacement are often gendered, taking into account all the spectrums of female asylum seekers. In that sense, the fact that “the refugee determination system needs to develop a gendered analysis and interpretation to enable the recognition of particular ways in which women fit the definition of refugees

as contained in the Refugee Convention and its protocol²¹³” is a path to grant all women and girls the same protection as to those who flee from persecution based on race, religion, or political beliefs. Therefore, a feminist approach to the RSD highlights the importance of expanding the definition of ‘well-founded fear of persecution’ to include gender-related violence and other forms of gendered oppression.

In conclusion, the GCR seems to make a global appeal for some aspects, such as to prevent and end all forms of sexual and gender-based violence, which was not approached, for example, by the Refugee Convention (1951). However, this analysis shows evidence that its approach to the specific vulnerabilities and challenges faced by female asylum seekers during their journey to reach the country of destination and during the RSD process, is not an improvement over previous international legal instruments. By comparing the GCR to the CEDAW General Recommendation No. 32 (2014), which provides comprehensive recommendations that address some gender-related issues within the refugee context, it seems that the lack of references and weak language to address the specific needs and vulnerabilities of female asylum seekers undermines the possibility of achieving proper feminist approach.

²¹³Caroline Lambert, “Crawley, Heaven (2001) Refugees and Gender: Law and Process,” review of *Refugees and Gender: Law and Process*, by Heaven Crawley, *Current Issues in Criminal Justice* 14, no. 1 (2002): 121.

Chapter 3

Integration of refugee women into host communities: analysis of the Global Compact on Refugees through a feminist approach

After the approval of the refugee status, refugees can have three possibilities: “voluntary return to their country of origin²¹⁴”, “permanent integration into the country in which [they] have sought asylum²¹⁵”, and resettlement²¹⁶. When integrating a host community, refugee women face critical barriers in the access to important sectors. Firstly, it is important to understand how the GCR recognizes and addresses such barriers to those important sectors like education, employment and healthcare. Secondly, the attention will be placed into resettlement programs, in order to understand the extent in which they represent a better solution for the challenges women face when integrating into these host communities.

3.1. Critical gendered-barriers to refugee women’s integration:

Women make 50% of the world refugee population²¹⁷ and, while the number is still increasing²¹⁸, refugee women face significant barriers to successfully settle into host communities due to their gender²¹⁹, in comparison to male refugees. Such barriers may be caused by “fear and persecution, gender-based discrimination and physical and/or sexual violence, cultural displacement, inequitable gender norms or confluence of cultural gender role expectations, language barriers, lack of resources and education, and an increase of structural and situational stressors²²⁰”. Acknowledge how social, economic

²¹⁴ Michaela Hynie, “Refugee Integration: Research and Policy,” *Peace and Conflict: Journal of Peace Psychology* 24, no. 3 (2018): 266, <https://doi.org/10.1037/pac0000326>.

²¹⁵ Hynie, “Refugee Integration,” 266.

²¹⁶ Hynie, “Refugee Integration,” 266.

²¹⁷ Caitlin Bletscher and Sara Spiers, “Step by Step We Were Okay Now: An Exploration of the Impact of Social Connectedness on the Well-Being of Congolese and Iraqi Refugee Women Resettled in the United States,” *International Journal of Environmental Research and Public Health* 20 (2023): 2, <https://doi.org/10.3390/ijerph20075324>.

²¹⁸ Bletscher and Spiers, “Step by Step We Were Okay Now,” 2.

²¹⁹ Bletscher and Spiers, “Step by Step We Were Okay Now,” 2.

²²⁰ Bletscher and Spiers, “Step by Step We Were Okay Now,” 2.

and political structures perpetuate gender inequalities and oppression is crucial to understand women's unique lived experiences²²¹. Therefore, it is important to understand the gendered-barriers that undermine the proper integration of refugee women into host communities, how the GCR approaches them and if, when doing so, it uses a feminist approach to understand how refugee women are specially affected by these barriers.

Before analysing some of the areas under which refugee women face barriers to their integration into host communities, it is essential to understand the root causes of such barriers, which are linked with the political and social conjectures of the destination countries. Firstly, it should be noted that refugee women's integration can be facilitated by settlement policies²²². However, refugee women are "susceptible to changes in the social and political context²²³", since they arrive in vulnerable circumstances, often without speaking the country of destination language, and with less financial resources²²⁴. Moreover, the success of refugee women's integration is highly dependent of the political and social context²²⁵, especially to the restrictive immigration policies that may be in force within the country of destination, which can "limit their employment, access to social services, housing, and education²²⁶". This is often related to a global concern that "refugees and asylum seekers will be an economic burden²²⁷" when settled in host communities, because they will increase the employment competition and require access to "emergency medical care, housing, language training, children's education, and even processing of asylum claims, all of which place demands on services and staff at both the national and regional level²²⁸". Lastly, refugee women can be subject to stereotypes, as they are often portrayed as 'helpless victims'²²⁹ due to the humanitarian assistance they need, which in one hand is a positive aspect, but can "undermine the well-being of refugees, and their ability to integrate as full and equal members of their new communities²³⁰". In this sense, a successful integration of refugee women into host communities is intrinsically linked with the "equitable access to opportunities and

²²¹ Bletscher and Spiers, "Step by Step We Were Okay Now," 4.

²²² Hynie, "Refugee Integration," 266.

²²³ Hynie, "Refugee Integration," 266.

²²⁴ Hynie, "Refugee Integration," 266.

²²⁵ Hynie, "Refugee Integration," 267.

²²⁶ Hynie, "Refugee Integration," 266.

²²⁷ Hynie, "Refugee Integration," 267.

²²⁸ Hynie, "Refugee Integration," 268.

²²⁹ Hynie, "Refugee Integration," 270.

²³⁰ Hynie, "Refugee Integration," 270.

resources, participation in the community and society, and feelings of security and belonging in their new homes²³¹”.

In its preamble, the Refugee Convention (1951) recognizes that “the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation²³²”. Through a comprehensive analysis of the GCR, it can be noted the reaffirms this principle through the appeal for States’ cooperation to assist the development of local strategies²³³ and “to include the impact of a refugee situation on host countries and communities in their planning and policies²³⁴”. However, in none of those provision the GCR emphasizes the need to develop those strategies and policies through a gender lens, which would take into account the specific ways in which women can be discriminated during settlement, a principle that would be aligned with CEDAW General Recommendation No. 32 (2014), which underscores in its paragraph 24 that:

“[women] are entitled to be treated in a non-discriminatory manner and with respect and dignity at all times during the asylum procedure and thereafter, including through the process of finding durable solutions once asylum status has been recognized by the receiving State²³⁵.”

During their settlement, refugee women face barriers to their integration into host communities in the social, economic and political sphere. There are three essential areas that are included in the Sustainable Development Goals, where refugee women face discrimination to their right to access them, during the integration process, which are: education, work, and healthcare.

²³¹ Hynie, “Refugee Integration,” 267.

²³² United Nations High Commissioner for Refugees (UNHCR), *Convention Relating to the Status of Refugees* (1951): 13, <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees>.

²³³ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 39, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

²³⁴ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 13, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

²³⁵ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women*, CEDAW/C/GC/32, November 5, 2014: 8, <https://www.refworld.org/legal/general/cedaw/2014/en/102146>.

3.1.1 Access to education:

The Sustainable Development Goal number 4 affirms the right of equal access to education for all by 2030²³⁶, and yet, refugee women and girls “are much more likely to be significantly disadvantaged than boys not only when it comes to school enrolment, but also due to their higher likelihood to drop out after enrolment²³⁷”. This gap persists regarding refugee women and girls’ likelihood to obtain a college degree²³⁸, as the access to learning opportunities for them still remains a critical challenge²³⁹.

There are several contributing factors to justify this gap and understand why refugee women and girls have less access to education than refugee man and boys. Factors amongst the cost of education (such as school fees, materials books and transportation)²⁴⁰, family responsibilities (like childcare or domestic tasks)²⁴¹ and race discrimination²⁴², contribute to the decrease of refugee women and girls enrolling in schools. However, it should be noted that “[g]ender can act as a significant barrier to accessing learning, with girls and women facing unique challenges such as cultural norms and early marriage²⁴³”. The patriarchal and cultural assertion that women belong at home²⁴⁴ and that they don’t need education makes clear how refugee women and girls have to “battle social and cultural conventions and expectations²⁴⁵”. Aspects related to the asylum system also contribute to these barriers, since it “exacerbate[s] the ‘temporariness’ of refugees’ residential status, which was found to impact refugee women’s educational access and

²³⁶ United Nations General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development*, A/RES/70/1, September 25, 2015:14.

²³⁷ Djenita Svinjar, “Refugee Women and the Integration into a New Society through Education,” *Journal of Comparative & International Higher Education* 12, no. 3 (2020): 142, <https://doi.org/10.32674/jcihe.v12iWinter.1996>.

²³⁸ Svinjar, “Refugee Women and the Integration,” 148.

²³⁹ Ruth Naylor, “Mind the gap in refugee education: where are all the girls?,” *Education Development Trust*, June 21, 2021, <https://www.edt.org/research-and-insights/mind-the-gap-in-refugee-education-where-are-all-the-girls/>.

²⁴⁰ “Her Turn It’s time to make refugee girls’ education a priority,” UNHCR, accessed October 9, 2024, <https://www.unhcr.org/herturn/>.

²⁴¹ Lucy Hunt, Yousef Khalifa Aleghfeli, Joanna McIntyre and Chris Stone, “Refugees’ gendered experiences of education in Europe since 2015: A scoping review,” *Review of Education* 11 (2023): 12, <https://doi.org/10.1002/rev3.3441>.

²⁴² Hunt, Aleghfeli, McIntyre and Stone, “Refugees’ gendered experiences of education in Europe since 2015,” 13.

²⁴³ Hunt, Aleghfeli, McIntyre and Stone, “Refugees’ gendered experiences of education in Europe since 2015,” 2.

²⁴⁴ Svinjar, “Refugee Women and the Integration,” 142.

²⁴⁵ “Her Turn It’s time to make refugee girls’ education a priority.”

experiences²⁴⁶”. Therefore, understanding how gender impact these women and girls’ disadvantages is absolutely “needed to inform more targeted and effective policies and interventions that address [their] unique needs and experiences²⁴⁷”.

Understanding the benefits of refugee women and girls’ enrolment in education is crucial to understand why this is a critical barrier to their integration in host communities. According to UNICEF, “[i]f all girls were to complete secondary school, the level of child marriage would likely fall by two thirds (66 per cent)²⁴⁸”, and “[i]f all girls continued on to higher education, the level would drop by more than 80 per cent²⁴⁹”. Moreover, if refugee women and girls have access to education, it will be “far more likely to send their children to school²⁵⁰”, which will empower them into challenging these social and cultural norms, improving “their lives, their family’s overall wellbeing, and their surroundings and communities²⁵¹”.

After a careful analysis of the GCR, it should be highlighted that it emphasizes the need to “enhance the quality and inclusiveness of national education systems to facilitate access by refugee²⁵²”, as well as to support their specific educational need and overcome obstacles to their enrolment²⁵³, advocating for their right to education as a durable solution²⁵⁴. In this specific case, the GCR place the focus on refugee women and girls through its paragraph 75, where it appeals to measures “to support access by women and girls to education (including secondary and tertiary education)²⁵⁵”. All these provisions are aligned with the CEDAW (1979), which binds the States that ratify it “to ensure to [women] equal rights with men in the field of education and in particular to

²⁴⁶ Hunt, Aleghfeli, McIntyre and Stone, “Refugees’ gendered experiences of education in Europe since 2015,” 2.

²⁴⁷ Hunt, Aleghfeli, McIntyre and Stone, “Refugees’ gendered experiences of education in Europe since 2015,” 2.

²⁴⁸ United Nations Children’s Fund, “The Power of Education to End Child Marriage,” UNICEF (2022): 7.

²⁴⁹ United Nations Children’s Fund, “The Power of Education to End Child Marriage,” 7.

²⁵⁰ Svinjar, “Refugee Women and the Integration,” 146

²⁵¹ Svinjar, “Refugee Women and the Integration,” 150

²⁵² United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 26, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

²⁵³ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 26, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

²⁵⁴ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 29, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

²⁵⁵ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 29, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

ensure, on a basis of equality of men and women²⁵⁶”. However, it should be noted that despite placing focus on refugee women and girls right to access education, the GCR fails to identify the importance of mitigating some of the factors that places them into disadvantageous and disproportional positions, like cultural and social norms that retain women from access education, ensuring a truly inclusiveness for all these women and girls, who face specific experiences through these barriers.

3.1.2. Access to employment and economic opportunities:

Even though the Sustainable Development Goal 8.5 aims to “[b]y 2030, achieve full and productive employment and decent work for all women and men”²⁵⁷, refugee women are disproportionately affected in their right to access employment²⁵⁸, representing low rates of employment around the world²⁵⁹. For example, “[i]n Germany – a country with one of the largest refugee populations – the gap is even wider, with only 29% of refugee women being employed in contrast with 57% of men²⁶⁰”.

Refugee women face specific forms of discrimination in their right to access employment due to their gender, being “pushed into informal employment²⁶¹” and “[earning] less than host women²⁶²”. While linguistic barriers are “a major determinant of refugees’ ability to find adequate, or even any, employment²⁶³”, there are also several legal frameworks that restrict refugees to access formal markets²⁶⁴ and do not grant them equal pay. Moreover, childcare also plays a decisive role as one of the barriers to this access, since “[m]any of the refugee women who arrive in their host countries have children but

²⁵⁶ United Nations General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, GA/RES/34/180, December 18, 1979: 4, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.

²⁵⁷ United Nations General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development*, A/RES/70/1, September 25, 2015: 19.

²⁵⁸ Patricia Yanez, “Closing the gap: zooming in on refugee women on Equal Pay Day,” *UNHCR Blogs*, September 27, 2024, <https://www.unhcr.org/blogs/closing-the-gap-zooming-in-on-refugee-women-on-equal-pay-day/>.

²⁵⁹ Anna Zhukova, “Refugee women: barriers to career development,” *Adamah Media*, February 8, 2022, <https://adamah.media/refugee-women-bizgees/>.

²⁶⁰ Zhukova, “barriers to career development.”

²⁶¹ Yanez, “Closing the gap.”

²⁶² Yanez, “Closing the gap.”

²⁶³ Michaela, “Refugee Integration,” 268.

²⁶⁴ Yanez, “Closing the gap.”

lack the family networks or connections they can rely on for childcare²⁶⁵. Additionally, the persistent social and cultural norms that associate women to care occupations, such as household duties and responsibilities, places them in great disadvantage towards men²⁶⁶. To achieve a proper integration in the host communities, refugee women should have access to employment, as well as the insurance that they access it in an equal way, with equal outcomes. In that sense, it is essential to address the different “factors [that] can lead to disparities in employment outcomes between refugee women and men, frequently resulting in disadvantages for women²⁶⁷”.

Through a comprehensive analysis of the GCR, it can be noted it appeals for the promotion of “economic opportunities, decent work, job creation and entrepreneurship programmes for host community members and refugees, including women²⁶⁸”, emphasizing the need of supporting “language and vocational training, linked to market opportunities, in particular for women²⁶⁹”. This aligns with the CEDAW Recommendation No 32 (2014), which states that “women refugees should be offered sources of livelihood and employment opportunities²⁷⁰”. However, even though the mention to the linguistic barrier is a step in the right direction to address these barriers, the GCR misses other important mentions to gender-related barriers, such as childcare systems or social and cultural norms, that represent considerable obstacles for women to access employment opportunities.

3.1.3. Access to healthcare and sexual and reproductive and health rights:

Universal health coverage is a concern of the Sustainable Development Goals, which aims in its Goal number 3, not only to “[a]chieve universal health coverage,

²⁶⁵ Yanez, “Closing the gap.”

²⁶⁶ Renate Ortlieb, Paul Baumgartner, Meike Palinkas, Petra Eggenhofer-Rehart and Elena Ressi, “Employment outcomes of refugee women and men: multiple gender gaps and the importance of high-skill jobs,” *Journal of Ethnic and Migration Studies* 50, no.2 (2024): 4991, <https://doi.org/10.1080/1369183X.2024.2379945>.

²⁶⁷ Ortlieb, “Employment outcomes of refugee women and men,” 4991.

²⁶⁸ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 27, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

²⁶⁹ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 27, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

²⁷⁰ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women*, CEDAW/C/GC/32, November 5, 2014: 5, <https://www.refworld.org/legal/general/cedaw/2014/en/102146>.

including financial risk protection, access to quality essential health-care services²⁷¹”, but also to “ensure universal access to sexual and reproductive health-care services, including for family planning, information and education²⁷²”. However, refugee women still face barriers to access healthcare services, which is a concerning factor, especially when taking into consideration that “a considerable share suffer from the traumatic and often violent experience related to their forced migration²⁷³”.

Structural barriers like the lack of knowledge of the language spoken in the host country is critical to access these services, but also to “understand the verbal or written information provided²⁷⁴”, which is in fact “exacerbated by the lack of multicultural training in healthcare providers²⁷⁵”. Moreover, persistent stigma leaves a feeling of discrimination in these women, who often lose the motivation to seek for healthcare as a preventive measure²⁷⁶. There are barriers directly connected with sexual and reproductive rights that negatively impact refugee women and girls, like the lack of female health professionals²⁷⁷ and the “increased risk of contracting sexually transmitted infections, having unwanted pregnancies and abortions” during their journey to obtain the refugee status, which healthcare centres in host localities do not always take (...) into account, resulting in women having limited access to appropriate sexual and reproductive health (SRH) services²⁷⁸”. Therefore, it is important to consider both cultural and social dimensions that shape these refugee women individual barriers to access healthcare services and, which as a consequence, to excludes them from their host community²⁷⁹.

²⁷¹ United Nations General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development*, A/RES/70/1, September 25, 2015: 16.

²⁷² United Nations General Assembly, *Transforming Our World: The 2030 Agenda for Sustainable Development*, A/RES/70/1, September 25, 2015: 16.

²⁷³ Thomas Liebig and Kristian Rose Tronstad, “Triple Disadvantage? A first overview of the integration of refugee women,” *OECD Social, Employment and Migration Working Papers*, no. 216 (2018): 30, <https://doi.org/10.1787/3f3a9612-en>.

²⁷⁴ Nicola Heslehurst, Heather Brown, Augustina Pemu, Hayley Coleman and Judith Rankin, “Perinatal health outcomes and care among asylum seekers and refugees: a systematic review of systematic reviews,” *BMC Medicine* 16 (2018): 19, <https://doi.org/10.1186/s12916-018-1064-0>.

²⁷⁵ Pengdewendé Maurice Sawadogo, Drissa Sia, Yentéma Onadja, Idrissa Beogo, Gabriel Sangli, Nathalie Sawadogo, Assé Gnambani, Gaëtan Bassinga, Stephanie Robins and Eric Tchouaket Nguemeleu, “Barriers and facilitators of access to sexual and reproductive health services among migrant, internally displaced, asylum seeking and refugee women: A scoping review,” *PLoS ONE* 18, no.9 (2023): 12. <https://doi.org/10.1371/journal.pone.0291486>.

²⁷⁶ Sawadogo, Sia, Onadja, Beogo, Sangli, Sawadogo, Gnambani, Bassinga, Robins and Tchouaket Nguemeleu, “Barriers and facilitators of access to sexual and reproductive health services,” 13.

²⁷⁷ Heslehurst, Brown, Pemu, Coleman and Rankin, “Perinatal health outcomes,” 19.

²⁷⁸ Sawadogo, Sia, Onadja, Beogo, Sangli, Sawadogo, Gnambani, Bassinga, Robins and Tchouaket Nguemeleu, “Barriers and facilitators of access to sexual and reproductive health services,” 2.

²⁷⁹ Bletscher and Spiers, “Step by Step We Were Okay Now,” 5.

Promoting the inclusion of aspects like sexual and reproductive health rights is fundamental to address refugee women's challenges and grant them health outcomes and well-being²⁸⁰.

Following a careful analysis of the GCR, it should be highlighted that there is an emphasis placed under the importance of developing “resources and expertise to expand and enhance the quality of national health systems to facilitate access by refugees and host communities²⁸¹”, including both women and survivors of sexual and gender-based violence. The GCR goes further and adds that resources are crucial to strength the access to “social and health care services, including through recruitment and deployment of female health workers²⁸²”. Nevertheless, despite the mention increase of female health personnel, which represents an important outcome, the GCR does not expand its focus to cover sexual and reproductive health rights, affordability, or the social and cultural norms, that place refugee women in disproportional positions and affects their well-being and integration into host communities.

3.2. Resettlements programs as a solution to suppress gender barriers:

The resettlement programs are processes mainly undertaken by the UNHCR²⁸³, and can be defined as “the transfer of refugees from an asylum country to another State, that has agreed to admit them and ultimately grant them permanent residence²⁸⁴”, being proposed by the GCR as a durable solution to address refugees' needs²⁸⁵. Therefore, according to the UNHCR, in order for a refugee to submit to this process, they have to use two submission categories, one “according to the most appropriate characterization of the protection needs or vulnerabilities of the resettlement case members²⁸⁶”, and another “to help strengthen the case and is an opportunity to advocate for the case and

²⁸⁰ Bletscher and Spiers, “Step by Step We Were Okay Now,” 17.

²⁸¹ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 28, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

²⁸² United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 28, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

²⁸³ Hynie, “Refugee Integration,” 266.

²⁸⁴ “Resettlement”, UNHCR, accessed October 29, 2024, <https://www.unhcr.org/what-we-do/build-better-futures/long-term-solutions/resettlement>.

²⁸⁵ “Resettlement.”

²⁸⁶ “Resettlement Handbook,” UNHCR, accessed October 29 2024, <https://www.unhcr.org/resettlement-handbook/>.

highlight complex or intersectional protection risks within a case or family²⁸⁷”. The resettlement submission categories are the following²⁸⁸: legal and/or physical protection needs; women and girls survivors or at risk of gender-based violence; children and adolescents at risk; survivors of violence and/or torture; medical needs, in particular life-saving treatment; restoring family unity; lack of foreseeable alternative to durable solutions (mainly relevant as a secondary submission).

The resettlement of a refugee is usually done in a high-income country, and often grants the possibility to get access to permanent residency or citizenship in that same country²⁸⁹. In fact, “[b]etween 2010 and 2019, approximately 1.1 million refugees were resettled globally, and 322, 400 were naturalized in the resettlement country²⁹⁰”. Due to the multiple risks they face, refugee women and girls form one of the prioritizing categories to request resettlement²⁹¹, however it is important to analyse which barriers surface in this resettlement process, in order to understand in which extent it represents a solution to the previous barriers faced in the initial host community, commonly addressed as the third country.

While factors like the linguistic barrier persist in resettlement programs²⁹², there is one main factor which is identified as the greatest barrier to resettlements, which is the cultural difference. For refugee women and girls coming from low-income countries or with ethnicity and culture way distinct than the one in third country, moving to these third-countries might cause a “conflict within their personal identity development²⁹³”. In many occasions, refugee women enter in a cycle which is “continuously reinforced throughout the integration process, through ongoing internal ethnic factors and external

²⁸⁷ “Resettlement Handbook.”,

²⁸⁸ “Resettlement Handbook.”

²⁸⁹ Shelley Gower, Zakia Jeemi, David Forbes, Paul Kebble and Jaya A. R. Danta, “Peer Mentoring Programs for Culturally and Linguistically Diverse Refugee and Migrant Women: An Integrative Review,” *International Journal of Environmental Research and Public Health* 19 (2022): 1, <https://doi.org/10.3390/ijerph191912845>.

²⁹⁰ Gower, Jeemi, Forbes, Kebble and Danta, “Peer Mentoring Programs,” 1.

²⁹¹ “Resettlement Handbook.”

²⁹² Elisabeth Mangrio, Slobodan Zdravkovic and Elisabeth Carlso, “Refugee women’s experience of the resettlement process: a qualitative study,” *BMC Women's Health* 19 (2019): 4, <https://doi.org/10.1186/s12905-019-0843-x>.

²⁹³ Bletscher and Spiers, “Step by Step We Were Okay Now,” 2.

marginalizing factors such as discrimination, racism, and prejudice from their host community²⁹⁴”.

As mentioned, the GCR identifies resettlements programs as durable solution to address the refugee needs. In its text, the GCR appeals States for the establishment and expansion of the size of resettlement programmes²⁹⁵, as well as to considering broadening its criteria²⁹⁶. Moreover, it emphasizes the importance of States to, while creating or expanding these programmes, “incorporate a non-discriminatory approach and a gender perspective²⁹⁷” throughout the process. This last provision aligns with CEDAW Recommendation No 32 (2014), which prohibits sex- and gendered-based discrimination during the resettlement process²⁹⁸, treating women with dignity and respect²⁹⁹.

Yet, it is important to highlight that, despite the inclusion of an appeal to make the resettlement non-discriminatory and gender-sensitive, the GCR leave this provision with a broad interpretation, once it does include a feminist approach by mentioning the specific barriers that represent the major limitation for refugee women and girls to fully integrate into host communities in third countries.

3.3. Interim Conclusions:

Bearing in mind the complete analysis exposed under this chapter, it can be now concluded that, in comparison to the previous chapter, the GCR seems to address more gender-related challenges and barriers of refugee women and girls in their integration into the host communities, with reservations that should be noted.

²⁹⁴ Bletscher and Spiers, “Step by Step We Were Okay Now,” 2.

²⁹⁵ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 51, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

²⁹⁶ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 51, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

²⁹⁷ United Nations General Assembly, *Global Compact on Refugees*, New York (2018): 51, <https://www.unhcr.org/media/global-compact-refugees-booklet>.

²⁹⁸ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women*, CEDAW/C/GC/32, November 5, 2014: 4, <https://www.refworld.org/legal/general/cedaw/2014/en/102146>.

²⁹⁹ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 32 on the Gender-Related Dimensions of Refugee Status, Asylum, Nationality and Statelessness of Women*, CEDAW/C/GC/32, November 5, 2014: 5, <https://www.refworld.org/legal/general/cedaw/2014/en/102146>.

Firstly, while the emphasis on enhancing national education systems to ensure its access by refugee women can be seen a step in the right direction to recognize the gender aspect as barrier, it cannot be ignored the absence of references to factors that enable a better mitigation of some disadvantages related to, for example, cultural norms that undervalue their education. The same can be applied to the access to employment, under which the GCR notes the linguistic barriers and appeals for its promotion, but fails to address gender-related barriers, such as childcare systems, barriers that shape refugee women vulnerabilities in specific ways. Lastly, the access to healthcare and sexual and reproductive health rights follows the same critique, as despite emphasizing the importance of including refugee women in its approach, as well as the increasing of female healthcare personnel, the GCR does not mention important issues as reproductive health rights, affordability or the social and cultural norms that undermine their access to these services.

Secondly, while identifying resettlements programs as durable solutions to address the refugee women's needs and appealing for its non-discriminatory and gender-sensitive process, the GCR does not approach these programs through a feminist approach. That same approach would be a path to address refugee women's limitations due to their gender and background experiences that shape create distinct forms of disadvantages.

Therefore, when addressing these gender-specific challenges and vulnerabilities within the refugee women's integration into host communities, the GCR lacks some important references. In that sense, it fails to properly address these barriers once to do that, it should also look to the refugee women unique experiences without ignoring their backgrounds and the social and cultural norms that undermine their full integration into host communities.

Moreover, this analysis shows evidence that the GCR's approach to the specific vulnerabilities and challenges faced by refugee women and girls during their integration into host communities, is not an improvement over previous international legal instruments. By comparing the GCR to the CEDAW General Recommendation No. 32 (2014), which provides comprehensive recommendations that address some gender-related issues within the refugee context, it seems that the references that the GCR made to approach these issues were generally already approached by the CEDAW General

Recommendation No. 32 (2014), adding a considerably lower amount of innovation regarding the approach suggested by this analysis.

Conclusion

Through a comprehensive analysis of female asylum seekers and refugee women journey to obtain the refugee status and their further integration into host communities as refugee women, this report was able to identify, while using feminism as a theoretical tool, that severe challenges still persist in the GCR's gender-sensitive approach to address the needs and vulnerabilities within the refugee context.

The analysis provided regarding female asylum seekers' journey to obtain the refugee status, was able to demonstrate that the GCR lacks a gender-based approach to the challenges and vulnerabilities identified in this scope, which is intrinsically related to the absence of a proper distinction between "asylum seekers" and "refugees", thus failing to properly underscore the protection required under this particular and vulnerable phase of seeking asylum.

Firstly, the lack of mentions regarding the root causes that are behind female asylum seekers' choice towards irregular pathways of migration undermines the effective recognition of their specific needs and vulnerabilities. It is crucial that the GCR recognizes the backgrounds that motivates them to make this choice, as well as the obstacles they can encounter due to their gender. Additionally, tackling the discriminatory border control and detention centres policies and practices that directly affect female asylum seekers is crucial for comprehending their reasons for choosing irregular migration routes, as well as for safeguarding their needs throughout such processes. Regarding border control, the insufficient focus on its increasing securitisation, technology used to screen female asylum seekers and family separation policies by the GCR hinders States from enhancing their gender-sensitive approaches and recognize the vulnerabilities and challenges faced by female asylum seekers, which when not taken into account, can lead to misidentification or long-term trauma. Concerning detention facilities, the GCR appears to lack more robust language to address this issue, consequently failing to grant female asylum seekers equal access to resources and services and to reduce gender-specific threats, like sexual and gender-based violence. If such concerns were properly address through a more robust feminist perspective, it would enable GCR to tackle the inequalities and damages inflicted on female asylum seekers by these policies and practices. Secondly, although the GCR promotes the fairness of the RSD procedures and highlights the importance of adopting a gender-sensitive approach

in refugee provisions, it appears again to lack specific guidance on implementing such gender-sensitive approach at each stage of the process. In that sense, the GCR acknowledges women's vulnerability but fails to address and provide detailed guidance on how this process should incorporate a feminist approach, considering such vulnerabilities that contribute to various forms of discrimination and violence, which, if adequately addressed, enable these women to obtain appropriate protection. In addition, an effective feminist approach to the RSD should also explicitly recognize gender-related persecution as a 'well-founded fear of persecution', granting all women and girls the same protection level as to those who flee from persecution based on race, religion, or political beliefs.

By comparing the GCR to the Refugee Convention (1951) it can be concluded that it makes an explicit recognition of some gender-related issues within the refugee context that were not addressed by the Refugee Convention (1951), such as to forms of sexual and gender-based violence. However, when comparing it to the CEDAW General Recommendation No. 32 (2014) numerous references are lacking, as well as the use of stronger language to address the specific needs and vulnerabilities of female asylum seekers, namely regarding discriminatory screening mechanisms, detention practices, interviewing techniques, proper credibility assessments, and the explicit recognition of gender-based persecution. Therefore, this analysis shows evidence that the GCR's approach to the specific vulnerabilities and challenges faced by female asylum seekers during their journey to reach the country of destination and during the RSD process, is not an improvement over previous international legal instruments.

Regarding the analysis of refugee women's integration into host communities, it can be concluded that, in comparison to the female asylum seekers' journey to obtain the refugee status, the GCR appears to tackle more gender-specific challenges and obstacles faced by refugee women in their integration into host communities, within its framework. The focus on improving national education systems, eliminate linguistic obstacles to employment, and inclusion for more female personnel into healthcare services to grant its access for refugee women is a considerable positive step towards acknowledging gender-related barriers. However, it is important to highlight that GCR's approach seems insufficient as it overlooks important factors to better address the combined disadvantages

tied to financial status, cultural norms, stigma and stereotypes, that undermine the proper access of refugee women to education, employment and healthcare services and sectors.

Secondly, even though the GCR recognizes resettlement programs as sustainable solutions in its framework, in order to better consider refugee needs, as well as advocates for their non-discriminatory and gender-sensitive implementation, it does not recognize the persistent challenges and barriers that refugee women continue to face in new host communities. In that sense, a proper feminist approach to these resettlement programs would allow to tackle those same challenges faced by refugee women and girls in new host communities, which arise from their gender and influence their experiences.

By comparing the GCR to the CEDAW General Recommendation No. 32 (2014), it can be concluded that GCR's general approach aligns with the approach made by the CEDAW General Recommendation No. 32 (2014), without any sign of considerable innovation in order to tackle gender-specific and persistent challenges. Therefore, this analysis shows evidence that GCR's approach to the specific vulnerabilities and challenges faced by refugee women and girls during their integration into host communities, is not an improvement over previous international legal instruments.

A feminist approach advocates for policies that address these structural inequalities, ensuring that women have access to resources that enable them to live with dignity and agency. Therefore, as the literature gaps regarding the analysis of the GCR gender-approach within the refugee context still persist, continued discussion is essential to better address female asylum seekers and refugee woman needs and vulnerabilities in the near future and at an international level. Further discussions and debates need to bring feminist perspectives into the discussion, and even consider connecting it with intersectionality, due to its influence on the feminist movement, in order to provide a more comprehensive analysis and guidance on how these international frameworks can better include female asylum seekers and refugee women and be better aligned with international human rights within the refugee law.

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