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Migrant women, violence, and the securitization of European borders

How asylum regimes endanger the lives of migrant women

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Abstract

Il tragico naufragio di una nave carica di migranti nella primavera del 2015 nelle acque del Mediterraneo, con la conseguente morte di più di 600 persone, è stato rielaborato dai media europei come il simbolo più emblematico di una “crisi migratoria” che l’Unione Europea si ritrovava a dover fronteggiare ai suoi confini. In realtà, tale “crisi” non è un fenomeno nuovo, ma va interpretata come il frutto della crescente instabilità determinata dai conflitti in Medio Oriente e Nord Africa, seguita da un inasprimento delle politiche migratorie europee, le quali hanno portato a una significativa riduzione delle vie di accesso legali per richiedenti asilo. La mancanza di armonizzazione tra il sistema di asilo Europeo e i sistemi nazionali dei singoli Stati Membri ha mostrato l’incapacità dell’Unione di fornire una risposta unitaria all’emergenza e uno scarso impegno nell’istituire corridoi umanitari e vie di accesso sicure all’Unione. Al contrario, l’UE ha adottato una logica di contenimento e respingimento dei flussi migratori incentrata su policy di esternalizzazione dei confini europei, delegando la responsabilità della gestione delle domande di asilo a Paesi terzi, come nel caso della Libia. La militarizzazione dei confini europei, la criminalizzazione dei migranti e l’accento dell’Unione posto più sul contrasto alle attività di traffico di essere umani che su misure che mettano al centro il rispetto dei diritti dei richiedenti asilo, ha aggravato la pericolosità e i rischi comportati dal viaggio e ha paradossalmente portato i migranti a fare maggiore affidamento sui trafficanti per tentare l’attraversata verso l’Europa. L’intento dell’Unione di controllare la libera circolazione delle masse dal “Sud del Mondo”, lo sforzo di categorizzare i migranti e rifugiati in modo da distinguere tra chi “merita” e chi “non merita” di essere accolto, dimostra come i confini del mondo occidentale stiano divenendo sempre più militarizzati, selettivi, razzializzati, genderizzati e sempre più mortali. L’insicurezza, la vulnerabilità e la mortalità provocata da confini sempre più difficili da attraversare colpiscono in maniera sproporzionata le donne migranti. Questo elaborato si propone di analizzare come le

politiche migratorie e i regimi di asilo europei esercitino una violenza strutturale sulle donne richiedenti asilo, in quanto doppiamente a rischio di violenza dovuta sia al genere che al loro status di “migrante”. Le relazioni di potere storicamente ineguali tra uomini e donne rendono la figura della donna migrante particolarmente soggetta a una serie di forme di violenza, poiché la condizione di precarietà dell’essere migrante, non fa altro che accentuare situazioni di insicurezza e violenza di partenza, di cui la donna migrante è vittima nella propria comunità. La violenza quindi, si pone sia come causa della migrazione che come caratteristica dell’esperienza migratoria delle donne. I motivi che spingono le donne a migrare di fatto vanno ben oltre l’insicurezza economica e sono spesso legati a dinamiche di oppressione e violenza sulla base del genere, come i matrimoni forzati, le mutilazioni genitali femminili, la discriminazione in base all’orientamento sessuale, e la violenza domestica. Durante il viaggio le donne sono esposte ad innumerevoli forme di violenza perpetrate da altrettanti attori, che possono essere trafficanti, agenti di frontiera, autorità dello Stato di transito o altri migranti. La violenza sessuale, specialmente lo stupro, costituisce solo una delle più visibili forme di violenza che riguardano le donne migranti. In Paesi di transito come la Libia, la violenza sessuale è divenuta una pratica istituzionalizzata e sistemica, con cui le donne che non dispongono di sufficienti mezzi economici, sono costrette a pagare i trafficanti, in modo da poter continuare il loro viaggio verso l’Europa. La violenza, tuttavia non si limita alla dimensione del viaggio ma continua nelle cosiddette “borderlands”, o zone di confine come il Mediterraneo o il deserto che separa l’Africa sub-sahariana dalla Libia, dove le possibilità di violenza e morte si moltiplicano. Chi sopravvive deve comunque scontrarsi con il sistema di detenzione e accoglienza nei Paesi di destinazione che potrebbe comportare l’esposizione per le donne a ulteriori forme di violenza istituzionale esacerbate dalle condizioni di detenzione. Ne deriva che la violenza sulle donne sia quindi una violenza di tipo strutturale aggravata dalle politiche di bordering e dall’inasprimento dei regimi di asilo europei contro l’immigrazione illegale o meglio, “illegalizzata”. Paradossalmente, tale orientamento di chiusura nelle politiche migratorie europee avviene in concomitanza con il crescente riconoscimento da parte degli strumenti di protezione internazionale, dei concetti di vulnerabilità e di violenza di genere contro le donne, tra cui la Convenzione di Ginevra del 1951, la Convenzione di

Istanbul del 2011, le Linee Guida dell'UNHCR sulla persecuzione di genere, nonché a livello europeo il riconoscimento da parte della ECtHR della natura vulnerabile delle donne richiedenti asilo e l'Articolo 21 della Direttiva 2013/33/EU sulle norme relative all'accoglienza dei richiedenti protezione internazionale. Tuttavia, l'esistenza di questi strumenti la crescente attenzione alle dinamiche di genere da un punto di vista normativo non trova un'efficace applicazione pratica. Gli ostacoli al riconoscimento della protezione internazionale e della richiesta dello status di rifugiato sulla base della persecuzione di genere, è legata soprattutto al problema della credibilità, nonché alla mancanza di informazioni adeguate alle richiedenti asilo circa le possibilità di protezione internazionale che sarebbero in diritto di ottenere. A livello europeo il Nuovo Patto sulla migrazione e l'asilo, è stato criticato per il fallimento nel riconoscere la dimensione intersezionale della vulnerabilità delle donne migranti, mentre le disposizioni riguardanti le vulnerabilità appaiono troppo vaghe e limitate nella loro implementazione. Inoltre, le nuove procedure di screening ai confini che dovrebbero assicurare l'individuazione delle vulnerabilità in questione, non sono applicate in maniera effettiva risultando inadeguate. Un altro limite riguarda l'eccessiva attenzione verso forme di violenza altamente "razzializzate" come le mutilazioni genitali femminili o il traffico sessuale, le quali non fanno che aggravare la stigmatizzazione e la rappresentazione stereotipata delle donne migranti come "opresse" "dalla loro cultura, sollevando la responsabilità delle istituzioni europee dalla creazione di situazioni di violenza e vulnerabilità ai danni delle donne migranti.

Adottando come lenti di lettura e di indagine i concetti di vulnerabilità, intersezionalità e genere, l'elaborato analizzerà il framework migratorio nel Mediterraneo e tenterà di rispondere alla domanda centrale: "La migrazione rappresenta un pericolo per le donne?". Attraverso l'identificazione delle circostanze di genere, sociali, razziali, politiche e istituzionali che sono alla base della vulnerabilità delle donne alla violenza sessuale di genere, si sosterrà che il carattere selettivo del regime migratorio e di asilo europeo, insieme alle politiche di esternalizzazione delle frontiere, determinano la vulnerabilità strutturale che colpisce le donne richiedenti asilo, esponendole al rischio di violenza. Nonostante un apparato normativo e di valori europei che inneggiano alla protezione dei diritti umani alla base della stessa UE, la direzione contraria delle

politiche di asilo, la politicizzazione delle donne migranti e la loro strumentalizzazione per fini di controllo delle frontiere, rivelano non solo l'organized hypocrisy delle istituzioni europee, ma anche la volontà degli Stati Membri di controllare i corpi dei migranti e l'esercizio del loro diritto alla mobilità. L'elaborato non si propone ovviamente, di trovare delle soluzioni ma attirare l'attenzione sulla necessità non solo di accoglienza di chi domanda asilo, ma soprattutto di autonomia e di autodeterminazione delle migranti, che spesso schiacciate dalla burocrazia del sistema dell'accoglienza europeo vengono private della dignità e della libertà di decisione sulle loro stesse vite. L'Unione Europea e gli Stati Membri necessitano di conciliare i progressi normativi compiuti nel campo della protezione internazionale delle donne in una prospettiva di genere, con l'implementazione nella pratica, di politiche emigratorie capaci di rispettare tali norme.

List of abbreviations

ASGI Association for Legal Studies on Immigration

CAMPO term used by migrants and refugees to indicate the places of detention controlled by militias and armed groups in Libya

CAS Centro di accoglienza straordinaria

CARA Centro di Accoglienza per Richiedenti Asilo

CEAS Common European Asylum System

CEDAW Convention on the Elimination of All Forms of Discrimination Against Women

CPR Centri di Permanenza per i rimpatri

DCIM Department for Combating illegal migration (Libya)

DPCM Decree of the President of the Council of Ministers

DTM Displacement Tracking Matrix

EASO European Union Agency for Asylum

ECCHR European Center for Constitutional and Human Rights

ECHR European Charter of Fundamental Rights

EU European Union

EUBAM European Union border assistance mission

EUNAVFOR MED European Union Naval Force in the South-Central Mediterranean

EURODAC European Asylum Dactyloscopie Database

EUROPOL European Police Office

EUROJUST European Union Agency for Criminal Justice Cooperation

EUROSUR European Border Surveillance System

FIDH International Federation for Human Rights

FRONTEX European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

GBSV Gender based sexual violence

GNC General National Congress

GNA Government of National Accord

IOM International Organization for Migration

LCG Libyan Coast Guard

LFJL Lawyers for Justice Libya

LNA Libyan National Army

MS Member State

MoU Memorandum of Understanding

NTC National Transitional Council

SAR search and rescue

SOLAS International Convention for the Safety of Life at Sea

SPRAR System for the protection of Asylum Seekers and Refugees

SIPROIMI sistema di protezione per titolari di protezione internazionale e per minori stranieri non accompagnati (system for the international protection of unaccompanied foreign minors)

SAI Sistema di accoglienza e integrazione (System of reception and integration)

TC Territorial Commission

TFEU Treaty on the Functioning of the European Union

UN United Nations

UNHCR United Nations High Commissioner for Refugees

UNSCR United Nations Security Council Resolution

UNSMIL United Nations Support Mission in Libya

Introduction

The tragic capsizing of a boat crossing the Mediterranean that caused the death by drowning of 700 hundred migrants in 2015¹, subsequently taken as the most emblematic symbol of what European governments labeled as a “migrant crisis”² unfolding at the borders of Europe, has brought once again, migration and asylum issues at the top of the Union’s political agenda. However, the series of operations at sea and pushbacks that followed, along with the lack of harmonization between the European Union’s asylum system and that of the single member states (MS), in particular the erratic and confused Italian system, has shown a faltering commitment on the part of European governments to develop a common and unitarian response to curb the enormous number of migrants’ deaths in what has become one of the deadliest borders in the world. On the contrary, the strong tendency towards securitization and containment that characterizes to this day, the Union’s borders externalization policies, has clashed with the humanitarian rhetoric with which European governments have justified the measures adopted to obstacle migrants’ departures, especially from Libya, which in this work will be taken as a sample case. What the Western medias insist on labeling as a “migrant crisis”, is in fact not a new phenomenon, but is rather the result of the combination on the one hand of the growing instability due to conflicts in the Middle East and Africa, and on the other, of the growing absence of legal migration channels³. The stress put by the EU on policies aiming at the crackdown of smuggling and human trafficking gangs together with the suppression of legal migration routes and passages for migrants and asylum

¹Gayle, D. (2015) “Hundreds of Migrants Believed to Have Drowned off Libya after Boat Capsizes”. *The Guardian*, 15 April 2015, www.theguardian.com/world/2015/apr/14/400-drowned-libya-italy-migrant-boat-capsizes.

²European Parliament (2017), *Eu Migrant Crisis: Facts and Figures*. <https://www.europarl.europa.eu/news/en/headlines/society/20170629STO78630/asylum-and-migration-in-the-eu-facts-and-figures> (Accessed September 2022)

³De Genova, N. (2017), “The Borders of “Europe” and the European Question”, *The Borders of Europe. Autonomy of Migration, Tactics of Bordering*, Duke University Press, 2017, pp.5-9.

seekers, has made people attempting to cross the Mediterranean more reliant on “illegal” and dangerous migratory routes controlled by these very criminal gangs. In this view, the EU appears to be fostering the same system that it claims to be fighting through its “anti-human trafficking” policies. Therefore, instead of benefiting migrants such policies have worsened the position of people attempting to reach Europe, furtherly jeopardizing migrants’ lives.

In recent years the boundaries between the regulation of migration and refugee regimes have become more and more blurred⁴, an evolution confirmed by the UN Global Compacts for the safe and orderly management of migrants and refugees, agreed upon by the world leaders following the 2016 New York Declaration for Refugees and Migrants, which has acknowledged the existence of “vulnerable migrants” and at the same time has advanced a common protection framework for both migrants and refugees. However, the main aim of the Global Compacts remains the management or it could be said, the “control” of large movements of people as well as the “burden” sharing and redistribution of migrants and refugees among the MS. Such attitude is the product of the underlying xenophobic context in which these policies have been constructed. Indeed, the anxiety of Western States to control the free movement of masses from the “Global South”, the constant effort to categorize migrants and refugees in order to distinguish between who they consider the “underserving” “from the “deserving”, the stereotyped depiction of the refugee as a subordinate individual deprived of any agency or personal aspiration, and thus not a threat to the receiving State’s social order, shows how borders are becoming more securitized, selective, racialized, gendered and also highly deadly to the mere and undesirable “migrants”. The EU and its member States have followed on the policy line established by the Compacts, exercising in fact a great influence in the decision-making process. As previously stated, European asylum and refugee policies are oriented towards securitization and border closing, while paradoxically since 2014 the notion of vulnerability of migrants has been emerging and has been incorporated in asylum procedures in Europe again, as a tool for categorization of asylum-seekers but also

⁴Rigo, E. (2022) “*La Straniera. Migrazioni, asilo, sfruttamento in una prospettiva di genere*”. Carrocci editore S.p.A. Roma, p.40.

producing further fragmentation in the European asylum system⁵. Significantly, the European Court of Human Rights (ECtHR) has widely recognized the vulnerable nature of asylum-seekers under the European Charter of Fundamental Rights (ECHR) and has underlined the existence of even more vulnerable individuals within the group of asylum seekers, among which women would make up a particularly vulnerable category. The concept of vulnerability applied by the European legislators is based on Article 21 of Directive 2013/33/EU⁶ which reformed the procedures for request and access to asylum and identified numerous categories of migrants deemed “vulnerable” among which figure pregnant women, women victims of trafficking, and women victims of sexual violence. Another powerful legal binding instrument for the recognition of migrants’ women’s vulnerability is the 2011 Council of Europe Convention on violence against women (Istanbul Convention), which may represent a progressive instrument for the international protection of migrant women victims of gender based sexual violence (GBSV). Nevertheless, as it will be seen later in this study, some critics of such use of “vulnerability” argue that it may also be instrumentally used by the EU to keep the “unwanted” out of its borders and at the same time its excessive attention to “cultural” and racialized forms of GBSV (for instance female genital mutilation), may produce further stigmatization and racial stereotyping of asylum-seeking women⁷.

The aim of this study is to provide an overview of the most recent evolutions in the European and Italian asylum system and the forms of protection that can be granted in response to the needs of migrant and asylum-seeking women victims of GBSV. Through such overview this thesis will stress how the EU and Italy’s response is still inadequate: the important steps forward made in the creation of international protection instruments at the normative level and a growing attention towards women in migration and their specific needs, still encounter implementation obstacles in practice. Moreover,

⁵Mouzourakis, M., Pollet, K., Fierens, R. (2017), “The concept of vulnerability in European asylum procedures”, European Council of Refugees and Exiles, Jan. 2017.

⁶European Commission, (2020) “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum”, https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11eab44f-01aa75ed71a1.0002.02/DOC_3&format=PDF

⁷Peroni, L. (2016), “*Violence Against Migrant Women: The Istanbul Convention Through a Postcolonial Feminist Lens*”, Fem. Leg. Stud., Springer, 26 Apr 2016. DOI 10.1007/s10691-016-9316-x

the attitude in terms of migration policy of the EU member States towards the migrant crisis clashes with such norms, creating rather than preventing, further situations of danger and violence affecting women on the move. This issue will be tackled in the second chapter, analyzing the emblematic case of migrant women detained in Libyan detention centers. By gathering prominent literature of migration, feminism, and gender studies, as well as NGOs reports, together with the existing international conventions and legal instruments on the matter, it will be inferred how the EU and Italy are lacking, not only in providing support to migrant and asylum-seeking women survivors of GBSV, but to offer them the right tools to regain their agency. On the contrary, European, and Italian rhetoric and measures focus on the victimization and control of migrant women's bodies and choices, a stance that is generally adopted towards migrants and asylum seekers entering Europe illegally.

The migratory journey poses specific challenges and dangers to women migrants. In this sense, the closing of borders and the consequent dependence on smugglers and insecure routes has increased the risks for women of falling victims of GBSV, as well as to other forms of violence specifically affecting and often, this risk is well present at borders and in the detention centers located in countries of transit and arrival. As it will be argued, considering the case of migrant women transiting in Libyan detention centers, the situation of vulnerability they experience often do not start with their journey, but originate in their communities in countries of origin, and typically continue or even worsens once they reach Europe. But first, it is necessary to take a step back and introduce the critical concepts of vulnerability and intersectionality in migration theory which are going to be the lenses through which the argument of this thesis will try to answer to the question of why and how is migration dangerous to women and in what ways this degree of danger is different in relation to the multiplicity of migration experiences of migrants women seeking asylum in Europe. Therefore, how is vulnerability defined? And how it is linked to the concept of intersectionality? What makes migrant women vulnerable and some of them more vulnerable than others? Is migration specifically dangerous to women?

Starting from the notion of vulnerability the definition, although it has entered the international legal system for the protection of human rights, is still a subject of debate

among scholars. One of the most accepted definitions is the one by Fineman, who has defined vulnerability as inherent and universal to the human experience⁸, in this way seeking to detach vulnerability from the negative association with “victimhood”, “deprivation”, “dependency” and “pathology”⁹. Nevertheless, while being “universal” vulnerability is also “particular” because each individual has a different position within “a web of economic and institutional relationships” maintains Fineman, so that vulnerabilities have different configuration and degrees according to the individual’s experience¹⁰. Thus, such definition implies that all human beings are inherently vulnerable given the universal and inescapable condition of vulnerability of human life itself, while at the same time migrants would have different forms and magnitudes of vulnerability according to their personal history. Fineman’s approach does not leave out the role of structural, institutional, and social factors that may create vulnerability and contribute to it. Another scholar, McKenzie, identifies different sources and conditions of vulnerability¹¹. In her view, vulnerability cannot be completely ascribed to uncontrollable biological processes, but the sources of vulnerability might depend on the circumstances people, and so migrants, find themselves in as well as to their political status.¹² For this reason, she proposes the concept of “situational vulnerability”, that is “context specific and is caused or exacerbated by social, political, economic, or environmental factors; it may be short term, intermittent, or enduring”¹³. Moreover, argues the scholar, situational vulnerability might be interconnected to inherent vulnerability, so that one might give rise to the other or vice versa¹⁴.

Considering this theory of vulnerability and applying it to the condition of migrant women detained in Libyan detention centers, for instance a pregnant woman not only would be vulnerable for the fact of being a migrant and a pregnant woman, but also

⁸Fineman, Martha.A. (2008), “The Vulnerable Subject: Anchoring Equality in the Human Condition”, *Journal of Law and Feminism*, Yale, 6 March, 2008. p.8.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1131407

⁹Ibid.

¹⁰Ibid, p.10.

¹¹McKenzie, C. (2014), “The Importance of Relational Autonomy and Capabilities for an Ethics of Vulnerability”, *Vulnerability New Essays in Ethics and Feminist Philosophy*, ed. by Catriona McKenzie, Wendy Rogers, Susan Dodds, Oxford University Press, 2014, pp. 33-34.

¹²Ibid, p. 38.

¹³ Ibid p.39.

¹⁴ Ibid

because of the circumstances of detention. It is similar situations that the notion of intersectionality must be taken into account.

Intersectionality was first theorized and developed by the feminist scholar Kimberlé Crenshaw initially to explain the different forms of intersecting factors of discrimination on the grounds of race, gender, sexuality, social status, and class at first specifically affecting women of color in the USA and successively extended to the field legal studies in international protection. Indeed, in her 2000 United Nations Background Paper for the Expert Meeting on the Gender-Related Aspects of Race Discriminations, the scholar argues how gender, racial, class and social status intersect with political, economic, and social structures creating what she defines as “compound vulnerabilities”¹⁵. To illustrate the concept, she takes the figure of the refugee or migrant woman as the emblematic example of how background structures of inequality as gender, race and class intersect with policies thus creating a compound burden for particularly vulnerable subjects. It comes that migration related vulnerabilities often intersect with and worsen pre-existing forms of vulnerabilities¹⁶. In this sense, refugee women result particularly vulnerable to sexual violence¹⁷ and as Rigo states, asylum seekers imprisoned in Libyan detention centers fall in the category of the particularly vulnerable as gender discrimination is worsened by racist discrimination against sub-Saharan migrants, which is ulteriorly influenced by the social position of the woman, given that only women whose families have enough economic resources can pay for a better treatment during detention and for the release of the detainee¹⁸. An intersectional approach has found application in the UN normative system, notably in the General Recommendation n.28 of the Convention on the elimination of all forms of discrimination against women (CEDAW), which describes intersectionality as: “The discrimination of women based on sex and gender is inextricably linked with other

¹⁵Crenshaw, Kimberlé. W. (2018),” The Structural and Political Dimension of Intersectional Oppression”, *Intersectionality. A Foundations and Frontiers Reader*, ed. by Patrick P. Grzanka, Routledge, 2018, p.17.

¹⁶ Marchetti, S. and Palumbo, L. (2021),” Vulnerability in the Asylum and Protection System in Italy: Legal and Policy Framework and Implementing Practices”, 2021. VULNER Research Report1. p.21.

¹⁷ Crenshaw, Kimberlé Williams.” The Structural and Political Dimension of Intersectional Oppression”, *Intersectionality. A Foundations and Frontiers Reader*, ed. by Patrick P. Grzanka, Routledge, 2018, pp 19-20.

¹⁸Rigo, E. (2022) “*La Straniera. Migrazioni, asilo, sfruttamento in una prospettiva di genere*”. Carrocci editore S.p.A. Roma, p.68.

factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity”¹⁹. Such wording in the view of Degani and De Stefani , interpreting social and individual identities through the rigid categories of gender, race, age, color, and nationality, fails to acknowledge the intersectional identity, subjectivity, and agency of the individual and its personal experiences which are necessary to effectively catch the complexity of intersectional discriminations²⁰.

Now, considering the European legal framework, the EU Directive 2011/36 on preventing and combating trafficking in human beings, though vaguely referring to “particular vulnerable persons”, underlines the existence of intersecting and multiple forms of vulnerabilities that do not limit themselves to the victim’s physical vulnerabilities, but include circumstantial and structural elements that provoked or enhanced the state of vulnerability. This interpretation was followed by the ECtHR in the landmark case *M.S.S. v Belgium and Greece* of 2011 in which the Court recognized the role that structures, and circumstances have in determining the vulnerability of migrants²¹. Nevertheless, this decision was not followed by the successive evolutions of European policies, as in the Article 21 of Directive 2013/33/EU returned to refer to vulnerability as a rather inherent characteristic suggesting that people and their bodies are “vulnerable”²², marking a step back in the recognition of authorities and institutions’ responsibility in the creation of migrants’ vulnerabilities. Overall, the EU asylum framework leans towards a notion of “group-based vulnerability” and so it mostly ignores situational vulnerabilities and the role played by migration policies, institutions, and structures²³. As it will be discussed in this thesis, the New Pact on Migration and Asylum still very much embraces this outlook on vulnerability, and it will be argued

¹⁹UN Committee on the Elimination of Discrimination Against Women (CEDAW), (2010), *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, 16 December 2010, CEDAW/C/GC/28.

²⁰ Degani, P. and De Stefani, P. (2020),” Addressing Migrant Women’s Intersecting Vulnerabilities. Refugee Protection, Anti-trafficking, and Anti-violence Referral Patterns in Italy “, *Peace Human Rights Governance*, 4(1), March 2020, p.121 doi:10.14658/pupj-phrg-2020-1-5

²¹Marchetti, S. and Palumbo, L. (2021),” Vulnerability in the Asylum and Protection System in Italy: Legal and Policy Framework and Implementing Practices”, 2021. VULNER Research Report1. P.23.

²²Standke-Herdmann, M. (2021),” *Intersectionality and refugee women. The shortcomings of the EU Pact on Migration and Asylum from an intersectional perspective*”, Heinrich-Böll-Stiftung, Nov.2021, P.10

²³ Marchetti, S. and Palumbo, L. (2021),” Vulnerability in the Asylum and Protection System in Italy: Legal and Policy Framework and Implementing Practices”, 2021. VULNER Research Report1. P.23

how this fact might pose serious concerns regarding the effective protection of women seeking asylum in Europe.

Another fundamental theoretical lens strictly connected to the abovementioned concepts of vulnerability and intersectionality, is the notion of gender. The term gender is understood as the social construct of being a man or a woman, and as the ensemble of social roles attributed to sexual differences²⁴. This notion of gender and its application to human sciences is the product of the evolution of feminism as a political movement²⁵ and since its first theorizations it has taken on a deep political meaning²⁶. Following the contribution of Black feminist scholars, the notion of gender became to be understood as strictly interconnected to social class and race, with Black and ethnic women suffering a triple burden of oppression. It is in this sense that gender is linked to intersectionality as gender, social class and race determine different forms of vulnerability for women. It derives that gender is fundamental in the understanding of the position of migrant women, as it identifies the differences existing in the social positions of women and men migrants both in their country of origin and in the receiving country²⁷.

The gender theory has found application in the international legal instruments for the suppression of violence against women. A considerable contribution in the conception and recognition of “gender-based violence” has been the 2011 Istanbul Convention which in its Explanatory Report defines the term gender as “[...] based on the two sexes, male and female, explains that there are also socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for women and men. Research has shown that certain roles or stereotypes produce unwanted and harmful practices and contribute to make violence against women acceptable²⁸. In other

²⁴Pinelli, B. (2019), “*Migranti e Rifugiate. Antropologia, genere e politica.*”, Raffaello Cortina editore, 2019, p.28.

²⁵Anthias, F. and Yuval-Davis, N, (1992), “Connecting Race and Gender”, *Racialized boundaries Race, nation, gender, color and class and the anti-racist struggle*, Routledge, 1992, p.68

²⁶Pinelli, B. (2019), “*Migranti e Rifugiate. Antropologia, genere e politica.*”, Raffaello Cortina editore, 2019, p28.

²⁷Anthias, F. (2012), “Transnational mobilities, migration research and intersectionality. Towards a translational frame”, *Nordic Journal of Migration Research*, 2012. P.106• DOI: 10.2478/v10202-011-0032-y NJMR

²⁸ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11 May 2011, par.43.

words, this definition implies that gender inequalities determine the conditions or are the very causes of violence against women²⁹, therefore gender-based violence is any form of violence that affects women disproportionately or that is “directed against women because they are women.”

As already mentioned in pages 10 and 11 of the introduction, this thesis is going to examine the Mediterranean migration framework from the gender-based perspective of asylum-seeking women and it will adopt as its guiding thread the question “is migration dangerous to women?”. Through the identification of the gender, social, racial, political, and institutional circumstances that create the conditions for migrant women’s vulnerability to GBSV, it will be argued that the European selective asylum and migration regime along with its border securitization and externalization policies, foster violence against migrant women. The conclusion will be that even though the normative and legal apparatus of the EU clashes with the direction of migration and asylum policies, the politicization of vulnerable asylum-seeking women is instrumentalized by the EU for the purpose of migration and border control.

Outline of the thesis

The first chapter sets the general picture of the Mediterranean migration framework. Starting from the so-called 2015 “migration crisis” it will illustrate how the increase in the numbers of migrants trying to cross the Mediterranean is not new, but its due to harsher conflicts in the Middle East and Africa combined with the higher numbers of women and children in migratory flows³⁰. Concomitantly, the crisis is exacerbated by the implementation of growingly restrictive migratory policies by the EU and its members. Continuing in this direction, the following section will identify the main corridors of female migration towards Europe, and it will inquire into the motives and modalities of gendered migration. The last part is going to focus on the EU policy and asylum frameworks in the context of the ongoing “emergency” in the Mediterranean.

²⁹De Vido, S. (2016), “Violenza contro le donne: analisi giuridica di un fenomeno sociale”, *Donne violenza e diritto internazionale. La Convenzione di Istanbul del Consiglio d’Europa del 2011*, Mimesis Edizioni, 2016, p.31.

³⁰Freedman, J. (2016), “Endangering Security at the borders of Europe: Women Migrants and the Mediterranean “crisis”, *Journal of Refugee Studies*, Vol. 29, No. 4, Oxford University Press, 2016. P.568.

Through the examination of the recent evolutions in the European Agenda on Migration and the policy strategies of the EU to curb the arrivals of migrants, it will be argued how the Union is failing to reach the harmonization of its asylum and reception systems. In addition, though recognizing the notion of vulnerability at a normative level, this is not mirrored by adequate policy responses. Continuing, it will describe the New Pact of Migration and Asylum and its most critical aspects from the perspective of gender and vulnerability. Moreover, it will be pointed out that the screening procedures for the individualization of migrants' vulnerabilities are not adequately applied and their effectiveness is questionable³¹. The last paragraph will describe the application on the part of the EU of a humanitarian-securitization approach to the challenge of Mediterranean migration.

The second chapter is going to thoroughly describe and analyze the situation of migrant women transiting through Libya and in Libyan detention centers. Through the reports of NGOs operating in the country, this part is going to describe the gravity of the violence to which women are subjected to and how Italy, through its collaboration with Libya and the outsourcing of migration control is responsible of assisting Libyan authorities in committing these violations. The chapter starts with an overview of how the situation of violence and exploitation of migrants' lives in Libya is comparable to systematic and institutionalized abuse. It will be seen how the abuse takes the configuration of GBSV towards migrant women; secondly it will be pointed out how women are exposed to GBSV not only in transit zones and during their imprisonment in detention facilities, but also along the migratory journey to Libya; the third section will examine the most concerning aspects the Union's and Italy's collaboration with Libya and in what ways Italy is responsible for the gross violation of human rights in the country.

The third chapter will give insight into the dimension of gender-based violence against migrant women during their migratory journey. Gender-based violence might be at once the cause of migration but also a product of it. It will be argued how violence affects women at every stage of the migratory process and it is reinforced by structural

³¹Carta, Maria C. (2021), "Il "nuovo" Patto europeo sulla Migrazione e l'Asilo: recenti sviluppi in materia di solidarietà ed integrazione" *Freedom, Security & Justice: European Legal Studies Rivista giuridica di classe A*, 2021, n. 2, 2021, pp.9-42

and institutional factors, primarily in the form of restrictive asylum regimes, dangerous and militarized borders, inadequate systems of reception and detention in destination countries. Firstly, the chapter will investigate the concept of border and States' bordering practices, arguing that the EU's border externalization and shifting of responsibility to neighboring countries is contributing to reinforcing existing vulnerabilities of migrant women and fostering the production of GBSV against them and in many cases causing their deaths at border crossings. Secondly it will be maintained that the migratory experience of women is shaped by structural and individual factors that create gendered constraints to women's agency and mobility. Exclusionary and repressive asylum regimes produce vulnerabilities that give rise to gender-based violence by the control of migrants' mobility which is exerted through the control of bodies. The control on women's bodies and mobility is enforced at the hands of men, namely the smuggler or the trafficker who regulate the illegal migratory routes or at the hands of institutions as the European asylum and border regime. A technological system of surveillance for the fingerprinting and forced immobility at borders, hotspots and detention centers all concur in creating physical and psychological vulnerability to gender-based violence for asylum seeking women. Nevertheless, there are still instances in which women manage to regain the control over their own migratory journey and strategically use their gender and their vulnerable condition for successfully continuing their journey. Such violent practices of control are to be attributable to a racialized, patriarchal, and humanitarian character that still characterizes the European perception of migratory flows from the Global South. Lastly, it will be maintained that stereotypical representations of the asylum seeking and refugee woman, their racialization, victimization, or condemnation are politicized in the European humanitarian and securitization discourses to distinguish between the "real" and "deserving" refugees and the "economic migrants" endangering Europeanness.

The fourth and final chapter will provide an overview of the relevant legal and political international framework for the protection of migrant, asylum seeking, and refugee women's rights from a gender-sensitive approach. The chapter will start with a review of the UN international protection system, beginning with the 1951 Geneva Convention and its 1967 Protocol Relating to the Status of refugees that though ignoring

women' security and gender issues at the time of its adoption, it gradually became more inclusive towards women. Significant for a gender inclusive definition of refugee and a gender-sensitive interpretation of the Convention, were the 2002 United Nations High Commissioner for Refugees (UNHCR) Guidelines on Gender Related Persecution. The evolution continued with the adoption of the UN Convention on the Elimination of All forms of Discrimination against women (CEDAW Convention) in 1975, which represented the first comprehensive international legal instrument on women's rights, along with its most significant General Recommendations. The section will also see other relevant instruments at the international level, such as the 1995 Beijing Declaration and the Global Compact for Safe, Orderly and Regular Migration. At the regional level a special space will be given to the review of the 2011 Istanbul Convention and to its great potential in the protection of migrant women victims of GBSV. Another relevant Council of Europe's instrument is the Council of Europe Convention on Action against Trafficking in Human Beings. The following paragraph will focus on the international protection system at the EU level and will provide an overview of the most pertinent Directives and regulations concerning the protection of migrant women in the EU. Special notice will be also given to the policy relevant policy framework for the protection and advancement of migrant and refugee women's rights, such as the new EU Strategy on Combatting Trafficking in Human Beings (2021-2025), and the New Action Plan on Gender Equality and Women's Empowerment in External Relations 2020-2025. The third paragraph will focus on the overview of the protection system at the Member State level, taking as case study Italy and the most relevant provisions for the protection and integration of migrant women provided by the Italian national asylum system. The Italian system should also integrate EU and international protection norms, as one of the ten European Union member states that have ratified the Istanbul Convention. The last subparagraph will focus on the special protection measures contained in the Italian asylum system. In conclusion it will be argued that considering the legal and policy framework reviewed and despite the evolution of a human-rights sensitive asylum system the EU has been adopting migration repressive policies and erecting border barriers. Said barriers aim at hampering migrants from reaching its territory, basically preventing them from enjoying those same rights that the

EU proclaims to defend. Also, it will be argued that a securitization attitude is justified by humanitarian rhetoric and practices, which are carried out at the damage of the right and lives of asylum seekers and migrants.

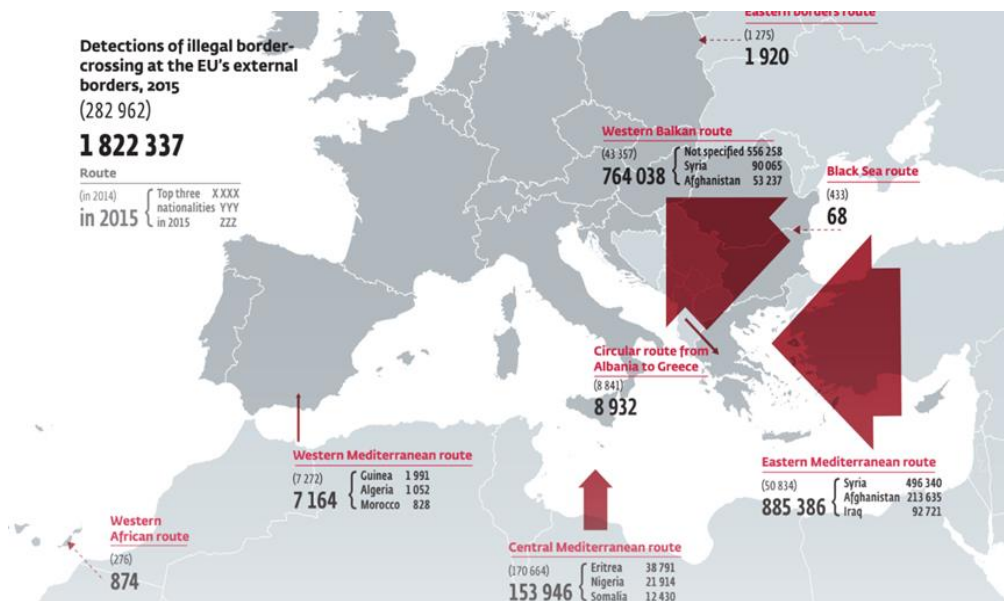
As a final clarification, the term “migrants” is at times used in text to refer either to asylum seekers and/or to refugees, for simplification.

1. The Mediterranean migration crisis: facts and figures

The first chapter will set the context of this thesis' argumentation, describing the Mediterranean migration framework and the main reasons that determined the rise in migrants' numbers from 2015 up to now. It will identify the principal migration corridors chosen by migrant and asylum-seeking women as well as the push factors of gendered migration across the Mediterranean routes. The aim is to illustrate the EU push-backs policies and strategy toward the so-called "migrant crisis" and the implementation of a humanitarian-securitization approach.

In 2015 over 1 million refugees have arrived in Europe after engaging in a life-threatening journey across the Mediterranean in unseaworthy vessels. Migrants move along three routes, the Central Mediterranean route that oversees the crossings from North Africa to Italy and Malta, the Western Mediterranean route, connecting North Africa to Spain and the Eastern Mediterranean route representing the crossing point from to Greece for Middle Eastern and South Asian migrants.

Figure 1: Migrant routes into Europe in 2014 and 2015



Figures for migrant routes into Europe in 2014 and 2015 representing the main migration routes into Europe.³²

In 2015 the largest number of arrivals was registered in the Greek islands (885,386) but significant numbers were registered also in Italy (154,000)³³. Since then, the European Union has started to portray this phenomenon as a new “crisis” unfolding at the borders of Europe. However, Mediterranean migration is not new but in fact, mixed migration flows towards western European states started to gradually increase during the 1990s³⁴. The increase in the numbers of arrivals is to be attributed to new conflicts and instability in Africa and the Middle East (such as Syria, Libya, Horn of Africa, Somalia, Afghanistan, Eritrea), combined with harsher asylum requirements on the part of the European Union’s Member States and more generally restrictive migratory policies which basically make legal migration impossible.

In conjunction with restrictive migratory policies, the single member states have also adopted repressive national migratory policies which have caused a further limitation of legal migration channels. An example is Italy’s 2012 “inflows decree”, or the Decree of the President of the Council of Ministers (DPCM), issued on 16 October 2012 that set the maximum number of foreign workers admissible per year at a quote of 13.850 individuals³⁵. Furtherly, it should be stressed how in the context of growingly restrictive migratory policies, the limitations of a separation between economic migration and forced migration become more evident.

Indeed, the fear of masses of asylum seekers at the doors of Europe has sparked a securitization policy response from the European policy makers with the launch of various operations at sea aimed at pre-emptively stopping migrants to reach European shores, conducted through a process of border externalization with the delegation of responsibility to third states. The Union has paradoxically justified these interventions

³²Frontex, Risk Analysis for 2016, March 2016, p.16.

https://frontex.europa.eu/assets/Publications/Risk_Analysis/Annula_Risk_Analysis_2016.pdf(Accessed January 2023)

³³Tsourdi, E. (2021),” Situation at the External Borders of the Union and recent Trends in the Mediterranean: from the 2015 crisis to the Covid-19” *The EU Approach on Migration in the Mediterranean*, European Union 2021, p.52.

³⁴Missing Migrants Project, IOM <https://missingmigrants.iom.int/region/mediterranean>

³⁵Decreto del Presidente del Consiglio dei ministri 16 Ottobre 2012, “*Programmazione transitoria dei flussi d'ingresso dei lavoratori non comunitari per lavoro non stagionale nel territorio dello Stato, per l'anno 2012*” (2012, 17 Dicembre) (Italy), *Gazzetta Ufficiale*, n. 273.

<https://www.gazzettaufficiale.it/eli/id/2012/11/22/12A12384/sg> (Accessed 10, January 2023)

using a human rights friendly rhetoric³⁶ whilst adopting a strategy of externalization of asylum policy with the collaboration of African countries. In this sense, one of the most notable examples is the 2017 Memorandum of Understanding signed by Italy and Libya, in order to fight “irregular migration” and crack down the business of smugglers and human traffickers with the aim to reduce the numbers of potential asylum seekers reaching Europe³⁷. The Italy-Libya Memorandum is a blatant proof of European efforts to shift the burden of border migration control to third countries through the financial and technical funding of the Libyan Coast Guard (LCG) and infrastructural development in the region, at the detriment of migrants’ human rights. As argued by Anja Palm, the text of the memorandum lacks reference to any human rights framework, and it stresses the words *illegal* and *clandestine* when referring to migrants³⁸.

At the UE level, the principal instrument for the management of external borders is the European Border and Coast Guard agency (FRONTEX), whose main task is to coordinate and support Member’s States activities at the external borders of Europe which focus on preventing smuggling, human trafficking, joint operations, information sharing with other EU agencies, especially the European Union Agency for Asylum (EASO), training and return operations. Since 2011, in parallel with the rise of migrants’ arrivals due to the Libyan revolution and the growing perception of a terrorism threat, the mandate and operational capacities of FRONTEX have been reinforced. The agency’s mandate has a strong orientation to law enforcement and closely operates in coordination with the EASO especially in times of pressure on the Member States facing heavy migratory influxes. Following the growing Italian pressure for a European intervention in the Mediterranean, the EU started the first FRONTEX led operation Triton in 2014, which focused less on search and rescue operations (SAR)

³⁶Moreno-Lax, V (2018),” The EU Humanitarian Border and the Securitization of Human Rights: The ‘Rescue-Through-Interdiction/Rescue-Without Protection’ Paradigm”, *Journal of Common Market Studies*, Vol.56. Num.1pp.119-140, 2018 DOI: 10.1111/jcms.12651

³⁷Degani, P. and De Stefani, P. (2020),” Addressing Migrant Women’s Intersecting Vulnerabilities. Refugee Protection, Anti-trafficking, and Anti-violence Referral Patterns in Italy “, *Peace Human Rights Governance*, 4(1), March 2020, pp. 113-152. 10.14658/pupj-phrg-2020-1-5

³⁸Palm, A. (2017), “*The Italy-Libya Memorandum of Understanding: The baseline of a policy approach aimed at closing all doors to Europe?*” in *EU Migration and Asylum Law Policy*, 2 October 2017, <https://eumigrationlawblog.eu/the-italy-libya-memorandum-of-understanding-the-baseline-of-a-policy-approach-aimed-at-closing-all-doors-to-europe/>. (Accessed 11 January 2023)

carried out until that moment by the Italian Coast guard, while prioritizing monitoring and anti-smuggling activities. In June 2015, in the aftermath of the tragic shipwreck recalled in the introduction, the EU launched its mission European Union Naval Force in the South-Central Mediterranean (UNAVFOR MED) “Operation Sophia”, whose mandate was not different than its predecessor operation Triton and consisted of disrupting the smuggling business model put in place by human traffickers and smugglers by identifying, capturing, and disposing of the vessels engaged in these activities. The mission was extended in June 2016 and its mandate was expanded to include a UN arms embargo on the high seas off the coasts of Libya and the training of the Libyan coast guard. The Council of the EU voted for a further extension of the mission for 2017 and 2018.

However, Operation Sophia was not as successful to reduce the irregular migratory flows in the central Mediterranean, which “rose steadily until mid-2017 at least”³⁹. Another weak point of the mission, is the difficulty to bring to justice the smugglers and traffickers apprehended by European authorities, given the limits of the Libyan judicial system; in addition, the mission does not have the authorization to enter Libyan territorial waters, where the major trafficking and smuggling organizations operate. To overcome this limitation and fulfill its borders externalization strategy, it has been necessary to establish a partnership with local stakeholders. This consists in the training and allocations of material resources to the Libyan Coast Guard which has become one of the main tasks of Operation Sofia since 2016. Even though a human rights training is part of the general training program, serious doubts have arisen regarding the effectiveness of the training itself and the behaviors of Libyan coast guard officers, especially during the screenings to assess migrants’ statuses. There are grounds to argue that “a checklist mentality might have taken precedence over a genuine commitment to core EU values”⁴⁰, with the consequence that situations of vulnerability and violence, to which are especially subjected migrant women, are overlooked. Another critical point is the selection process of trainees. The situation of chaos existing in Libya since 2011 and

³⁹Loschi, C, et al. (2018), “The Implementation of EU Crisis Response in Libya. Bridging Theory and Practice.” *EUNPACK*, 31 Jan. 2018, p.3.

⁴⁰Loschi, C, et al. (2018), “The Implementation of EU Crisis Response in Libya. Bridging Theory and Practice.” *EUNPACK*, 31 January 2018, p.7

the deterioration of the Libyan security governance, has made it complicated for European authorities to identify potential smugglers and traffickers infiltrated in the Libyan Coast Guard training program. Unsurprisingly, among the Libyan Coast Guard personnel have been identified several traffickers and smugglers who have benefited of the European trainings, and the EU has been accused by NGOs of collaborating with human rights offenders. Indeed, as denounced by several NGOs⁴¹, the Libyan Coast Guard often operates in collusion with human traffickers, militias and armed groups and benefit from the exploitation of migrants' lives, while also threatening NOGs vessels engaged in rescue operations⁴².

Operation Sophia's successor, EUNAVFOR MED Operation Irini, has been launched in March 2020 and continues to this date, has a similar mandate to Sophia's, which includes combating the illegal crude oil trade, implementing the UN arms embargo against Libya, the capacity building and training of the Libyan Coast Guard and navy, disrupting the human trafficking and smuggling business⁴³. In 2017, the same year of the launch of the EU Support to Integrated border and migration management in Libya, the EU struck a deal with the UN-backed Libyan government signing the Malta Declaration. Aside from more funding and training allocated to Libyan authorities, the EU delegated to the Libyan Coast Guard the task to intercept Europe-bound illegal vessels and to disembark migrants in Libya.

Moreover in 2017 the Italian government approved a code of conduct for NGOs' vessels carrying out search and rescue operations in the Mediterranean, which has banned NGOs from entering Libyan waters to rescue migrants in distress at sea and has generally hindered their maritime rescue abilities⁴⁴. In December 2022 the Italian government has adopted a new decree that has furtherly limited the rescuing capacities

⁴¹Amnesty International, (2017), "Libya: European Governments Complicit in Horrific Abuse of Refugees and Migrants", 12 December 2017,

<https://www.amnesty.org/en/latest/press-release/2017/12/libya-european-governments-complicit-in-horrific-abuse-of-refugees-and-migrants/>

⁴² Ibid

⁴³EU-Libya relations, 11 Feb.2022. EEAS

https://www.eeas.europa.eu/eeas/eu-libya-relations_en (Accessed 7 August 2022)

⁴⁴Euronews, "Italy's code of conduct for NGOs involved in migrant rescue: text", 3 August 2017, <https://www.euronews.com/2017/08/03/text-of-italys-code-of-conduct-for-ngos-involved-in-migrant-rescue> (accessed 21 January 2023)

of NGOs in the Central Mediterranean, obligating them to reach the nearest port after a rescue rather than continuing to assist other migrant boats in distress at sea⁴⁵.

The oldest instrument of EU's external action in Libya is the European Union Border Assistance Mission in Libya (EUBAM Libya) launched for the first time in 2013. EUBAM mission was to support Libyan authorities in border management, law enforcement and criminal justice while also disrupting the criminal networks involved in the traffic and smuggling of migrants. However, due to the deteriorating security conditions in Libya the mission has been halted in 2015 and even though its mandate has been extended and widened, it remains under reorganization⁴⁶.

Another instrument set up by the EU to support border and migration management in Libya is the EU Trust Fund for Africa which in July 2017 started a EUR46 million program to support the Libyan border. The program implemented and co-financed by Italy, does not differentiate in mandate and objectives from the securitization and border externalization policies of the EU. As the other instruments mentioned previously in this paragraph, this initiative concentrates on the border control and surveillance aspects of migration management. The funds are also directed to the definition and strengthening of SAR operations and to the creation of a Libyan SAR region as well as to reinforce the infrastructure system for the "temporary detention" and "voluntary return" of migrants. Albeit the official press release addresses the humanitarian aspect of the program, here too there is no mention of the word "refugee" or any reference to migrants in situations of vulnerability, but the emphasis is given to (in the words of Italian Minister Mogherini), "assisted voluntary returns and reintegration of migrants"⁴⁷.

Following the adoption of these policies the scarce regard for migrants' human rights, has forced migrants to choose more dangerous migratory routes and has produced the opposite result of increasing their dependence on smugglers and traffickers due to the absence of legal and safe corridors of migration. At the same time

⁴⁵Bathke B." Italy prompts outrage with clampdown on migrant sea rescuers", Infomigrants, Ansa, 30 November 2022, <http://www.infomigrants.net/en/post/45773/italy-prompts-outrage-with-clampdown-on-migrant-sea-rescuers> (Accessed 21 January 2023)

⁴⁶Loschi, Chiara, et al. (2018) "The Implementation of EU Crisis Response in Libya. Bridging Theory and Practice." *EUNPACK*, 31 January 2018, p11.

⁴⁷ European Union, European Commission, 'EU Trust Fund for Africa Adopt €46 million Program to Support Integrated Migration and Border Management in Libya'. Press Release, Brussels, 2017.

the dropping on arrivals registered since 2016 with the numbers going from 181,436 in 2016 to 119,369 in 2017 and plunging to 23,370 (minus 80 percent) in 2018 until up to 11,471 in 2019⁴⁸ with an increase to 36,221 in 2020⁴⁹, is to be attributed to a growing practice of administrative detention of migrants in transit countries, of which Libya is part, furtherly jeopardizing migrants lives and exposing them to violence and human rights violations. There is extensive documentation that during detention migrants suffer a range of cruelties at the hands of the Libyan state officials that range from extortions to beatings, tortures, food and water deprivation, neglect of medical needs, sexual and gender-based violence. In Cusumano's view⁵⁰, the EU is a hypocritical actor since it struggles to reconcile its normative apparatus and its material interests and action. The incapacity of MS to compromise over their individual policy preferences has resulted in serious gaps and weaknesses in the Common European Asylum System (CEAS) that negatively affect the lives of asylum seekers and refugees. This lack of harmonization and "the differentiation between policy areas leaves EU migration policy imbalanced, uncoordinated in crisis, and ultimately contributing its own turbulence"⁵¹; in this view the 2015 migration crisis is at the same time the product and the object of EU's border closures and repressive migration policies.

1.1 Migrant women seeking asylum in Europe

It is well known that gender influences all phases of the migratory journey⁵² which is therefore, particularly threatening to women who are disproportionately affect by GBSV and other forms of violence specifically targeting women. The current European asylum system may be fostering insecurities and vulnerabilities for asylum seeking women

⁴⁸Degani, P. and De Stefani, P. (2020), "Addressing Migrant Women's Intersecting Vulnerabilities. Refugee Protection, Anti-trafficking, and Anti-violence Referral Patterns in Italy", *Peace Human Rights Governance*, 4(1), March 2020, p.118 10.14658/pupj-phrg-2020-1-5

⁴⁹ IOM, "Deaths on Maritime Migration Routes to Europe Soar in First Half of 2021" <https://www.iom.int/news/deaths-maritime-migration-routes-europe-soar-first-half-2021-iom-brief> (Accessed July 2022)

⁵⁰Cusumano, E. (2019), "Migrant rescue as organized hypocrisy: EU maritime missions offshore Libya between humanitarianism and border control", *Cooperation and Conflict*, SAGE, 2019, Vol. 54(1) 3–24, Pp.6-7 <https://doi.org/10.1177/0010836718780175>

⁵¹ Schilde, K. and Goodman W.S. (2021), "The EU's Response to the Migration Crisis: Institutional Turbulence and Policy Disjuncture." *The Palgrave Handbook of EU Crisis*, ed. by Marianne Riddervold et al., Palgrave Studies in European Union Politics, Palgrave Macmillan, 2021, pp.449-468.

⁵²Welfens, N. (2020), "Protecting Refugees Inside, Protecting Borders Abroad? Gender in the EU's Responses to the 'Refugee Crisis'", *Political Studies Review*, SAGE, Vol. 18(3) 510–524, 2020.

exposing them to an increased risk of GBSV violence along the journey, through dangerous migratory paths and forced detention in countries of arrivals but also of reception⁵³.

The growth in migratory flows registered in the recent years, is also attributable to the growing number of women attempting to reach the EU. As 2016 they made up 17% of the arrivals in Europe⁵⁴ while according to Eurostat statistics in 2018 women seeking international protection in the EU accounted for the 36% on a total number of 650.000⁵⁵. For a long time, the image of the migrant and asylum seeker has been identified with that of the young “boat migrant” man and as today, this image tends to persist in media representation of Mediterranean migration. Nevertheless, since 2015 a large proportion of migrant and asylum seeking women has been arriving in Europe with the United Nations High Commissioner for refugees (UNHCR) estimating that women make up the 20% of arrivals in Europe⁵⁶ both travelling alone or with their children and family. However, the presence of women in migratory flows has been long overlooked in migration studies, and the lack of gender- disaggregated data makes it impossible to have precise estimates of the number of women refugees arriving in Europe. This lack of data is even worsened by a void in research on women granted refugee status in the West caused by the tendency to incorporate refugee women in the general category of research on “immigrant women”, thus overlooking the specific experiences of refugees⁵⁷. Another critical point on research concerning migrant women is the merging of migrant women and children in a single category of “vulnerable” refugees, which plays a huge part in the representation of refugee women in the humanitarian assistance discourse and the way this last one influences gender dynamics

⁵³Freedman, J. (2016), “Sexual and gender-based violence against refugee women: a hidden aspect of the refugee “crisis”, *Reproductive Health Matters*, 2016, 24:47, 18-26, DOI: 10.1016/j.rhm.2016.05.003

⁵⁴Grotti, V. et al. (2018), “Shifting vulnerabilities: gender and reproductive care on the migrant trail to Europe”, *Comparative Migration Studies*, 6:23,2018, p.2. <https://doi.org/10.1186/s40878-018-0089-z>

⁵⁵Degani, P. De Stefani, P. (2020),” Addressing Migrant Women’s Intersecting Vulnerabilities. Refugee Protection, Anti-trafficking, and Anti-violence Referral Patterns in Italy “, *Peace Human Rights Governance*, 4(1), March 2020, p.119 10.14658/pupj-phrg-2020-1-5

⁵⁶Freedman, J. (2018), “Sexual and gender-based violence against refugee women: a hidden aspect of the refugee “crisis”, *Reproductive Health Matters*, 24:47, 2018, p.18, DOI: 10.1016/j.rhm.2016.05.003

⁵⁷Marchetti, S. and Ruba, S. (2017), “Policing gender mobilities: interrogating the ‘feminization of migration’ to Europe, *International Review of Sociology*, 2017,27:1, pp. 6-24, DOI: 10.1080/03906701.2017.1303966

in international protection regimes⁵⁸. Despite the “invisibility” of women in migration studies, in the West the perception of the refugee women population tends to be exaggerated and according to statistics, women appear to be more successful than men in obtaining the refugee status. All these elements contribute to the “gender-blindness” in migration analysis which is even more lacking in the field of asylum studies, with most of them ignoring the gendered impacts of contemporary European asylum policies and legislation⁵⁹. In reality, less women reach the West seeking asylum given that they encounter several obstacles and barriers to migration compared to men. For such reason, it is necessary to adopt a gendered and intersectional perspective in order to analyze and understand the dynamics of contemporary female migration in the Mediterranean.

Women’s migration and their decision and ability to migrate is shaped by gender relations and social structures of power which poses barriers to the free agency of women. There are several intersectional factors influencing the experience of migrants’ women beyond their gender, such as their class, ethnicity, race, age, and sexual orientation⁶⁰, which combined with structural factors embodied by the social and gender norms of their communities and asylum regimes’ policies and legislation, hamper women’s freedom of choice whilst creating insecurities and vulnerabilities for those able to migrate. For instance, in many countries of origin of asylum seeking women, because of oppressive social norms and expectations, females are not able to freely move alone or to leave the country without the authorization of their husbands or other male relatives; since they are charged for the care of children and the household, they may not have the economic resources to migrate or even if they manage to gather enough money, they might consider the journey too dangerous for their children decide that it is not worth the risk. Women who decide to leave their countries because of conflicts, gender-based violence such as forced marriages, female genital mutilation (FGM) and domestic violence take this decision as last resort, aware of the dangers that their journey entails. The following section is going to illustrate the dangers and the

⁵⁸Freedman, J. (2007), “Who are the “Refugee Women?”, *Gendering the International Asylum and Refugee Debate*”, Palgrave MacMillan, 2007, pp. 21-22

⁵⁹Freedman, J. (2007) “A Gendered approach to Refugee and Asylum studies”. *Gendering the International Asylum and Refugee Debate*”, Palgrave MacMillan, 2007, pp.1-21

⁶⁰Freedman, J. (2007), “A Gendered approach to Refugee and Asylum studies”. *Gendering the International Asylum and Refugee Debate*”, Palgrave MacMillan, 2007, pp.1-21

sources of vulnerabilities women migrant find themselves facing along their journey but also in destination countries.

As we have briefly anticipated in the last paragraph women's vulnerabilities are generated first in their countries of origin where they usually occupy a subordinate position in society, that in the words of Freedman, "legitimate or justify violence against women with reference to the symbolic and practical roles assigned to them"⁶¹, principally that of mothers and care-providers. In addition, international political and protection systems can reinforce said vulnerabilities and gender inequalities which will determine the social position of migrant women in the country of destination⁶², depending on the representation of the asylum-seeking woman either as a "threat" or as a "vulnerable subject".

Along the journey women are vulnerable to GBSV, especially when their financial resources are too scarce, or they cannot rely on the help of family or friends in order to pay the passage to their next destination. Those who cannot pay the smugglers are forced to perform bonded labor (at times for extensive period of times), to suffer sexual exploitation in the form of forced prostitution or coerced into exchanging sexual favors in order to be allowed to continue their travel. Indeed, as already anticipated in the introduction, the restrictive asylum policies carried out by the EU exacerbate migrant women's vulnerability amplify the risk of exposure to these forms of violence since, in the absence of secure and legal passages migrants have to rely on smuggler and traffickers, situation that will be extensively analyzed in the second chapter of this dissertation. Militarized borders also pose a danger to the lives of women migrant with studies reporting that the incidence of border related deaths is significantly higher for women⁶³. In destination countries migrants are detained for long periods of times in reception centers. Here, living conditions are generally precarious due to overcrowded spaces and poor sanitization. The insecurities for women are accentuated in particular

⁶¹Ibid, p.20.

⁶²Marchetti, S. & Ruba, S. (2017), "Policing gender mobilities: interrogating the 'feminization of migration' to Europe, *International Review of Sociology*, 2017,27:1, pp. 6-24, DOI: 10.1080/03906701.2017.1303966

⁶³Pickering, S. and Cochrane, B. (2012), "Irregular border-crossing deaths and gender: Where, how and why women die crossing borders", *Theoretical Criminology*, 17(1) 27-48, SAGE, 2012. DOI: 10.1177/1362480612464510

by the scarce or absent access to sanitary facilities and services. Overcrowded spaces expose women to the risk of harassment by other migrants since there is no separation between male and female quarters. In addition, women who flee their countries with violent husbands because it was too dangerous to move alone with their children, find themselves trapped in abusive relationships and with no resources to denounce or leave⁶⁴.

Nevertheless, migrant women are not only victims, but they are also agents of their own migratory journey and strategies. There are instances in which women escaping from social constraints in their countries have found a new freedom in Europe, whilst many other women have strategically used their condition of vulnerability to have better chances of success in their asylum claim in the hope that the rest of their families will be able to join them thanks to family reunification visa policies⁶⁵.

The following sections of this chapter will examine how gender and vulnerabilities are addressed in the European asylum policy approach in the context of the so-called Mediterranean “migration crisis” and the failed attempt to implement a common European approach to asylum through the 2015 European Agenda for Migration. It will follow a reconstruction of the recent reforms of the Common European Asylum System (CEAS) with a focus on vulnerability and gender. It will also be tackled the New Pact on Migration and Asylum pointing out its most critical aspects from the perspective of intersectionality and vulnerability. It will be demonstrated how the Pact missed the opportunity of effectively addressing the gendered and intersectional dimension of asylum-seeking women’s vulnerabilities. The last paragraph will address the EU’s humanitarian-securitization approach in the Mediterranean.

1.2 The EU approach to the “migration crisis”

The enormous flow of migrants that overwhelmed the European asylum system in 2015 instilling in European policymakers and MS’ governments the fear of a “refugee invasion”, not only did pose a never before seen, challenge to the reception of migrants and the assessment of huge numbers of asylum claims, but also sparked conflicts among

⁶⁴Freedman, J. (2018), “Sexual and gender-based violence against refugee women: a hidden aspect of the refugee “crisis”, *Reproductive Health Matters*, 24:47, 2018, p.18, DOI: 10.1016/j.rhm.2016.05.003

⁶⁵Ibid

the MS⁶⁶. The EU, struck by the strong pressure to control the crisis, failed to produce a joint strategy to curb the arrival of asylum seekers at its borders. As a consequence, the single MS adopted a series of national responses shaped by the political pressure and economic hardships they were dealing with, which produced different protection standards and reception conditions of migrants on a country basis. Their immediate reaction was a shift towards securitization and a reassessment of the external and internal border management, especially on the part of the southern MS the most exposed to the crisis, such as Italy and Greece.

Since 1999 the EU has been working on a CEAS, aiming at the harmonization of asylum and migration policies among the MS, but policies such as the Dublin Regulation and the European Asylum Dactyloscopie Database (EURODAC) regulation⁶⁷, both heavily criticized for delegating most of the burden to the southern European MS forcing asylum-seekers to remain in the country of first entry, have shown that there is still not a unified “Europeanization” for migration as whole⁶⁸. Other fundamental instruments of the CEAS for a holistic approach to migration are the three Directives all revised in 2013: the Qualification Directive (2011)⁶⁹; the Procedures Directive (2013)⁷⁰; and the Reception Conditions Directive (2013)⁷¹. Nevertheless, such instruments have not brought about the expected results and the European Asylum system still appears fragmented, whilst it has achieved to set only minimum protection

⁶⁶Krause, U. and Schwenken, H. (2021), “Migration and Asylum Policy”, *The Routledge Handbook of Gender and EU Politics*, ed. by Gabriel Abeles et Al., Routledge, 2021, pp.339-351

⁶⁷Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013, [2013] OJ L180/1.

⁶⁸Krause, U. and Schwenken, H. (2021), “Migration and Asylum Policy”, *The Routledge Handbook of Gender and EU Politics*, ed. by Gabriel Abeles et Al., Routledge, pp.339-351, 2021.

⁶⁹Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, 2011 OJ L337/9 (‘2011 EU Qualification Directive’).

⁷⁰Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, 2013 OJ L180/60 (‘2013 Asylum Procedures Directive’).

⁷¹Council and European Parliament Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection, 2013, OJ L180/96 (‘2013 Reception Conditions Directive’)

standards⁷². The capacity of national asylum systems to deal with an adequate assessment of asylum requests varies significantly between MS, depending on the economic development of each member, in many cases the underfunded national asylum system cannot provide decent standards of living for asylum applicants. Some MS in order to deter migrants from requesting asylum, resort to “practice dumping” that is to strategically deliver low quality reception conditions⁷³. Most importantly, among the MS there are still divisions in the assessment and recognition of the refugee status and the granting of subsidiary protection.

As anticipated at the beginning of this paragraph, the Dublin Regulation III⁷⁴, that is the responsibility allocation system for asylum applications, has caused the most discontent and division among the MS. The most debated obligation set by the Regulation, is the principle of first entry, which dictates that only the country of first entry of the “irregular” migrant is responsible for the person that enters the EU, principle which obviously places the heaviest burden on the MS at the external borders of the Union. In addition, if the person leaves the country of first entry but is later apprehended by the authorities of another MS, the person will be sent back to the country where they first entered. The fairness of this obligation is quite disputable also in what concerns the right to free movement of asylum seekers and refugees in the territories of the Union, causing “refugee immobility” and hindering the redistribution of asylum seekers among the MS⁷⁵.

Following the crisis, the EU issued in the spring of 2015 the European Agenda on Migration through which it started to enact a series of measures aiming at the externalization of European borders. In the Agenda the European Commission expressed the intention to “manage migration better” and laid out 4 main pillars : the first is “reducing incentives to irregular migration by fighting traffickers and

⁷²Kriesi, H. et Al (2021), “Debordering and re-bordering in the refugee crisis: a case of ‘defensive integration’”, *Journal of European Public Policy*, Vol. 28, NO. 3, 331–349, 2021

⁷³Tsourdi, E. et Al, (2021), “State of play of EU legislation: A New Pact on Migration and Asylum”, *The EU Approach on Migration in the Mediterranean*, European Union, 2021, pp.26-48.

⁷⁴Council and European Parliament Regulation (EU) No 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Recast), [2013] OJ L180/31 (‘Dublin III Regulation’)

⁷⁵Tsourdi, E. et Al, (2021), “State of play of EU legislation: A New Pact on Migration and Asylum”, *The EU Approach on Migration in the Mediterranean*, European Union, 2021, pp.26-48.

smugglers”; the second is “ border management and saving lives and securing external borders”; the third “build a strong and unified European asylum policy”; the fourth is “a new policy for legal migration”⁷⁶. Apart from the momentary use of the emergency mechanism as codified in the Article 78(3) of Treaty on the Functioning of the European Union (TFEU)⁷⁷ that allowed for the resettlement of asylum seekers from Greece to other MS (mainly Germany and Austria and in a limited number), slightly easing the burden on the most exposed MS, the approach of the Migration Agenda has been oriented towards border externalization, containment and securitization policy responses, following the logic of “rescue through interdiction”, that is “saving” migrants lives by preventing them from reaching the EU in the first place. The CEAS’s hotspot approach is the main strategy adopted by the EU in this sense. This approach combines the joint action of three EU agencies, namely FRONTEX, the EASO and the European Police Office (EUROPOL), with the authorities responsible for asylum management in the coastal MS hit the most by the emergency (Italy and Greece) in order to carry out the identification, registration and finger printing of migrants at their arrival. In reality, this is merely a strategy to shift back the responsibility of dealing with asylum claims to the frontline MS⁷⁸ and to return migrants who they deem unfit for benefiting of any protection mechanism. Another feature of the border externalization process are the collaboration agreements of the EU with third countries or the so called “neighbor country” policy, one being the 2016 EU-Turkey statement which basically closed the Eastern Mediterranean Route and the following 2017 Malta Declaration⁷⁹, for the control of the Central Mediterranean Route. With the former the Turkish part promised to prevent migrants from reaching the Greek coasts, in exchange of a 6 billion euros payment on the part of the EU, favorable visa conditions for Turkish citizens, an

⁷⁶European Union, European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a European agenda on Migration, 13 May 2015, COM/2015/0240 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52015DC0240>

⁷⁷Emergency measures on migration: Article 78(3) TFEU - European Parliament. [https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/649325/EPRS_ATA\(2020\)649325_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/649325/EPRS_ATA(2020)649325_EN.pdf) (Accessed 10 August 2022)

⁷⁸Kriesi, H. et Al. (2021), “Debordering and re-bordering in the refugee crisis: a case of ‘defensive integration’”, *Journal of European Public Policy*, Vol. 28, NO. 3, 331–349, 2021

⁷⁹European Union: Council of the European Union, *Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route*, 3 February 2017, available at: <https://www.refworld.org/docid/58a1ce514.html> (accessed July 2022)

upgrade of the customs union, and a recasting of Turkey's accession process to the EU. Whilst the latter set up the collaboration of the EU with Libyan authorities, mainly through the funding and training of the Libyan Coast Guard aiming at the crack-down on criminal networks engaged in smuggling and human trafficking of migrants; the enhancement of Libyan reception system; the support to the Italian government who individually signed a Memorandum of Understanding with Libya in 2017, as mentioned in the first paragraph of chapter 1.

Moving on to the next paragraph, it will be seen how this crisis brought to the attention of European policy makers the importance of vulnerability and gender in the assessment of migrants' statuses, underlining the necessity to revise the CEAS⁸⁰ and in what ways the European Agenda on Migration responded or failed to respond to this necessity.

1.2.1 Gender and vulnerability in the European Agenda on Migration and the CEAS

The European asylum and refugee system is deeply tied up with international asylum policies and especially to the definition of refugee enshrined in the 1951 Geneva Convention. However, this definition was modeled on the image of the young political dissident refugee, and thus was essentially "gender biased" toward a "male paradigm"⁸¹. It derives that the European asylum system building on this definition, was initially gender-blind and even if there were early instances of a gender-sensitive interpretation of the Geneva Convention demanded by feminist scholars, the attention towards gender related issues and vulnerability remained marginal in EU refugee policies up until recently. In addition, the EU subscribed to international and European law norms for the advancement of gender equality, notably the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Istanbul Convention but the commitment to the norms enshrined in these Conventions was not met by the European external asylum and migration policies. The 2013 recast Directive on the standards for the reception of applicants for international protection and the recast Directive on common procedures for granting and withdrawing international protection,

⁸⁰Półtorak, M. (2021), "European Agenda on Migration Towards Vulnerable Persons. Migracyjne. Przegląd Polonijny" (2021, nr 2, s. 21-40), DOI:10.4467/25444972SMPP.21.018.13774

⁸¹Krause, U. and Schwenken, H. (2021), "Migration and Asylum Policy", *The Routledge Handbook of Gender and EU Politics*, edited by Gabriel Abeles et Al., Routledge, pp.339-351, 2021.

partially refer to women and vulnerability, showing some progress of European policies towards a more inclusive asylum system even though they still lack an intersectional understanding of gender and vulnerabilities. In particular, Article 21 of the Common procedures Directive defines as vulnerable “[...]minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation” (2013/33/EU, Article 21). These issues in the European asylum system, resurfaced during the 2015 refugee crisis in relation to the necessity of coordinating a unitarian response, but the European Agenda on Migration and the CEAS are yet to reach such objective. As Welfens argues, in the CEAS “there is no mention of gender in interaction with other social categories shapes vulnerabilities throughout different phases of the migratory process”⁸². A lack of coherence and consistency relates also to the multiple definitions of “vulnerable persons” in the EU law and CEAS, such as persons in need of “special procedures” or “special reception needs”, but no further insight is provided in what determines these “special needs” and what these needs might be. Such inconsistency has led to further fragmentation and incoherence in the domestic regimes of the MS in determining who should be considered as a “vulnerable asylum seeker”⁸³. Vulnerability has been also used as an identification tool for determining the beneficiaries of international protection or refugee status during the reallocation initiative carried out in Greek migrant hotspots. Here, the CEAS has applied vulnerability especially in the context of smuggling and trafficking of vulnerable migrants, identified with women and children and with the 2016 reform of the CEAS directives⁸⁴ it proposed the substitution of “vulnerability” with “special reception

⁸²Welfens, N. (2020), “Protecting Refugees Inside, Protecting Borders Abroad? Gender in the EU’s Responses to the ‘Refugee Crisis’”, *Political Studies Review*, SAGE, Vol. 18(3)2020, p.516

⁸³Hruschka, C. and Leboeuf, L. (2019), “Vulnerability. A Buzzword or a Standard for Migration Governance?”, ed. by Aimie Bouju, *Population & Policy Compact Policy Brief* No. 20 Jan. 2019. [Vulnerability – a buzzword or a standard for migration governance | Max-Planck-Institut für Sozialrecht und Sozialpolitik - MPISOC \(mpg.de\)](#)

⁸⁴Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast), COM/2016/0465 final. [EUR-Lex - 52016PC0465 - EN - EUR-Lex \(europa.eu\)](#)

needs”, thus moving towards a procedural rather than categorical approach for the identification of the different needs of asylum seekers⁸⁵. In the next paragraph it will be seen how the New Pact on Migration and Asylum proposed by the Commission on the model of the 2016 reforms tried to overcome this system but basically ended up reinforcing it.

1.3 The New Pact on Migration and Asylum from a gender perspective

After a long negotiation process, the European Commission published on 23 September 2020 the New Pact on Migration and Asylum, a non-binding legal instrument that is going to set the strategy for the European asylum and migration systems for the next five years. Despite the words of the President Von der Leyen, stating that the Pact would have marked a fresh start for European migration policies, the Pact seems to confirm and reinforce the strategies enacted both at the EU level and on individual initiative of the MS during the 2015 crisis. On the other side it leaves unsolved several issues, among others the reform of the system of shared responsibility, Dublin III, for the reallocation of migrant quotas among the MS, and the creation of legal channels for the accession to international protection in the EU. The Pact’s proposal is developed around two main bodies: the external and internal policy dimensions. The former concerns a faster and more efficient management of asylum requests with the introduction of pre-entry screenings and the strengthening of the FRONTEX, EASO, EURODAC and EUROPOL, which basically have the objective to reinforce the mechanism of return, deportation, and the collaboration with third countries partners. The latter concerns the internal dimension, that is the establishment of an effective system of solidarity among MS for the relocation of and/or the repatriation of asylum seeker on the territories of the Union. The border screening mechanism is directly inspired by the hotspot approach⁸⁶ which on several occasions has been criticized by

⁸⁵Hruschka, C. and Leboeuf, L. (2019), “Vulnerability. A Buzzword or a Standard for Migration Governance?”, edited by Aimie Bouju, *Population & Policy Compact Policy Brief* No. 20 Jan. 2019. [Vulnerability – a buzzword or a standard for migration governance | Max-Planck-Institut für Sozialrecht und Sozialpolitik - MPISOC \(mpg.de\)](#)

⁸⁶Celoria, E. (2021),” La normalizzazione della detenzione amministrativa alle frontiere esterne dell’Unione nel Nuovo Patto sulla Migrazione e l’Asilo”, *Freedom, Security & Justice: European Legal Studies*, Rivista giuridica di classe A, n. 2, 2021, pp.43-70

NGOs for violating migrants' human rights. This mechanism entails that every migrant, including minors, has to undergo a screening (carried out within 5 days) to determine age, health conditions, eventual vulnerabilities and an assessment of whether or not they may pose a threat to the host society. Depending on the outcome of this briefing the asylum seeker can be eligible for asylum procedure or be subject to refoulement and repatriation. This system also introduces an accelerated procedure (12 weeks), for the examination of asylum claims made by nationals of countries considered "safe" by the EU and therefore unlikely to be accepted. Thus, as soon as the asylum request is rejected, the repatriation procedure will be immediately active so as to remove any risks of unauthorized movements in the territories of the Union⁸⁷. Another procedure strengthened by the New Pact to prevent migrants from moving across MS is the border procedure under which the entire examination of the asylum claim can be carried out at the border or in a transit zone.

Moving on, to the measures concerning the internal dimension, as already said, the Dublin III Regulation is still in place without any significant modifications, the new element introduced to foster solidarity and responsibility sharing among the MS, consists of a solidarity mechanism and new rules concerning responsibility. In the words of the Pact the new solidarity mechanism "will primarily focus on relocation and return sponsorship"⁸⁸. Under this mechanism MS will show solidarity to the MS under pressure, by sponsoring the repatriation of migrants with "no right to stay" or/and contributing to relocations. However, this principle is not binding and the extent of the support that might be or might not be handed out is at the discretion of MS. As far as responsibility, the Pact does not clearly state how the current issues in determining MS responsibility over international protection applications might be ameliorated but there is only mention of the necessity to redefine these rules in order "to make the system more efficient, discourage abuses and prevent unauthorized movements"⁸⁹.

After having illustrated the salient characteristics of the New Pact, the following section will describe the most critical issues detected by scholars and migrant women-

⁸⁷De Pasquale P. (2021), "Il Patto per la migrazione e l'asilo: più ombre che luci, I Focus "La proposta di Patto su immigrazione e asilo", Post di AISDUE, II (2020), [aisdue.eu](https://www.aisdue.eu), n. 1, 5 Ottobre 2020, pp.1-15. <https://www.aisdue.eu/wp-content/uploads/2020/10/Patrizia-De-Pasquale.pdf>

⁸⁸ New Pact on Migration and Asylum, p.5,2020.

⁸⁹ Ibid p.6

led associations, concerning the implementation of an asylum framework that acknowledges vulnerability and protects the human rights of migrant women. The first issue concerns the definition of migrants. Migrants are divided into two groups: those considered “legal”, that is refugees, asylum-seekers and people in need of international protection, who according to the Pact have the right to claim asylum; and the rest who falls into the category of “illegal” or “irregular”, that is those who do not have the right to claim any form of protection and are even perceived as criminals or as a threat to security. Those who belong to the first group, are treated differently according to their specific needs or “vulnerabilities”⁹⁰. Such categorical separation between “legal “and “illegal”, between who deserves to be accepted and who in turn is undeserving and rejected, shows how despite the talks, the Union migration policy discourse tends to criminalize migration. Now, considering the Pact from a women’s rights perspective, the text groups all legal migrants into the category of “vulnerable groups” or “people showing vulnerabilities”, generally mirroring the definition of vulnerable persons found in the Article 21 of the 2013 Directive already mentioned in the Introduction. No mention is made of women and girls and to the specific challenges that asylum seeking women have to face both in the countries of origin and destination⁹¹. Even though, smuggling and trafficking is acknowledged as structural form of vulnerability (even if it is the only one mentioned), particularly affecting women and girls, the Pact overall, applies the notion of vulnerability as inherent to the individual and to its body, in this way it reproduces a gendered categorization of migrants into pre-defined groups. The result is a further victimization of migrant women who are perceived as needy, passive, and weak individuals lacking any form of agency. A second problematic aspect can be identified with the pre-entry screening procedures. In the proposal of the Regulation introducing a screening of third country nationals at the external borders⁹², issued by the

⁹⁰Standke-Herdmann, M. (2021),” Intersectionality and refugee women. The shortcomings of the EU Pact on Migration and Asylum from an intersectional perspective”, Heinrich-Böll-Stiftung, Nov.2021, pp 1-26.

⁹¹European Network of Migrant Women, (2018), “EU Migration and Asylum Pact through the eyes of a woman”, 12 Dec. 2018. (accessed August 2022)
<http://www.migrantwomennetwork.org/wp-content/uploads/MIGRATION-PACT-THROUGH-THE-EYES-OF-A-WOMAN.pdf>

⁹²Regulation COM/2020/612 final, introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU)

Commission in the context of the New Pact on Migration and asylum, it is introduced the pre-entry screening procedure for all third-country nationals to be carried out at the external borders of the Union. The objective of this screenings, aside from fingerprinting and registering asylum seekers in the ERUODAC database, is the identification of vulnerabilities in migrants who may need immediate healthcare, must be isolated for public health reasons, or might need special reception procedures. However, these screening are set to be fast and so they can hardly be suited for the identification of vulnerabilities, given that they assume different physical and psychological forms and magnitudes⁹³ which are difficult to detect in a stressful situation. Women at disembarkation points might have a hard time in explaining the reasons of their asylum claim, or they might be too traumatized to talk about the violence they suffered. What is also concerning is the fact that the Pact does not clarify whether these screenings procedures are carried out by professionals trained in identifying vulnerabilities and in dealing with gender-based violence, trafficking and other forms of violence that specifically affect women. The absence of female personnel such as mediators, psychologists, guards, and translators at the frontier may also hinder women from disclosing the violence suffered, because they might feel too ashamed, threatened, and uncomfortable to talk with male personnel. A fast-screening process might just give not enough time to assess individual vulnerabilities and risks to favor a “group vulnerability approach” that would circumscribe vulnerability to its most obvious forms, as those related to age, and health and physical characteristics⁹⁴.

Another critical point pointed out by the European Network of Migrant Women concerns the relocation, sponsored return and repatriation mechanism which may negatively impact women coming from countries considered as “safe”. Repatriation may expose women to the risk of trafficking or re-trafficking, sexual and domestic violence, sexual exploitation, and other various forms of violence perpetrated by their

2019/817.

https://libguides.lub.lu.se/apa_short/eu_legislation_and_publications_from_the_european_commission/eu_regulations

⁹³Scissa, C. (2021), “Il Nuovo Patto sulla Migrazione e l’Asilo dalla prospettiva della vulnerabilità: un’occasione mancata” *Freedom, Security & Justice: European Legal Studies Rivista giuridica di classe A* 2021, n. 2, 2021, pp.351-388.

⁹⁴Ibid.

own communities but also in transit countries. Indeed, repatriation and pushbacks of migrants to third countries constitute a violation of the principle of non-refoulement. This risk has been increasingly exacerbated by the partnership agreements that the EU has signed with third countries, which as the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) reports⁹⁵, “prevent women from arriving in safe places”. It is evident at this point, that the instruments of extra-territorial border control described above fail to take account of the special protection needs of refugee and asylum-seeking women implementing them in a way that does not consider their vulnerabilities and special protection needs, failing to distinguish them from other migrants⁹⁶.

Notably one of the most problematic collaborations of the EU with third countries is that with Libya, especially the 2017 Italy -Libya Memorandum of Understanding. Even if the Pact states that the measures of repatriation must be carried out in compliance with the respect of human rights, it is not clear how migrants’ human rights can be respected in a country that has shown extensive and systematic evidence of GBSV, abuses, tortures, and arbitrary detention, sexual exploitation, and coercion of migrant women.

1.4 EU migration management: the humanitarian-securitization approach

While the legal evolution of the EU’s asylum framework over the past years has been increasing the legal safeguards to migrants’ human rights and has pinned safeguarding asylum seekers and refugees’ human rights as a top priority of the Union, practical changes in migration management have not followed in the same direction, rather reducing arrivals has remained the ultimate goal of European policymakers. As Frelik et

⁹⁵GREVIO, (2020),” Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)”, ITALY. 2020.

<https://www.coe.int/en/web/istanbul-convention/-/grevio-publishes-its-report-on-italy>

⁹⁶Nagore, C. M. (2019), “The instruments of pre-border control in the EU. A new source of vulnerability for asylum seekers”, Paix et Sécurité Internationales, *Journal of International Law and International Relations*, no.7,2019, pp.161-181.

al. argue⁹⁷, States that have developed a human rights sensitive asylum framework for assessing migrants and asylum seekers' protection claims, have simultaneously erected barriers to keep migrants out of their territories so that they cannot benefit of the protection guarantees that States are obliged to provide under their jurisdiction. EU migration governance follows a humanitarian-securitization approach, where securitizing tactics such as border externalization, pre-emptive interceptions, push backs, and outsourcing responsibility to third countries, is not in contradiction with a humanitarian rhetoric of saving migrants' lives at sea but is rather the justification of such control and repressive migration practices⁹⁸. This humanitarian-security nexus⁹⁹ hampers asylum seekers and migrants' human rights and exposes them to the risk of refoulement, unlawful detention, death, and violates the fundamental right of a person to choose to move to any country. Humanitarianism has been increasingly used by the EU to justify migration control practices that, as it will be seen in the third chapter of this dissertation, exercise forms of government' control on human beings¹⁰⁰. To Chimni humanitarianism is used by contemporary governments to manipulate the language of human rights in order to justify securitization in refugee discourse in such a way to legitimize the push-back of the unwanted who try to escape from the "losing side" of globalization¹⁰¹.

The framing of migration as a security matter¹⁰² has become normalized in European migration management and several reasons are used to justify repressive policies and border closure. Especially after the events of 2001, European Union policymakers started to look at migration flows from the Global South and especially Africa, as crime

⁹⁷Frelik, B., Kiesel, I. M., Podkul, J. (2016), "The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants", *Journal on Migration and Human Security*, Center for Migration Studies of New York, Vol.4, N.4, 2016. Pp. 190-220.

⁹⁸Moreno-Lax, V. (2018), "The EU Humanitarian Border and the Securitization of Human Rights: The 'Rescue-Through-Interdiction/Rescue-Without Protection' Paradigm", *Journal of Common Market Studies*, Vol.56. Num.1, 2018. Pp.119-140. DOI: 10.1111/jcms.12651

⁹⁹Andersson, R. (2017), "The Humanitarian-Security Nexus at Europe's Frontiers", in De Genova, N. (eds.), *The Borders of Europe. Autonomy of Migration, Tactics of Bordering*, Duke University Press, 2017 p.64- 94.

¹⁰⁰Fassin, D., (2012), "Humanitarian Reason: A Moral History of the Present", University of California Press, 2012, p.2.

¹⁰¹Chimni, B. S., (2000), "Globalization, Humanitarianism and the Erosion of Refugee Protection", *Journal of Refugee Studies*, Oxford University Press, Vol. 13, No. 3, 2000, pp.244-258.

¹⁰²Bigo, D. (2002), "Security and Immigration. Toward a Critique of the Governmentality of Unease", *Alternatives* 27, 2002, Special Issue, 63-9.

and terrorist threats, since many irregular migrants could elude identification. The fear of unauthorized migration is also linked to the perception of migrants as “invaders” coming to Europe with the sole purpose of finding better economic prospects. Others maintained that refugees could have found relief from conflict and persecution in countries closer to theirs and thus rather than protection from violence, they were only moving for economic reasons¹⁰³. This discourse is usually instrumentalized by populist and nationalist parties particularly since the economic crisis that hit Europe in 2008. Another motive is linked to the abolition of internal borders under the Schengen regime, which prompted European leaders to reinforce the external borders of the Union. However, migrants are not only depicted as threats to security but also as preys to traffickers and smugglers who in European rhetoric, have been identified as the main drivers of unauthorized migration in the Mediterranean¹⁰⁴. Such way of depicting migration and migrants has allowed the adoption of restrictive and securitizing policies in an effort to crack down the trafficking business and save migrant “victims” from death, describing these actions as “humanitarian”. In this way border-control and securitization is justified as a humanitarian strategy to safeguard migrants’ human rights and lives and interceptions at sea and pushbacks become the means to “save some” in order to discourage others from attempting the voyage¹⁰⁵. The stress put by medias and politicians on the aspect of “crisis” and “emergency” since the 2015 surge in migrations flows, stems from securitization logics which frame unexpected and uncontrollable events as menaces to the social well-being of European States, authorizing them to adopt policies that deviate from ordinary laws and rights¹⁰⁶. According to Bigo the securitization of immigration is a part of a political strategy of government used by institutions to validate their power and divert attention from some of their failures¹⁰⁷.

¹⁰³Frelik, Bill, Kiesel. Ian M., Podkul, Jennifer, “The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants”, *Journal on Migration and Human Security*, Center for Migration Studies of New York, Vol.4, N.4, 2016, p.192

¹⁰⁴Moreno-Lax, V. (2018), ” The EU Humanitarian Border and the Securitization of Human Rights: The ‘Rescue-Through-Interdiction/Rescue-Without Protection’ Paradigm”, *Journal of Common Market Studies*, Vol.56. Num.1 pp.119-140, 2018. DOI: 10.1111/jcms.12651

¹⁰⁵ Ibid

¹⁰⁶Agamben, G. (2003), “Stato di eccezione”, Bollati Boringhieri, Torino, 2003, pp.128.

¹⁰⁷Bigo, D. (2002), “Security and Immigration: Toward a Critique of the Governmentality of Unease”, *Alternatives* 27, Special Issue, 2002, Pp. 65-66

Nowadays, EU's securitization strategy has evolved to move beyond the territorial borders of the Union and is being carried out by external actors through practices of border externalization. The out-sourcing of maritime border control and sea rescue operations to third countries has taken a prominent part in the EU's strategy of transferring responsibility to third actors and creating "legal loopholes" that allow the Union to avoid accountability for the death of migrants and sea and their mistreatment in detention facilities¹⁰⁸. The outsourcing of border control has been directed for the most part to North African countries such as Libya, Morocco, Tunisia¹⁰⁹ but also to Turkey¹¹⁰. Apart from Turkey, the countries with which the EU is collaborating with are developing countries that not only have a limited material and institutional capacity to deal with large number of migrants, but also have a reduced capacity to ensure the protection of human rights compared to European and international standards. This can prevent asylum seekers and refugees from receiving the care they need, and in turn would even worsen their condition. As Cutitta theorizes, the delocalization of European borders through practices of externalization is a product of humanitarian discourse shifting moral responsibilities away from European policies to place it on other actors such as third countries, smugglers, and traffickers¹¹¹. Another product of humanitarian and securitization discourse is the hotspots approach which has become the principal instrument for the relocation or expulsion of migrants and asylum seekers. This approach has been introduced with the European Agenda on Migration to face the refugee crisis in 2015. Also, in this case the rhetoric that accompanies this strategy is

¹⁰⁸Schneider, P. (2020), "Dilemmas of European Migration Policies: Failure of Sea Rescue in the Mediterranean or Successful Externalization of Borders?" *Sicherheit & Frieden*, vol. 38, no. 4, 2020, pp. 215–227. DOI: 10.5771/0175-274x-2020-4-215.

¹⁰⁹With the Valletta Summit in 2015 the EU set the European Union Emergency Trust Fund (EUTF), to enhance the cooperation with and finance African countries in addressing the root causes of migration and displaced people in Africa. Moreover, the EU has concluded in July 2022 a collaboration agreement with Morocco to tackle irregular migration whilst the collaboration with Libya was set with the Malta Declaration and the Italy-Libya MoU in 2017.

https://ec.europa.eu/commission/presscorner/detail/en/IP_22_4388 ;
file:///C:/Users/Espos/Downloads/Joint_press_release_European_Commission_and_Morocco_launch_renewed_partnership_on_migration_and_tackling_human_smuggling_networks.pdf ;
<https://euagenda.eu/upload/publications/factsheet-eutf-en.pdf>

¹¹⁰EU-Turkey Statement, 18 March 2016. See:

<https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>

¹¹¹Cutitta, P. (2017), "Delocalization, Humanitarianism, and Human Rights: The Mediterranean Border Between Exclusion and Inclusion", *Antipode* Vol. 00 No. 0, 2017, pp.12-13. doi: 10.1111/anti.12337
<https://onlinelibrary.wiley.com/doi/abs/10.1111/anti.12337>

that of “emergency” and “crisis”¹¹² in line with the securitization discourse, thus presenting this measure as an exceptional solution to face the “pressure” provoked by high numbers of migrants at the border. This approach features what to Pallister-Wilkins is an aspect of humanitarian logic, that is distant creation between State’s citizens entitled to the enjoyment of citizenship rights and those who are excluded from it¹¹³. Distance creation can be physical, when asylum seekers and refugees are confined in camps or detention centers outside the territory of the State whilst it assumes the character of economic and socio-political distance when the migrant “other” is within the borders of the State. Economic distance is created through the denied access to the labor market whilst sociopolitical distance is created through risk-management approaches that exercise control on mobility, as the confinement in hotspots and in detention facilities. At the same time, humanitarian aid is provided to the people kept at distance, combining practices of care and control. In humanitarian discourses, care and control are intertwined and are deemed necessary to safeguard European hegemonic rationality and to maintain social security within the borders¹¹⁴. The externalization of borders and humanitarian bordering pose not only ethical questions about the legitimacy of European Union’s policies but also constitute legalized violations of asylum-seekers and refugees’ human rights. As mentioned earlier in this paragraph, border externalization practices limit the access of asylum seekers and refugees to the international protection system put in place by the EU primarily by physically preventing them the access to the territory of the Union. Secondly, European States have the moral responsibility to help migrants in distress regardless of their territorial location, in particular when they are in situations of distress at sea, derived from customary laws and international conventions, such as the International Convention for the Safety of Life at Sea (SOLAS) and the United Nations Convention on the Law of the Sea (UNCLOS). Hotspots, pushbacks, and interceptions expose asylum seekers and refugees to the risk of refolement. The principle of non-refoulment prohibits to States

¹¹²Mentzelopoulou, M. M., Luyten K. (2018), “Hotspots at EU external borders State of play”, European Parliamentary Research Service, June 2018.

[https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/623563/EPRS_BRI\(2018\)623563_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/623563/EPRS_BRI(2018)623563_EN.pdf)

¹¹³Pallister-Wilkins, P. (2020) “Hotspots and the geographies of humanitarianism”, *Society and Space* 2020, Vol. 38(6) 991–1008, DOI: 10.1177/0263775818754884

¹¹⁴ Ibid

the return refugees to countries where they would be exposed to violations of human rights on the grounds of race, religion, nationality, membership to a particular social group, or political opinion. However, externalization policies cause refolement to third countries, included those collaborating with the EU, where migrants face arbitrary detention and gross violation of human rights. When violations of human rights take place in third countries or are executed by the authorities of those countries that the EU is actively financing and assisting (as the Libyan case), complicated questions regarding the responsibility that European externalization and securitization policies have in contributing to these violations arise¹¹⁵. The necessity invoked by European politicians and institutions to protect sovereignty and territorial integrity for the sake of rights of citizens first, result in what Moreno-Lax theorizes as the “securitization of human rights”, a logic that entails the sacrifice of some human rights in order to preserve others, in this case the human rights of migrants are sacrificed in the name of “border integrity” preservation dictated by the superior importance attributed by state representatives to the protection of sovereignty¹¹⁶. As Chimni maintains, humanitarian and securitization policies produce an erosion of fundamental human rights as the principle of non-refoulement, but most importantly the creation of labels to distinguish the refugee population from asylum seekers, economic migrants and others is increasingly becoming more fragmented showing the power that State institutions have towards vulnerable and helpless people in deciding, depending on the circumstances, who deserves to be saved and who does not¹¹⁷. Asylum seekers and refugee’s human rights are not anymore a given, but rather an act of generosity that depends on the will of the authorities, therefore humanitarian securitization of borders has the power to include and exclude, to save or to condemn¹¹⁸.

¹¹⁵Frelik, B., Kiesel, I. M., Podkul, J. (2016), “The Impact of Externalization of Migration Controls on the Rights of Asylum Seekers and Other Migrants”, *Journal on Migration and Human Security*, Center for Migration Studies of New York, Vol.4, N.4, 2016, p.197

¹¹⁶Moreno-Lax, V. (2018),” The EU Humanitarian Border and the Securitization of Human Rights: The ‘Rescue-Through-Interdiction/Rescue-Without Protection’ Paradigm”, *Journal of Common Market Studies*, Vol.56. Num.1 pp.119-140, 2018. DOI: 10.1111/jems.12651

¹¹⁷Chimni, B. S., “Globalization, Humanitarianism and the Erosion of Refugee Protection”, *Journal of Refugee Studies*, Oxford University Press, Vol. 13, No. 3, 2000, pp.244-258.

¹¹⁸Cutitta, P. (2017), “Delocalization, Humanitarianism, and Human Rights: The Mediterranean Border Between Exclusion and Inclusion”, *Antipode* Vol. 00 No. 0, 2017, pp.12-13.
doi: 10.1111/anti.12337 <https://onlinelibrary.wiley.com/doi/abs/10.1111/anti.12337>

The next chapter is going to thoroughly describe and analyze the situation of migrant women transiting through and detained in Libya. Through the reports of NGOs operating in the country it will be assessed the gravity of the violence to which women are subjected to and how Italy, by financing the Libyan authorities and by outsourcing migration control is responsible for such violations.

2. A case study of migrant women detention in Libya

In Chapter 1, it has been argued how the border externalization policies carried out through the collaboration of the EU with “neighboring countries” are contributing to exacerbating the vulnerability of migrant women to GBSV (among many other serious abuses amounting to torture and human rights violation). This chapter is going to focus on the case of Libya which is the main hub for the departure of migrants on the Central Mediterranean route. The following second chapter will give an overview of how the situation of violence and exploitation of migrants’ lives in Libya has taken the character of systematic and institutionalized abuse and violation of human rights. It will be seen how such abuses take the configuration of GBSV towards migrant women; secondly it will be pointed out how women are exposed to GBSV not only in transit zones and during their imprisonment in detention facilities, but also along the migratory journey to Libya; thirdly it will be argued that the EU and Italy, by assisting and financing Libyan authorities, is responsible for the violation of migrant women’s human rights and of exposing them to the risk of GBSV.

2.1 Libyan detention centers for migrants

Libya has been ravaged by conflicts since 2011 and at present the country is contended among two actors, one the self-proclaimed Libyan National Army (LNA), and the other the internationally recognized Government of National Accord (GNA), both fighting against each other for the governing, military, and territorial power of the country. The LNA is in control of most of the eastern part of the country while both entities claim to exercises control over the southern territories, which however are effectively held by local armed groups. Said armed groups, despite being independent, often decide to back up one or the other part for the sake of their own interests. This has brought to the assimilation of militias, criminal gangs, and other armed groups into the state apparatus

including that involved in migration management, making human trafficking, and smuggling an institutionalized practice. The intensification of the conflict in 2019, the complete dissolution of state institutions, the widespread corruption, and the total disregard for the respect of human rights has plunged the humanitarian crisis in the country into an emergency state. According to several reports issued by the humanitarian organizations working in the country, violence, abuse, and exploitation of migrants' lives at the hand of state and non-state actors are systematic and happen in broad daylight in a climate of impunity.

Significative in the normalization of unlawful migrant detention in Libya is the criminalization of migration adopted in Libya with Law No.19 of 2010 which punishes the irregular, entry, stay and exit of migrants with the payment of a fine and with a detention period that in the words of the legal document is “not exceeding one year”¹¹⁹. This exposes migrants and refugees to unlawful detention and expulsion since, migrants and refugees often, not only do not dispose of the financial means to pay the fine but cannot appeal this decision and have access to a due process. As affirmed in a joint report by the European Center for Constitutional and Human Rights (ECCHR), International Federation for Human Rights (FIDH), and Lawyers for Justice Libya (LFJL):” [...] Detention without due process became the prevailing migration management policy in Libya, applied to migrants and refugees intercepted at sea, as a form of punishment and to deter others from attempting the crossing”¹²⁰. Such form of arbitrary detention is illegal under international standards: one of the reason being Libya’s breaching of Article 9 (1) of the International Covenant on Civil and Political Rights (to which Libya is a state party)¹²¹; the another reason being that “[...] Under international human rights law, the detention of migrants solely for reasons related to their immigration status should never be mandatory or automatic. Migrants have a right

¹¹⁹Law No. (19) of 2010 on combatting illegal immigration. Law No. (19) of 1378 FDP - 2010 AD on combatting illegal immigration.

¹²⁰ ECCHR, FIDH and LFLJ, (2021) “No Way out: Migrants and Refugees Trapped in Libya Face Crimes Against Humanity”, November 2021, p.14
[file:///C:/Users/Espos/Downloads/no_way_out_migrants_and_refugees_trapped_in_libya_face_crimes_a
gainst_humanity_en%20\(2\).pdf](file:///C:/Users/Espos/Downloads/no_way_out_migrants_and_refugees_trapped_in_libya_face_crimes_against_humanity_en%20(2).pdf)

¹²¹Article 9 (1) states that “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”. OHCHR. International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 175.

to security and liberty of person.”¹²². The other step was the setting up in 2012 of the Department for Combatting Illegal Migration (DCIM) inside the Ministry of Interior, which has ever since, been charged with the management of “illegal” migration in the country. The DCIM is also responsible of running the official detention facilities in the country but as reports testimony “[...]. In many cases detention centers are only nominally under the control of the DCIM and are in fact run by affiliated militias and armed groups. They represent an important component of trafficking operations.”¹²³Smuggling and trafficking networks in Libya are controlled by militias and criminal gangs and how has been seen, with the collaboration of government officials, especially working in the DCIM and from the Libyan Coast Guard (LCG). Such networks operate along the main routes used by migrants and refugees in their journey across Africa, the Middle East and Asia with migrants passing through a series of intermediaries and often through detention in DCIM centers, prisons, and other unofficial places of incarceration, or so-called “campos”¹²⁴. During the route, migrants are especially dependent upon the help of smugglers and traffickers when crossing the Sahara Desert that divides Libya from sub-Saharan Africa. It must be recalled that not all migrants’ destination is Europe, instead many of them do not have the intention of crossing the Mediterranean but to seek employment in Libya or to return to their country of origin. However, given the high profitability of the trafficking activity, migrants are torn between the choice of being imprisoned in detention centers for an indefinite period of time, (where they are exposed to torture, bonded labor, and other atrocities), or trying to cross the Mediterranean upon payment of a ransom to traffickers¹²⁵. It derives not only that some individuals are forced to make the sea crossing against their will, but also that migrants and refugees are at constant risk of abduction at the hands of criminal gangs and traffickers who seek to gain more

¹²²ECCHR, FIDH and LFLJ, (2021) “No Way out: Migrants and Refugees Trapped in Libya Face Crimes Against Humanity”, November 2021, p.8-9

[file:///C:/Users/Espos/Downloads/no_way_out_migrants_and_refugees_trapped_in_libya_face_crimes_a
gainst_humanity_en%20\(2\).pdf](file:///C:/Users/Espos/Downloads/no_way_out_migrants_and_refugees_trapped_in_libya_face_crimes_against_humanity_en%20(2).pdf)

¹²³Ibid p.16.

¹²⁴Ibid, p.17.

¹²⁵Amnesty International. (2020) “*Between life and death*” *refugees and migrants trapped in Libya’s cycle of abuse*”, Amnesty International Ltd, 2020, p.21

revenues. In addition, when intercepted at sea by the LCG and returned to disembarkation points in Libya, refugees and migrants are usually returned to detention centers and condemned to the same cycle of abuses¹²⁶. Most officially recognized detention centers are located in the western and eastern part of Libya, nonetheless the real number of DCIM detention centers currently active in Libya is not certain. Reports from 2018 identify the presence of more than thirty DCIM detention centers in the country, with 13 centers in Tripoli being under the control of paramilitary groups¹²⁷. More recent reports from Amnesty International affirm that at the time of August 2020 there were: “twelve active DCIM detention centers across the country, eight in western Libya and four in eastern Libya”¹²⁸. Some of the centers known to receive governmental support from Tripoli are reported to be the center in Zuwara, the al-Nasr center in Zawiya, the al-Krareem center in Misrata and the Tripoli center¹²⁹, whereas it is also reported that in 2021 one of the major centers for detention of migrants upon disembarkation is Al-Mabani¹³⁰. In the south of the country the only functional official center is that of Kufra¹³¹.

The situation of un-official detention centers controlled by armed militias is more complex to assess, and often, even official detention centers cannot operate without the support of these groups with the DCIM making agreements both to avoid military attacks and for personal gains. However, the real interest of armed groups is the control of smuggling routes in order to gain from extorting money to abducted migrants in exchange for their liberty and better treatment during imprisonment. Informal detention facilities or “campos” which are believed to be mostly located in southern Libya, “are often warehouses, houses, hangars, farms, or other structures unfit for human

¹²⁶Amnesty International. (2020) “*Between life and death*” refugees and migrants trapped in Libya’s cycle of abuse. Amnesty International Ltd, 2020, p.9.

¹²⁷Beşer, Mehmet E. and Elfeitori, F. (2018), “Libya Detention Centres: A State of Impunity”, AYBÜ Migration Policy Center, 2018, p.6.

¹²⁸Amnesty International. (2020), “*Between life and death*” refugees and migrants trapped in Libya’s cycle of abuse. Amnesty International Ltd, 2020, p.25.

¹²⁹Malakooti, A. (2019), “The Political Economy of Migrant Detention in Libya: Understanding the players and the business models”, Apr.2019, p. 28.

¹³⁰Amnesty International. (2021), “*No one will look for you*” forcibly returned from sea to abusive detention in Libya”. Amnesty International Ltd, 2021, p.19

¹³¹Malakooti, A. (2019), “The Political Economy of Migrant Detention in Libya: Understanding the players and the business models”, Apr.2019, p. 29.

habitation¹³². Among the most known informal detention location can be acknowledged: Bani-Walid, Kufra, Sebha, and Ajdabiya¹³³.

To simplify, detention centers can be divided into three main groups according to their main function: centers in the West are at the core of the smuggling business, and given that most disembarkations happen on the Western coast, centers here are also main transfer spots, such as Al-Nasr and Sabratha; centers in the east are used to give the image of counter-smuggling but also to operate transfers, with the main being Kufra, Ajdabiya and Benghazi; finally, centers in the south are mainly used for deportations and expulsions. Here, virtually all detention facilities are run by militias and smugglers who hold the majority of migrants in detention. One of the most known centers for deportations in the south is Sebha. In the Eastern area of the country the LNA led by general al- Haftar has been providing support to the detention facilities in the area with the aim of gaining recognition and legitimacy of its role in the area, filling a power gap.

Concerning the numbers of migrants present in the country, according to the 2020 International Organization for Migration (IOM)'s Displacement Tracking Matrix (DTM) report on Libya, the migrant population present in the country was at least of 625,638 people, and among these the percentage of migrant men and women was respectively 89% and 11%¹³⁴, whilst a more recent DTM's report shows that these figures have not changed much two years after, with the total number of migrants being 649,788, with a ratio of men and women migrants standing at 76% and 12% respectively with the majority of migrants located in western Libya¹³⁵. With respect to the number of people in detention, there are no accurate figures given the difficulties that NGOs and the UN personnel encounter when trying to have access to the centers, and the high number of un-official places of imprisonment. Nevertheless, Amnesty International reported that in 2017 the number of detainees reached a peak of 20.000

¹³²ECCHR, FIDH and LFLJ, (2021) "No Way out: Migrants and Refugees Trapped in Libya Face Crimes Against Humanity", November 2021, p.24.

[file:///C:/Users/Espos/Downloads/no_way_out_migrants_and_refugees_trapped_in_libya_face_crimes_a
gainst_humanity_en%20\(2\).pdf](file:///C:/Users/Espos/Downloads/no_way_out_migrants_and_refugees_trapped_in_libya_face_crimes_against_humanity_en%20(2).pdf)

¹³³Malakooti, A. (2019), "The Political Economy of Migrant Detention in Libya: Understanding the players and the business models", April 2019, p. 30.

¹³⁴IOM, (2020), "Libya- Migrant report 30 (March-April2020)-DTM", IOM. Int. p.5.

<https://dtm.iom.int/reports/libya-%E2%80%94-migrant-report-30-march-april-2020>

¹³⁵IOM, (2022), "Migrant Report Key Findings Round 41 (February- April 2022)-DTM",IOM.

<https://migration.iom.int/reports/migrant-report-key-findings-round-41-feb-april-2022>

people¹³⁶, while a Report of the Secretary-General of the United Nations Support Mission in Libya affirms that four of the DCIM centers visited by the UNSMIL held captive 5.200 migrants¹³⁷.

With respect to the composition of the migrant population in Libya, both transiting and in detention, reports found out that 62% of migrants arrive from Sub-Saharan Africa, 31% from North Africa, and 7% from Asia including the Middle East¹³⁸. Most migrants and refugees coming from sub-Saharan Africa are nationals of the Niger, Chad, Sudan, Nigeria, Ghana, Mali, Somalia, Eritrea, and Ethiopia; Egypt is the main contributor to the migrant population in Libya departing from north Africa while most migrants coming from the Middle East and Asia departure from Syria and Bangladesh. Detention centers reunite migrants and refugees of all nationalities, and usually a distinction is made between western and eastern Africans, with the latter being seen as “more valuable” by traffickers and militias because they assume that they can pay more for their release and because they need international protection. This happens especially with Eritreans, Somali and Ethiopian migrants. Usually Syrian and Bangladeshi migrants are seen as wealthier and able to pay higher ransoms, as well. Following the IOM humanitarian repatriation program, many labor migrants in Libya were able to escape the country and return to their homes, turning asylum seekers and people in need of international protection into the category with the highest number of people in detention¹³⁹.

As said before, migrants are at constant danger at every step of their journey, beginning with the desert crossing where migrants are completely dependent upon traffickers and smugglers who organize the transport to Libya, usually employing overcrowded pick-ups. Often migrants have no choice but to wait in the desert several days as smugglers arrange agreements with corrupt border patrol officials and other smuggling groups in control of the migratory routes. Once arrived in southern Libya,

¹³⁶Amnesty International, (2020), “*Between life and death*” refugees and migrants trapped in Libya’s cycle of abuse. Amnesty International Ltd, 2020 p.25.

¹³⁷UN, Security Council, (2018), Report of the Secretary-General on the United Nations Support Mission in Libya, S/2018/140 (12 Feb.2018). p.9.

¹³⁸IOM, (2020), “Libya- Migrant report 30 (March-April2020)-DTM”, IOM. Int. p.5.

¹³⁹Malakooti, A. (2019), “The Political Economy of Migrant Detention in Libya: Understanding the players and the business models”, Apr.2019, p.37

some migrants considered more vulnerable or valuable can be detained by traffickers especially in the cities of Kufra, Quatrun or Sebha¹⁴⁰ and demanded payment in order to be allowed to continue their travel. UNSMIL reports confirm that migrants have reported of being held captive by smugglers and traffickers in inhumane conditions as a way to extort money from their families through a system of money transfers and that they were sold to one trafficker to another and forced to pay ransoms multiple times before finally being set free and transported to coastal areas for attempting the sea crossing¹⁴¹. During the tract migrants have reported to having witnessed or having been victims of physical and psychological violence, beatings, starvation, gun violence and GBSV. UNSMIL has received credible testimonies from survivors, reporting that representatives of state institutions participate in the trafficking of migrants and that on several occasions, transfers from one detention facility to the other were arranged by those who appeared to be State officials¹⁴². Most deaths have reportedly been caused by malnutrition, dehydration, exposure to the elements, illnesses due to lack of medical care and accidents caused by reckless driving on the part of traffickers. The perpetrators are for the most parts smugglers and traffickers but a significant number of police and governmental officials, border guards, and immigration officials participate to the violence against migrants, causing 42% of GSBV on migrant women.¹⁴³ When migrants and refugees fall in the hands of traffickers, smugglers, and other armed militias groups they face dreadful conditions of detention, often in makeshift detention structures, unfit for human inhabitation. If they are unable to pay the ransom to their captors, they can be sold to private Libyan citizens, denominated “sponsors”, and forced to perform bonded labor for them until the payment of the sum paid by the “buyer” to the traffickers. Bonded labor for migrants can last from months to years; detainees can be released and returned to the center by the sponsor at the end of the working day or upon payment of a

¹⁴⁰Breen, D. (2020), “In questo viaggio, a nessuno importa se vivi o muori” *Abusi, Protezione E Giustizia Lungo Le Rotte Tra Africa Orientale E Occidentale E La Sponda Meridionale Del Mediterraneo*. UNHCR, Jul. 2020, p.13.

¹⁴¹UN High Commissioner for Refugees (UNHCR), (2018), “*Desperate and Dangerous: Report on the Human Rights Situation of Migrants and Refugees in Libya*”. 18 Dec. 2018, p.26

¹⁴²Ibid p.27

¹⁴³Breen, D. (2020), “In questo viaggio, a nessuno importa se vivi o muori” *Abusi, Protezione E Giustizia Lungo Le Rotte Tra Africa Orientale E Occidentale E La Sponda Meridionale Del Mediterraneo*. UNHCR, Jul. 2020, pp.23-26.

larger sum, migrants can directly be taken by the sponsor indefinitely and work for them until their debt is paid off¹⁴⁴. In performing bonded labor, migrants are constantly threatened by their captors and beaten with heavy objects or even shot at. In addition, migrant witnesses revealed that on several occasions, they are forced to join armed groups and engage in the Libyan conflict, the alternative being indefinite detention.

After surviving to such atrocities, migrants finally able to embark for Europe are packed onto unseaworthy vessels, usually wooden boats, or rubber dinghies, often lacking engines and nautical navigation devices, with no escorts. Since the proclamation of the Libyan SAR in 2017, the LCG has overseen interceptions at sea in international waters. NGOs, humanitarian organizations and migrants' testimonies have exposed the brutality of the LCG personnel during such operations. The UNSMIL reports that the LCG routinely threatens migrants with gunshots, physical violence, and racist language. Migrants' vessels in distress are usually approached recklessly and at an accelerated speed, increasing the risks of capsizing and of panicking among migrants' onboard. It is well known that the LCG also behaves aggressively towards NGOs engaged in SAR operations using threats "including by waving firearm and mimicking throat-cutting signs"¹⁴⁵. Migrants and refugees intercepted are disembarked on Libyan coastal areas. Here, no screening whatsoever is carried out by Libyan officials, who systematically fail to recognize situations of vulnerability. Survivors have recounted of being left waiting outdoors in soaking wet clothes without food and water until being moved to a detention center.

Conditions for migrants in the DCIM centers do not differ from informal detention facilities. Most migrants and refugees detained in official centers are imprisoned after being intercepted at sea by the LCG. Upon entering migrants are stripped of all their personal belongings, including passports and identity documents. Migrants interviewed by the UNSMIL have denounced those conditions are unfit for human habitation, with

¹⁴⁴ECCHR, FIDH and LFLJ, (2021) "*No Way out: Migrants and Refugees Trapped in Libya Face Crimes Against Humanity*", November 2021, p.27
[file:///C:/Users/Espos/Downloads/no_way_out_migrants_and_refugees_trapped_in_libya_face_crimes_a
gainst_humanity_en%20\(2\).pdf](file:///C:/Users/Espos/Downloads/no_way_out_migrants_and_refugees_trapped_in_libya_face_crimes_against_humanity_en%20(2).pdf)

¹⁴⁵UN High Commissioner for Refugees (UNHCR), (2018) "*Desperate and Dangerous: Report on the Human Rights Situation of Migrants and Refugees in Libya*". 18 Dec. 2018, p.36

lack of running water, washing facilities and basic cleaning items¹⁴⁶ and reports speak of “severe overcrowding and appalling hygiene conditions. Detainees were malnourished and had limited or no access to medical care”¹⁴⁷. Recent reports from Amnesty International confirm that despite the decrease in the number of detainees in DCIM centers in 2020, overcrowding is still a severe concern for the conditions of migrants in Libya¹⁴⁸. In addition, according to testimonies from rescued migrants, rooms lack adequate ventilation and often windows, spaces are so crowded that people cannot stretch their legs and more people have to sleep on the same mattresses. Also, they reported that black-African migrants with Christian background, suffer a worse treatment than others and often they were made to sleep on the floors. Overcrowding is so severe that “there is an insufficient number of toilets for the number of migrants detained. In some facilities, two or three toilets are shared amongst 400-500 migrants”.¹⁴⁹ In such appalling conditions, worsened by food and water scarcity, malnutrition and the spread of illnesses is common, especially respiratory diseases, urinary tract infections, scabies, and acute diarrhea. Physiological and physical abuses amounting to crimes against humanity are endemic, with the most common torture practices being whippings, beatings with metal bars, pouring of boiling water or chemicals on the victim’s body, nail pulling, electric shocks and shooting at the legs. Another widespread practice is forcing migrants to call their families while being tortured with the aim of extorting them money. Several humanitarian organizations who have collected interviews from rescued migrants and refugees, have denounced that death in custody is a widespread phenomenon, both in official and un-official detention facilities. Deaths are mainly caused by the atrocious detention conditions, forced labor and unlawful killings at the hands of state officials and traffickers alike. Amnesty International reports that “[...] Seven refugees and migrants, held between 2017 and

¹⁴⁶UN High Commissioner for Refugees (UNHCR). (2018) “*Desperate and Dangerous: Report on the Human Rights Situation of Migrants and Refugees in Libya.*” 18 Dec. 2018, p.28

¹⁴⁷UN, Security Council, (2018) “Report of the Secretary-General on the United Nations Support Mission in Libya”, S/2018/140 (12 Feb.2018), p. 9. <https://reliefweb.int/report/libya/report-secretary-general- united-nations-support-mission-libya-s2018140-enar>

¹⁴⁸Amnesty International, (2020), “*BETWEEN LIFE and DEATH*” REFUGEES and MIGRANTS TRAPPED in LIBYA’S CYCLE of ABUSE. Amnesty International Ltd, 2020, p.28.

¹⁴⁹Beşer, Mehmet E. and Elfeitori, F. (2018), “Libya Detention Centers: A State of Impunity”, AYBÜ Migration Policy Center, 2018, p.10

2020 at DCIM detention centers, [...] witnessed deaths in custody of friends, family members or other detainees. Some witnessed multiple deaths during their detention”¹⁵⁰. UN reports of the total disregard for human life by DCIM detention centers guards describing that in Beni-Walid, migrants witness death on a daily basis and that the Libyans dispose of migrants’ bodies in dry riverbeds, ditches or in the desert¹⁵¹. Male migrants are also routinely employed to perform forced labor outside of the detention facility mainly in construction, farm work, off-loading heavy merchandise and even transporting weapons.

Having given a comprehensive picture of Libya’s detention system for migrants, the next paragraph is going to focus on the experience of women migrants who are disproportionately affected by GBSV, including systemic rapes, and forced prostitution.

2.2 Abuse and gender-based sexual violence against imprisoned women

As anticipated in paragraph 2.1 women make around the 12% of the total migrant population in Libya. The violent conflicts that have been ravaging countries such as Afghanistan, Syria, Eritrea, Somalia, and Libya, have pushed a growing number of women and girls to attempt the dangerous Mediterranean crossing in the hope of finding sanctuary and better life prospects in Europe. However, women on the move are more exposed to male violence and to suffering specific forms of violence affecting women while also facing higher mortality rates compared to migrant men¹⁵². Following the EU’s hardening of border policies and the creation of the Libyan SAR in 2017, which has increased the numbers of returns to Libya, refugee and migrant women have been increasingly dependent upon smugglers and traffickers in attempting their journey towards Europe. This in turn has put them in a serious condition of gender specific vulnerability that escalates into sexual assault and exploitation, especially when travelling alone without a male guardian. Women are also at high risk of being trafficked with the purpose of sexual exploitation, in this regard the European Statistical

¹⁵⁰Amnesty International, (2020), “*Between life and death*” refugees and migrants trapped in libya’s cycle of abuse”, Amnesty International Ltd, 2020, p.31.

¹⁵¹UN High Commissioner for Refugees (UNHCR), (2018), “*Desperate and Dangerous: Report on the Human Rights Situation of Migrants and Refugees in Libya*”, 18 Dec. 2018, p.30

¹⁵²Holvikivi, A. and Reeves, A. (2020), “Women, peace and security after Europe's 'refugee crisis'”. *European Journal of International Security*, 5 (2). pp. 135-154. ISSN 2057-5637, 2020, p10.

System (EUROSTAT) reported that on 1st January 2018 adult and minor females trafficked for the purposes of severe exploitation were respectively 70 and 80 percent of all victims in Europe¹⁵³.

Coming to the specific situation of migrant women in Libya, it is well known that GBSV against women moving along migratory paths and passing through detention centers is so widespread that has taken the character of an institutionalized practice, so that it affects almost all migrant women travelling through Libya. Violence, especially in the form of rapes, happens at border-crossings as a payment for continuing the journey, in detention centers as a form of torture and extortion, and as a feature of forced-labor and sexual slavery¹⁵⁴. Beginning with GBSV against women on the move, UNHCR reports that 1634 of migrants interviewed, had been victims of or witnessed 2.008 episodes of GBSV¹⁵⁵. The Women's Refugee Commission estimates that nearly 90% of all women who have gone through Libya on their way to Italy have been victims of rape or other form of sexual violence¹⁵⁶. Such numbers give an idea of the endemic character of the phenomenon, considering that GBSV is one of the most underreported forms of violence given the combination of several hampering factors like stigma and trauma, further exacerbated by the migration context. Female victims accounted for the 65% of the total number of migrants interviewed with violence being mainly exercised by Libyan and north sub-Saharan traffickers and smugglers, followed by state officials, unidentified individuals, members of criminal gangs and other migrants¹⁵⁷. Well documented accounts by sexual violence survivors and witnesses tell how traffickers and smugglers keeping migrants captive at transfer points, used physical and psychological violence upon women and girls, gang raped them and refused to wear

¹⁵³Degani, P. and De Stefani, P. (2020), "Addressing Migrant Women's Intersecting Vulnerabilities. Refugee Protection, Anti-trafficking and Anti-violence Referral Patterns in Italy", *Peace Human Rights Governance*, 4(1), Mar. 2020, p.119

¹⁵⁴ Kirby, P. (2020), "Sexual violence in the border zone: the EU, the Women, Peace and Security agenda and carceral humanitarianism in Libya", *International Affairs*, Volume 96, Issue 5, September 2020, p.1217.

¹⁵⁵Breen, D. (2020), "In questo viaggio, a nessuno importa se vivi o muori" , Abusi, Protezione e Giustizia Lungo Le Rotte Tra Africa Orientale E Occidentale E La Sponda Meridionale Del Mediterraneo. UNHCR, Jul. 2020, p.20

¹⁵⁶Chynoweth, S. (2019), "More Than One Million Pains": Sexual Violence Against Men and Boys on the Central Mediterranean Route to Italy", Women's Refugee Commission, Mar.2019, p.34.

¹⁵⁷Breen, D. (2020), "In questo viaggio, a nessuno importa se vivi o muori" Abusi, Protezione E Giustizia Lungo Le Rotte Tra Africa Orientale E Occidentale E La Sponda Meridionale Del Mediterraneo. UNHCR, Jul. 2020, p.20

protections. Violence usually takes place at night and the most targeted are younger women even though pregnant and older women are not spared. Migrants have told how rapes are carried out in front of other migrants or in front of the victims' husbands or family. Many women become pregnant as a result of violence and cannot have access to abortion procedures, due to the criminalization of abortion under all circumstances in Libya. In addition, rape used as a form of "payment" whenever migrant women are not capable of paying ransoms to traffickers in order to continue their journey. The UNSMIL collected accounts of women and girls being sold by smuggler and traffickers to "connection houses" and forced into prostitution for periods up to 16 months¹⁵⁸. Women have recounted of being coerced into having sex with several men per day and beaten if they refused; women who suffer miscarriages cannot seek medical help nor denounce the violence to Libyan authorities in fear of persecution¹⁵⁹.

Accounts from detention centers are equally atrocious. Reports from the UNSMIL affirm that women who are deported in DCIM centers following interceptions at sea, are detained in facilities without female guards, which contributes to further expose them to the risk of sexual exploitation. Spaces for vulnerable people, such as pregnant women and children, are not provided. Women are constantly sexually harassed from the moment they enter the detention centers suffering invasive strip searches and forced nudity during which survivors have reportedly been searched in private parts and groped by male guards. Rape is not only used as a form of torture of DCIM guards on migrants but also as a barter for food, water and even for the permission to use toilets. Women detained in the Shara' al-Zawiya detention center between January and May 2021 reportedly told to interviewers that they have been coerced by the center staff into having sex with them in exchange for they release and for better living conditions in detention¹⁶⁰. Usually at night, women are taken into separate rooms were DCIM guards

¹⁵⁸ UN, General Assembly, (2019), "Situation of human rights in Libya, including the implementation of technical assistance and capacity-building and efforts to prevent and ensure accountability for violations and abuses of human rights", Report of the United Nations High Commissioner for Human Rights, A/HRC/40/46 (4 Feb. 2019), p.6.

¹⁵⁹UN High Commissioner for Refugees (UNHCR), (2018), "*Desperate and Dangerous: Report on the Human Rights Situation of Migrants and Refugees in Libya*". 18 Dec. 2018, p.34.

¹⁶⁰ECCHR, FIDH and LFLJ, (2021) *No Way out: Migrants and Refugees Trapped in Libya Face Crimes Against Humanity*", November 2021, p.40

and other unidentified individuals proceed to rape them. When resisting women, are violently beaten with leather shoes and guns. In some instances, both female and male migrants have been forced by DCIM guards to perform acts of sexual assault and rape to other fellow migrants while videos were filmed for extortion purposes. One of the most common forms of torture and extortion consists in forcing male detainees to stand and watch the rape and murder of a woman.¹⁶¹ In addition, there have been several cases of pregnant women giving birth in detention centers, following the neglect and refusal of DCIM staff to transport them to a hospital where they can, nonetheless, be refused medical treatment due to the widespread racism towards black-African migrants rampant in Libya. Difficult birthing conditions and lack of medical treatment has led to many women dying of preventable deaths¹⁶². DCIM guards are also responsible of trafficking women into sex work. Especially in un-official centers, it is common for detained women to be forced into sexual relationships with guards, as it is reported to have happened in the Zintan detention center¹⁶³. Nigerian women are more at risk of being sold to connection houses or being sold into international trafficking. Amnesty International also collected evidence of abuse and sexual violence against migrant female workers in Libya. Women working as housekeepers have reported to have been beaten and raped by their Libyan employers, but unable to denounce given the precarious condition of their migrant status and the fear of persecution by authorities given that the Libyan law criminalizes out-of-wedlock sexual acts.

This section has attempted to provide a full overview of the brutal violation of migrants and refugees' human rights during their migratory journey and the barbaric GBSV suffered especially by women and girls in Libya in a climate of total impunity. In the next paragraphs this study is going to examine the concepts of gender, vulnerability and GBVS as codified in the principal international legal instruments, and

https://reliefweb.int/sites/reliefweb.int/files/resources/no_way_out_migrants_and_refugees_trapped_in_libya_face_crimes_against_humanity_en.pdf.

¹⁶¹Chynoweth, S. (2019), "More Than One Million Pains": Sexual Violence Against Men and Boys on the Central Mediterranean Route to Italy", Women's Refugee Commission, Mar.2019, p.34

¹⁶² UN High Commissioner for Refugees (UNHCR), (2018) "Desperate and Dangerous: Report on the Human Rights Situation of Migrants and Refugees in Libya", 18 December 2018. pp. 28-33

¹⁶³Malakooti, A. (2019), "The Political Economy of Migrant Detention in Libya: Understanding the players and the business models", April 2019, p.42.

it will be argued how these instruments may be applied to the case of migrant and refugee women in Libya.

2.3 The EU and Italy outsourcing responsibility to Libya

Despite a legal framework that largely recognizes the urgent necessity to fight GBSV and seeks (at least theoretically) to safeguard the rights of refugees and asylum seekers, EU migration policy is still outsourcing the responsibility of dealing with migrants' issues to third countries in a process of border consolidation and externalization at the detriment of migrants' lives, in fact contributing to the system of trafficking and exploitation of human beings that is intending to dismantle. The collaboration between EU and Libya fits in EU's "project of bordering at a distance"¹⁶⁴ aiming at preventing migrants to arrive on European shores in the first place. In this direction, the creation of a Libyan SAR in 2017 and the sabotage and criminalization of NGOs, accused of acting as a "pull-factor" for migrants and even of collaboration with Libyan human traffickers, has increased the numbers of pullbacks of migrants on Libyan shores which translates in an increase in the number of migrants in detention. Sea crossings have diminished in number whilst death at sea have started to soar. By providing monetary funds and material as well as training to the LCG, in the name of "a war on smugglers" has demonstrated the refusal of EU policy makers to tackle the emergency in a humanitarian and migrant oriented approach but rather as a threat to national security. The strategy of containment and detention has in turn exacerbate migrant women's vulnerabilities so that "the neglect of sexual violence and other abuses against detained migrants is sustained by the framing of the crisis in terms of human trafficking"¹⁶⁵. Keeping in mind that Libya is not a signatory of the 1951 Convention on the status of refugees or its 1967 Protocol, the EU is knowingly pushing back migrants in a country where no refuge or asylum system are in place, where the presence of the UNCHR is not formally recognized, where illegal migration is punished with indefinite detention and where there is a systematic and institutionalized violation of human rights is in practice in

¹⁶⁴ Kirby, Paul. "Sexual violence in the border zone: the EU, the Women, Peace and Security agenda and carceral humanitarianism in Libya", *International Affairs*, Volume 96, Issue 5, September 2020, p.1213.

¹⁶⁵Kirby, Paul. "Sexual violence in the border zone: the EU, the Women, Peace and Security agenda and carceral humanitarianism in Libya", *International Affairs*, Volume 96, Issue 5, September 2020, p.1221.

violation of the principle of non-refoulement. Moreover, is quite concerning the fact that the EU has issued a list of safe countries of origin giving to host countries another tool to deny asylum claims¹⁶⁶ and at the same time it is in contradiction with the 1951 Geneva Convention¹⁶⁷. Even more worrisome is the refoulement of migrants and asylum seekers are to Libya even though the country, by no means, can be considered safe, especially for women who “are at risk of gender-based persecution in every country”¹⁶⁸.

As party of the Dublin III Regulation and as a frontier State, Italy has to bear a great burden in receiving and welcoming migrants coming from Libya and in 2015 it was, after Greece, the State the most hit by massive inflows of migrants. It follows that the control of the Central Mediterranean Route has become one of the main objectives of Italy’s migration management policy. However, international obligations bind Italy to assist migrants in distress at sea and to allow disembarkation at its ports. As a consequence, in order to elude its responsibilities towards migrants, Italy has adopted in line with the European approach, a strategy of outsourcing, that is externalizing the control of its borders to Libya. This has been carried out through the signing in 2017 of a Memorandum of Understanding inspired by the 2016 EU-Turkey Agreement, with which Libya agrees to prevent migrants from crossing the sea to Italy. In turn Italy commits to provide funding and training to the LCG, additional funding to enlarge Libya’s migrant detention infrastructures and to support the LCG, in carrying out anti-smuggling and anti-trafficking operations at sea. In 2020 the memorandum has been extended for three more years. The goal of the Memorandum is clearly the push-back of migrants to the Libyan border or their interception before departure. In both cases, migrants are transferred to local detention camps where they either await to be deported or choose to join the voluntary repatriation program run by IOM, which Italy has financed between 2017 and 2020. The text of the Memorandum, not only refers to

¹⁶⁶Hunt, M. (2014), “The Safe Country of Origin Concept in European Asylum Law: Past, Present and Future”, *International Journal of Refugee Law*, 2014, Vol. 26, No. 4, 500–535 doi:10.1093/ijrl/eeu052

¹⁶⁷European Association for the Defense of Human Rights, EuroMed Rights, International Federation for Human Rights, (2016). ““Safe” countries: A denial of the right of asylum”, 2016. Pp.14 https://www.ohchr.org/sites/default/files/Documents/Issues/MHR/ReportLargeMovements/FIDH2_.pdf

¹⁶⁸ European Network of Migrant Women, “EU MIGRATION and ASYLUM PACT THROUGH THE EYES OF A WOMAN”, 12 Dec. 2018. Available at: <http://www.migrantwomennetwork.org/wp-content/uploads/MIGRATION-PACT-THROUGH-THE-EYES-OF-A-WOMAN.pdf>

migrants as “illegals” and “clandestine”, even if it is well known that migration from Libya is highly mixed, that is composed of people eligible for refugee status or international protection under the EU asylum framework, but also lack any reference to human rights and how the respect of migrants’ rights should be ensured in the implementation of the measures envisaged by the memorandum¹⁶⁹. Italy is well aware that potential asylum seekers and refugees, among which women make a particularly vulnerable group, are being forcibly repatriated without the chance to make an asylum claim and risking suffering persecution in their country of origin and the risk or to being re-trafficked in Libya¹⁷⁰. However, outsourcing its responsibility to Libyan authorities, Italy could still be liable for the ongoing human rights violation in Libya. Indeed, this has already been proven by a by the judgement of the ECtHR in the 2012 case “*Hirsi Jamaa and Others v. Italy*, where the Court found that Italy violated the principle of non-refoulement following the interception at sea and the return of eleven Somali and thirteen Eritrean nationals to Libya, and that the refoulement posed a risk of exposing migrants to ill-treatment both in Libya and in their country of origin. The Court also stated that Libya cannot be considered as “safe-country”, contrary to what has been decide by the EU’s list of safe countries of origin.¹⁷¹ According to Phillips, Libya is the perfect example of how the migration system of a transit country can be shaped by foreign actors, in this case the EU, concerned only with countering the “irregular migrant” threat at its borders, showing little interest for local issues¹⁷² but most of all for the lives and human rights of the people who are unlawfully pushed-back and detained in Libya. European governments, by supporting Libyan authorities, have essentially demonstrated how their real priority remains the closure of the central Mediterranean route, no matter the costs in human lives. Such circumstances represent a serious

¹⁶⁹Palm, A. (2017), “*The Italy-Libya Memorandum of Understanding: The baseline of a policy approach aimed at closing all doors to Europe?*”, EU Immigration and Asylum Law and Policy, 2 Oct. 2017, <https://eumigrationlawblog.eu/the-italy-libya-memorandum-of-understanding-the-baseline-of-a-policy-approach-aimed-at-closing-all-doors-to-europe/>

¹⁷⁰ASGI, (2021), “Le conseguenze dell’esternalizzazione sui diritti delle donne”. 16 Dec. 2021 <https://www.asgi.it/asilo-e-protezione-internazionale/le-conseguenze-dellesternalizzazione-sui-diritti-delle-donne/>

¹⁷¹*Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, Council of Europe: European Court of Human Rights, 23 February 2012, <https://www.refworld.org/cases,ECHR,4f4507942.html> (accessed 12 August 2022)

¹⁷²Phillips, M. (2020), “Managing a Multiplicity of Interests. The Case of Irregular Migration from Libya”, *Migration and Society*, vol. 3, no. 1, 1 June 2020, p.94, 10.3167/arms.2020.111407.

damage to the credibility of the EU's action in Libya, and at the same time it seems to confirm the incapacity of the EU to conciliate talk and action of its different agencies.

The collaboration agreements between the EU and Libya which basically charge Libya with the burden of carrying out border control activities in exchange of economic and material financing, has been defined by Gammeltoft-Hansenas "jurisdiction shopping"¹⁷³ that is shifting the responsibility of border control activities to a third state in order to avoid dealing with protection and asylum claims that would be applicable in the territories of the MS and they fall within the securitization strategy of humanitarian bordering adopted by European policymakers. In this way the EU continues to fuel smuggling and trafficking which represent the only way for migrants and asylum seekers to circumvent the barriers of "fortress Europe". The collaboration with Libya is the perfect example of how whilst the EU presents itself as protector of rights and international law its external action humanitarian missions in the Mediterranean are inconsistent with a human rights-based approach in the first place, and with a gender-based approach in the second place, which should be both centered on the best interests of migrants and asylum-seeking women.

¹⁷³Gammeltoft-Hansen, T. (2012), "The Externalisation of European Migration Control and the Reach of International Refugee Law", *The First Decade of EU Migration and Asylum Law*, *Immigration and Asylum and Policy in Europe*, edi. by Elspeth Guild & Paul Minderhound, Vol.24, Martinus Nijhoff Publishers, 2012, Pp.273-298.

3. Violence at and beyond the border

The following section will illustrate specific dimensions of violence at borders and at reception in destination countries. Through this analysis it will be argued how States and the EU, with its policies of control and border militarization and externalization, is contributing to the increase the risk of violence and death for migrant women moving along the Mediterranean routes.

Feminist scholars have argued how gender-based violence against women is determined by unequal gendered power relations between men and women. These power relations create specific insecurities for women, which translate into different forms of gender-based violence. Migrant and refugee women may be more exposed to gender-based violence because the gendered inequalities that affect women are intensified by the migratory process¹⁷⁴¹⁷⁵. For this reason, migrant women are twice as vulnerable, as “women” and as “migrants”¹⁷⁶. In addition, gender-based violence can indeed represent at once the cause and the product of migration¹⁷⁷. Women might migrate to flee from patriarchal oppression, domestic violence, FGM, forced marriage, and persecution on the grounds of sexual orientation among others. As already anticipated, violence is an omnipresent feature of the migration journey for women, with perpetrators being traffickers, smugglers, frontier guards, transit State authorities, or other migrants. The degree of violence experienced by women during the migration

¹⁷⁴Marianne H Marchand (2008) The Violence of Development and the Migration/ Insecurities Nexus: labor migration in a North American context, *Third World Quarterly*, 29:7, 1375-1388, DOI: 10.1080/01436590802386575

¹⁷⁵Freedman, J (2012), “Analyzing the Gendered Insecurities of Migration. A case study of female sub-Saharan African migrants in Morocco”, *International Feminist Journal of Politics*, 14:1 March 2012, 36–55, [tp://dx.doi.org/10.1080/14616742.2011.631281](https://dx.doi.org/10.1080/14616742.2011.631281)

¹⁷⁶ Freedman, J. & Bahija. J. (2008), “Violence against Migrant and Refugee Women in the Euromed Region”, *Euro-Mediterranean Human Rights*, 2008, p.14.

¹⁷⁷ Freedman, Jane. “Who’s responsible for violence against migrant women?”, *Open Democracy*, 28 August 2015 <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/whos-responsible-for-violence-against-migrant-women/> (Accessed 1 Sept. 2022)

process is influenced by factors such as economic means, the presence or the absence of a male travel companion, whose presence however might not shield women from violence but might turn into a source of domestic violence, the fact of traveling with children or while pregnant. Sexual violence, especially rape, is one of the most systematic forms of violence women are subjected to on route towards Europe. In transit States, as in the Libyan case seen in chapter 2, sexual violence has become an institutionalized practice and a sort of “coercive payment” to traffickers for women who do not have enough economic resources to finance the whole migration journey. Violence is also a feature of the “borderlands” like the sub-Saharan desert and the Mediterranean, where the chances of death are also higher. Once having reached the destination country, survivors still must face the challenges and insecurities of the local reception and detention systems, which usually are blind to women’s needs and contribute to increase the risk of domestic and sexual violence. Restrictive migration policies, dangerous borders, inadequate reception and detention conditions constitute forms of structural violence exercising a serious impact on migrant women’s lives.

Traditionally in border studies, the border is intended as the line between two spaces, and it is strictly connected to the concept of the nation-state and sovereignty. Borders, by clearly delimiting the boundaries of the nation-state, mark a stark separation between inside and outside, and are thus fundamental instruments of control of who enters¹⁷⁸. As Mezzadra & Neilson argue, in recent years borders have not only multiplied but they have also undergone a complex transformation process that has produced an heterogenization of borders. Nowadays borders do not simply represent geographical edges, but they are complex institutions that regulate the passage of goods and people. In addition, borders are shaped and reshaped constantly in accordance with the evolution of geo-political circumstances. Scholars have theorized how European and Western borders are drawn under the force of globalization, capitalism, class, and gender struggles creating ever-changing regimes of exploitation, dispossession, and domination¹⁷⁹. Guild argues how in the globalized world the right to move has

¹⁷⁸Bigo, D. and Guild, E. (2016), “Frontier Controls in the European Union: Who is in control?”, *Controlling Frontiers Free Movement into and Within Europe*, Routledge, 2016. Pag.51

¹⁷⁹Mezzadra, S. and Neilson, B. (2013), “The Proliferation of borders”, *Border as a Method or the Multiplication of Labor*, Duke University Press, 2013, Pag.5

increasingly become a privilege of those who already detain economic power, whilst the system seeks to exclude the poor and those in need of international protection¹⁸⁰. In this sense, States take legal measures to exclude the poor and unwanted because they are not of any utility to the labor market, on the contrary they would be a burden on the welfare system of the State. Such rhetoric finds a practical application through bordering practices that enact violent measures of border control against migrants, which produce suffering and death that have repercussions beyond the physical border zone. The European border regime and bordering practices have become increasingly violent during the past years, with the Union's border out-sourcing and off-shoring measures, European States have extended their sovereignty beyond the physical borders of Europe, as it has seen in the previous chapters, through the collaboration with neighboring countries. In this way, the Union has created spaces where the normative values and standards of the UE do not apply, and at the same time it has outsourced the responsibility of violent border practices, such as push/pull backs, to third countries and other non-state actors.¹⁸¹ Along with border externalization the Union has set up a sophisticated and technological border control system in order to intercept, block, and push back migrants, through the joint collaboration of agencies such as FRONTEX and the European Border Surveillance System (EUROSUR). This system of control has pushed migrants to embark in faster and more hazardous boat crossings in order to avoid detection, resulting in an increase in deaths at the border zone, with IOM reporting 17,000 deaths and disappearances in the Central Mediterranean since 2014¹⁸². Pécoud argues that there are two frameworks framing the responsibility of migrants' death: the first attributes the cause of migrants' deaths to the insufficient border control that enables smugglers and traffickers to take advantage of migrants and to force them on unsafe and makeshift boats; on the contrary the second framework attributes deaths at the borders to the excessive immigration control of States. This interpretation implies that States, by restricting legal immigration paths and forbidding migrants from entering

¹⁸⁰Guild, E. (2005), "The Legal Framework: Who is entitled to Move?", *Controlling frontier. Free Movement into and within Europe*, ed. by Didier Bigo and Elspeth Guild, Routledge, 2005, pp.14-48

¹⁸¹Parker, N. and Vaughan-Williams, N. (2012), "Critical Border Studies: Broadening and Deepening the 'Lines in the Sand'", *Agenda, Geopolitics*, 17:4, 2012 pp.727-733.

<http://dx.doi.org/10.1080/14650045.2012.706111>

¹⁸²IOM, Missing Migrants Project, <https://missingmigrants.iom.int/region/mediterranean>

their territory, create the very conditions that push migrants to rely on dangerous routes controlled by smugglers and traffickers, therefore facilitating their illegal activities. The first framework is obviously the one used by the EU to justify its migration control and containment regime through the discourse of “protection through interdiction”, that is saving the lives of migrants by stopping departures. Even though NGOs and civil society have been reporting that the conduct of European Member States is causing an increasing in the number of deaths, scholars argue that although states enact restrictive policy measures, the legal responsibility for migrants’ deaths might not be necessarily attributable to States¹⁸³. In this regard, Bigo maintains that the right to control borders and to distinguish between citizens and immigrants is universally accepted as prerogative of States, which are entitled to regulate the movement of people even at the expense of the right of free movement of individuals¹⁸⁴. In this view the EU’s can rightfully regulate its borders and decide who is authorized to enter and who is not. According to Rigo, borders are spaces of “organized violence” where crossing is made impossible for certain categories of people¹⁸⁵.

3.1 The control of migrant women’s bodies: constraints to mobility

Though sometimes being highly visible and politicized events, border deaths are characterized by a lack of data concerning the real number of victims, which in Pécoud ‘s view is a proof of the disinterest of States to look into the phenomenon as it would put into question their border practices¹⁸⁶. It derives that when it comes to the data concerning the death of migrant women at the border, the issue is even more serious. The assumption that extra-legal border crossing is inherently male and the lack of gender-disaggregated data concerning migrant women’s border crossing, makes it

¹⁸³Pécoud, A. (2020), “Death at the Border: Revisiting the Debate in Light of the Euro-Mediterranean Migration Crisis”, *American Behavioral Scientist*, Vol. 64(4) 379–388, Sage, 2020. [ps://doi.org/10.1177/0002764219882987](https://doi.org/10.1177/0002764219882987)

¹⁸⁴Bigo, D. (2005), “Security and Immigration: Toward a Critique of the Governmentality of Unease”, *Alternatives* 27 (2002), Special Issue, 63-92, pp.74-75.

¹⁸⁵Rigo, E. (2022), “La Straniera. Migrazioni, asilo, sfruttamento in una prospettiva di genere”. Carrocci editore S.p.A. Roma, 2022, p. 104

¹⁸⁶Pécoud, A. (2020), “Death at the Border: Revisiting the Debate in Light of the Euro-Mediterranean Migration Crisis”, *American Behavioral Scientist*, Vol. 64(4) 379–388, Sage, 2020. [ps://doi.org/10.1177/0002764219882987](https://doi.org/10.1177/0002764219882987)

particularly hard to collect accurate information on women's experiences at the border¹⁸⁷. According to IOM, even though gender disaggregated data is missing, there is evidence that the Central Mediterranean route is extremely deadly for women. Moreover, the Missing Migrants Projects found out that in 2017 the percentage of the women who died crossing a body of water was 64% compared to 42% of men¹⁸⁸. Because of several gendered social factors, women are generally more likely to experience violence and death during the migration process, thus they are also more likely to die at border crossings. Studies from the IOM report that smuggling and trafficking practices may expose women to a higher chance of death. For instance, women and children usually occupy places below deck on boats from where it is more difficult to escape in cases of distress. Exposure to toxic fumes, heavier clothing and weak swimming skills all concur to heighten the risk of death. Considering data concerning border related deaths, pregnant women, are more likely to die at the border frontiers¹⁸⁹. Pickering and Cochrane maintain that pregnancy can act both as a push factor of migration to women, but also as an additional source of vulnerability to violence and death. Whilst a pregnancy might push women to leave abusive relationships and flee their country of origin to seek better life prospects in another country, it also associated to the risk of sexual violence and death. Many women become pregnant as a result of rape in borderlands regions or during detention in transit countries¹⁹⁰. Moreover, NGOs like Amnesty International have found widespread evidence of a heightened mortality risk for detained women in Libya who are denied medical care and forced to give birth in prison, ultimately losing their lives because of complications¹⁹¹. Women also experience psychological violence and separation from loved ones. Indeed, there are instances where women sometimes accompanied by their

¹⁸⁷Pickering, S. and Cochrane, B. (2012), "Irregular border-crossing deaths and gender: Where, how and why women die crossing borders", *Theoretical Criminology* 17(1) 27–48, SAGE, 2012. DOI: 10.1177/1362480612464510

¹⁸⁸UN Migration Agency: Lack of Data Perpetuates Invisibility of Migrant Women's Deaths." *International Organization for Migration*, www.iom.int/news/un-migration-agency-lack-data-perpetuates-invisibility-migrant-womens-deaths. (Accessed 1 September 2022)

¹⁸⁹ Pickering, S. and Cochrane, B. "Irregular border-crossing deaths and gender: Where, how and why women die crossing borders", *Theoretical Criminology* 17(1) 27–48, SAGE, 2012, p. 39. DOI: 10.1177/1362480612464510

¹⁹⁰ Ibid, p.34

¹⁹¹Amnesty International. (2021) "'No one will look for you' forcibly returned from sea to abusive detention in Libya". Pp.52

children, believing that it would be easier for them to claim an international protection or refugee status, attempt to cross the border without their husbands with the intention of obtaining for them legal documents through family reunification programs. However, the existence of the Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, difficulties in the reunification of asylum seekers in Europe are still widespread¹⁹².

Migrant criminalization through detention is another pillar of the EU's strategy against illegalized immigration and it is a measure that produces situations of vulnerability and violence against migrant women. Migrants intercepted at sea during SAR operations or who are able to reach the shores of coastal European States (Italy, Greece, Malta, Spain), are detained even for extended periods at hotspots and in reception facilities while their asylum request stays pending.

At Italian reception centers, families are separated whilst attention to gender-based forms of violence and adequate support for women in the most vulnerable state, such as pregnant and trafficked women is almost non-existent¹⁹³. This shows that notwithstanding the existence of several directives at EU level and at international level with the UNHCR gender-related persecution guidelines, the European member states (MS) still struggle to integrate gender-sensitive reception approaches in their asylum system. Living condition in hotspots and reception centers have been defined "substandard" in NGOs reports¹⁹⁴, with overcrowded spaces, lack of sanitization, and the impossibility to contact a lawyer and to go in or out of the center among the most concerning issues. Moreover, female staff at hotspots and detention centers is absent most of the times. Civil society actors denounce that Italian reception system still results inadequate to address the vulnerabilities of migrant women as despite the existence of specific guidelines for the identification of vulnerable groups, such as pregnant women, victims of trafficking, and women victims of FGM, sexual, psychological, and physical violence, the personnel at hotspots and at reception does not have sufficient training to

¹⁹²Falzon N., Winjkoop, M. (2017) "Protection in Europe: safe and legal access channels ECRE's vision of Europe's role in the global refugee protection regime: Policy paper 1", European Council on Refugees and Exiles, February 2017, Pp.35-36

¹⁹³Ottavi, D. (2020), "A Reluctant Welcome Exploring the Issues of Pushbacks, Treatment in Detention, and Living Conditions for Displaced People in Italy." Refugee Rights Europe, 9 Jul. 2020.

¹⁹⁴Ibid.

assess situations of vulnerability and to respond to the needs the women affected. Because of this, many women might see their asylum request being rejected and might face new risks of violence following expulsion and repatriation¹⁹⁵. Conditions in Maltese and Greek detention centers are not any better than their Italian counterparts. As no separation between male and female spaces is available due to the overcrowding, single women are at risk of suffering sexual violence and unwanted pregnancies. Access to contraceptive pills and to reproductive health is virtually impossible, especially in Malta where abortion is illegal. NGOs have also reported instances of degrading treatment and excessive use of force against migrants and the part of the Maltese detention center staff¹⁹⁶. ECRE also denounces “the excessive use of prolonged detention” of migrants in Greece¹⁹⁷ where the situation is particularly dire for women. Detention facilities are so overcrowded that the material lack of space has left many to sleep in the open air, in the streets or in makeshift tents at the outskirts of detention centers. Such precarious living conditions leave women exposed to additional forms of GBSV¹⁹⁸.

Many migrant women are involved in dynamics of trafficking, often for the purpose of sexual exploitation. As GRETA reports, Italy is a primary transit and destination country for trafficked women and girls arriving by boat from Libya¹⁹⁹, with IOM reports indicating that the majority of trafficking victims arriving in Italy are young Nigerian women²⁰⁰. The increase in the number of women trafficked can be attributed to the worsening of the human rights situation in Libya due to the ongoing conflicts

¹⁹⁵“Grevio “Rapporto Ombra.” in *D.i.Re Donne in Rete Contro La Violenza*,

<https://www.direcontrolaviolenza.it/pubblicazioni/grevio-rapporto-ombra/> (accessed 1 Sep. 2022)

¹⁹⁶Aida (2020), Country Report Malta, https://asylumineurope.org/wp-content/uploads/2021/05/AIDA-MT_2020update.pdf

¹⁹⁷ECRE, (2021), “Greece: Excessive Use of Detention, Shortcomings in Asylum Procedures, Food Crisis Develops as Assistance to Refugees and Asylum Seekers Halted”, 26 Nov.2021. <https://ecre.org/greece-excessive-use-of-detention-shortcomings-in-asylum-procedures-food-crisis-develops-as-assistance-to-refugees-and-asylum-seekers-halted/> (accessed 1 Sep.2022)

¹⁹⁸Freedman, J. (2016), “Sexual and gender-based violence against refugee women: a hidden aspect of the refugee “crisis”, *Reproductive Health Matters*, 2016, 24:47, 18-26, DOI: 10.1016/j.rhm.2016.05.003

¹⁹⁹GRETA, (2018),” Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy”, Council of Europe, 25 January 2019, P.8

²⁰⁰IOM, (2017), “Human trafficking through the central Mediterranean route: data, stories and information collected by the international organization for migration”, IOM, 2017

<https://reliefweb.int/report/italy/human-trafficking-through-central-mediterranean-route-data-stories-and-information>

tearing up the country. Conflicts and displacements represent a breeding ground for this type of crime²⁰¹. Asylum seeking and migrant women in Libya face economic insecurity and often do not have any choice but to engage in prostitution in order to gain sufficient money to pay smugglers and embark on a boat for Europe. Thus, they easily fall in the hands of slave traders and human traffickers. They might also be coerced into prostitution and fall into prostitution rings on the false offer of a job. Women trafficked for the purpose of sexual exploitation are often subject to various forms of violence such as beatings, psychological violence, exposure to STDs, unwanted pregnancies, dangerous abortions, physical violence, and death²⁰². Concerning the protection of victims of trafficking there are still, in Italy problems in the identification especially at hotspots where accelerated procedures for the assessment of migrants status, the lack of specialized personnel is ill-suited for the disclosure of such complex situations. Women might do not perceive themselves as victims, they might not trust the authorities enough to tell their story or they might refuse to talk about their story fearing reprisals on the part of traffickers against their families²⁰³. In addition, international organizations and NGOs have stressed how the EU rather than adopting a human rights approach to combat trafficking crimes and provide protection to the victims, it frames the problem in terms of criminalization, declaring a “war on smugglers” and putting emphasis on border control. In this way, as Pickering states, “sex trafficking becomes yet another site for enforcement of borders”²⁰⁴, whilst it should be addressed as a refugee protection issue.

3.2 The control of migrant women’s bodies: constraints to mobility

²⁰¹Spini, D. (2019), “Unveiling Violence: Gender and Migration in the Discourse of Right-Wing Populism.” *Women and Migration: Responses in Art and History*, edited by Deborah Willis et al., Cambridge, UK, Open Book Publishers, pp. 135-154, 2019.

²⁰² “MoC: Trafficking of Migrant Women for Forced Prostitution into Greece - Background.” *Hrw.org*, https://www.hrw.org/legacy/backgrounder/eca/greece/greece_memo_back.htm. (Accessed 17 Sept. 2022)

²⁰³ Pasquero, L. and Palladino, R. (a cura di) (2017), “Progetto Samira. Per un’ accoglienza competente e tempestiva di donne e ragazze straniere in situazione di violenza e di tratta in arrivo in Italia, D.i.Re, Donne in rete contro la violenza, ed. by Cuam Univeristy Press, November 2017, Pp.56-60 https://www.direcontrolaviolenza.it/wp-content/uploads/2018/04/Report-Samira_web_ridotto.pdf

²⁰⁴ Pickering, S. (2011), “Women, Borders and Violence. Current Issue in Asylum, Forced Migration, and Trafficking”, Springer, 2011, P.108 <https://link.springer.com/book/10.1007/978-1-4419-0271-9>

Since the beginning of their migration journey women's mobility and immobility are influenced by structural factors, which by creating numerous constraints, hamper them from exerting their agency, intended here as the choice of how to preserve and reproduce one's life²⁰⁵. Said constraints can eventually create sources of vulnerability that add up to the pre-existing ones, giving rise to additional forms of gender-based violence. Feminist scholars have argued how migration and mobility studies have mostly disregarded the role of women and gender in the reproduction of migratory processes, whilst focusing on the young male migrant looking for waged labor as the protagonist of migrations in the globalizing world²⁰⁶. In accordance with the societal expectation seeing men migrating for labor while women stay in the home country to perform child-rearing duties, traditionally in migration studies, the decisional power to migrate has been attributed to men, while women have been depicted as passively following their husbands or as "left-behind" wives²⁰⁷. Such limited understanding of migration processes has caused a lack of consideration of migrant women's contribution to migration and social reproduction and especially the importance of women's mobility in the production of these processes²⁰⁸. Nevertheless, as Schmoll writes, women have long been part of the global migration flows as autonomous individuals, and oftentimes they have outnumbered men in migratory flows²⁰⁹. Rather, a lack of a feminist outlook in migration studies has made the presence of women invisible and therefore the scholar stresses the necessity to "feminize" the approach to migration studies in order to give women back their autonomy as political subjects capable to take control of their bodies and their migratory journey. One of the most serious obstacles to women's mobility are regimes of migration control which seek to immobilize women through the control of

²⁰⁵Rigo, E. (2020), "La Straniera. Migrazioni, asilo, sfruttamento in una prospettiva di genere". Carrocci editore S.p.A. Roma, 2022, p.122

²⁰⁶ See Morokvašić, M. (2014), "Gendering Migration", in *Migracijske i etničke teme* 30 (2014), 3: 355–378; Rigo, E. (2022), "La Straniera. Migrazioni, asilo, sfruttamento in una prospettiva di genere". Carrocci editore S.p.A. Roma, 2022; Archambault, C. S. (2010) "Women Left Behind? Migration, Spousal Separation, and the Autonomy of Rural Women in Ugweno, Tanzania", *The University of Chicago Press, Signs*, Vol. 35, No. 4, Summer 2010.

²⁰⁷ Archambault, C. S. (2010), "Women Left Behind? Migration, Spousal Separation, and the Autonomy of Rural Women in Ugweno, Tanzania", *The University of Chicago Press, Signs*, Vol. 35, No. 4, Summer 2010, pp.919-942. <https://www.jstor.org/stable/10.1086/651042>

²⁰⁸Rigo, E. (2020), "La Straniera. Migrazioni, asilo, sfruttamento in una prospettiva di genere". Carrocci editore S.p.A. Roma, 2022, pp.72-73.

²⁰⁹ Schmoll, C. (2020) "Les Damnées de la mer. Femmes et frontières en Méditerranée", *Éditions La Découverte*, 2020, Pp.191-193

their bodies. Regimes of control of mobility as it is the European border externalization and detention systems, by restricting women's mobility, create sources of vulnerability and reinforce gender-based violence against migrant women. Notwithstanding there are instances where the role of gender does not only play as a disadvantage point, but women are also capable of using gender and the vulnerabilities that it entails, to regain control over their bodies and move forwards on their journey.

Before coming to the dimension of control of migrant women's bodies at the borders and in detention, it is necessary to stress how even though women autonomously decide to migrate, their mobility is constrained by male actors, traffickers and smugglers who control the migratory routes especially during desert crossings or at illegal embarkation points. As Stocks maintains, the control on women's is performed using sexual violence. In addition, the scholar writes that care duties towards children or/and a pregnancy status can also constitute a disadvantage during migration determining vulnerability and immobility but in numerous cases women are also capable of using motherhood to their advantage. Children might be the push factor for women to migrate because it is assumed that asylum requests advanced by pregnant women or women with children are more likely to be accepted; women might start their journey with the prospect of guaranteeing a better life and education for their children, or for security reasons when escaping from conflicts²¹⁰. For instance, as in the case of African women transiting in Morocco, there are case in which women can use children or pregnancy status to intentionally enhance their chances of mobility²¹¹. Given that NGOs or European MS' coastal guards ships are quicker to intervene when pregnant women or women with children are on board of the vessels stranded in the Mediterranean, women are either "encouraged" or pushed to become pregnant because their presence on boats is considered more favorable. However, even in these cases the control of women's mobility and bodies is still at the hands of male authorities, that is the smugglers at waiting posts. Permission for embarkation is usually given to women on the condition

²¹⁰Stock, I. (2011), "Gender and the dynamics of mobility: Reflections on African migrant mothers and" transit migration" in Morocco. *Ethnic and Racial Studies*, Taylor & Francis (Routledge), p.8, 2011, ppff10.1080/01419870.2011.594175ff. fhal-00721226f

²¹¹ Ibid, pp.1-28

of providing sexual favors and those who refuse are forced to wait longer, with the risks that such immobility might expose them to further sexual violence and rape²¹².

Forms of control of migrants' mobility are exerted by the EU's system of selective migration policies. One of the most sophisticated instruments of migrant bodies' control is notably the EURODAC system that through the fingerprinting of each individual, ensures the perpetual trackability of migrant bodies. Instances of mobility control are carried out by both EU institutions and NGOs during the whole duration of the asylum request process. Borders, centers of temporary stay, detention and reception centers, relocation programs, all sum up to create a mechanism that constrains and immobilizes the lives of migrant women and that entraps them in the tangles of bureaucracy and institutional abandonment²¹³. Extended waiting periods for the processing of asylum requests, the imposed permanence in reception centers while waiting for approval or rejection, in the words of Schmoll, in a sense "suspend" the lives of asylum seekers and the forced action of waiting actually is a powerful form of subjugation exercised upon migrants who, due to the lack of control and the uncertainty of their condition, are constricted into a subaltern position²¹⁴. Mobility control practices are deeply embedded in racialized, securitarian, and humanitarian bordering measures that designate right-bearing individuals and non-right bearing ones on the assumption that only the conflict-affected and most vulnerable deserve to be welcomed. This logic is also used to justify exclusionary migration regimes, especially stigmatizing Black African migrants, perceived as "economic migrants" and thus undeserving of protection. Migrant women suffer also from patriarchal and gendered control practices affecting specifically the reproductive dimension of women's bodies. In this sense, Sahraoui maintains that the humanitarian borders exert forms of domination and disempowerment upon pregnant women and new mothers. Immobilization is configured as a form of medical care towards pregnant women and new mothers because medical personnel does not deem

²¹²Tyszler, E. (2019), "From controlling mobilities to control over women's bodies: gendered effects of EU border externalization in Morocco", *Comparative Migration Studies*, 2019, 7:25.

<https://comparativemigrationstudies.springeropen.com/articles/10.1186/s40878-019-0128-4>

²¹³ Pinelli, B. (2013), "Silenzio dello stato, voce delle donne. Abbandono e sofferenza nell'asilo politico e nella sua assenza", *Antropologia – Migrazioni e asilo politico*, 5 luglio 2013. P.93

²¹⁴Schmoll, C. (2020), "Les Damnées de la mer. Femmes et frontières en Méditerranée", *Éditions La Découverte*, 2020, pp.136.

the travel safe enough for them. After giving birth women usually must wait at least 40 days before obtaining the permission to leave. Paradoxically, this immobilization for the sake of their own and children's lives, deprives them of their agency and demonstrates how women are more likely to get stuck at borders, even though being transported on the mainland would be actually safer for them²¹⁵. Grotti et al. in their study of reproductive care on the principal Mediterranean migratory routes, argue that despite the existence of humanitarian norms that establish pregnant women as recipient of free and urgent healthcare no matter of their status, migrant women stuck at borders do not enjoy adequate living standards nor any special consideration for their condition. Not only they suffer physical hardships because of the inadequacy of reception facilities but they also suffer psychological vulnerability due to the lack of control over their situation and the disregard of NGOs medical staff²¹⁶. In this case it can be inferred that border institutions set the conditions for creating the vulnerabilities lamented by pregnant asylum-seeking women who felt immobilized and disempowered by an institutional and legal system that should protect them.

Another dimension of control on women's bodies is carried out through the reception system, which condemns migrants to indefinite wait and imposed immobility. The strict control of freedom that characterizes the life in reception centers, the suffocating bureaucracy that regulates the asylum system, paradoxically contrasts with the abandonment of state institutions and their failure to meet the needs of asylum-seeking women. Whilst the EURODAC fingerprinting represents the control of migrants' mobility within the territory of the EU, the detention and reception system set up in the coastal member states like Italy, realizes the control of mobility within the territory of the member state in order to separate migrants from the societal dimension. In Italy the system of reception for migrants seeking asylum is divided into two types of reception: governmental centers of first reception where migrants undergo the procedures to formally request asylum; centers of second reception, where can have access both those who have requested asylum and those who already are entitled to forms of international

²¹⁵Sahraoui, N. (2020) "Gendering the care/control nexus of the humanitarian border: Women's bodies and gendered control of mobility in a European borderland", *Society and Space* 2020, Vol. 38(5) 905–922, <https://journals.sagepub.com/doi/epub/10.1177/0263775820925487> Pp.910-912

²¹⁶ Grotti, V. et al. (2018), "Shifting vulnerabilities: gender and reproductive care on the migrant trail to Europe", *Comparative Migration Studies*, 6:23, <https://doi.org/10.1186/s40878-018-0089-z> , pp.10-14

protection. This last type of centers called “centers of reception and integration” (in Italian “sistema di accoglienza e integrazione”) or SAI, was designated as the principal reception system for asylum seekers, however due the insufficient implementation of the system and the lack of spaces, the SAI system has been almost replaced by another type of emergency secondary reception system, that is the “centers of emergency reception”, or CAS (in Italian “Centri di accoglienza straordinaria”)²¹⁷. GREVIO and AIDA’s reports on the conditions of asylum seekers hosted in Italian reception centers denounce the inadequacy of the accommodation standards provided by the facilities, which are usually severely overcrowded and also fail to meet safety standards for women. Poor sanitary conditions, lack of separate toilets, of locks on bedroom doors and of an effective system for reporting episodes of violence, concur to expose women in centers to violence²¹⁸. As anticipated before, reception centers are part of the system of migration governance and humanitarian care put in place by the Eu and the most exposed member states to regain control over migrants and asylum seekers’ movements²¹⁹. Said need for control has been explained by Pallister-Wilkins as an aspect of liberal-governments’ humanitarianism made up of practices of care and control, rooted in the perception of people in need of humanitarian aid both as subject to help and as threats to the liberal order²²⁰, to the welfare state and security²²¹. Moreover, Tazzioli maintains that as recipients of humanitarian aid, asylum seekers must and are expected to comply to the norms and orders established by the asylum regimes and

²¹⁷“Come funziona l’accoglienza dei migranti in Italia”, 3 Gennaio 2023, in *Openpolis* <https://www.openpolis.it/parole/come-funziona-laccoglienza-dei-migranti-in-italia/> (Accessed 19 January 2023)

²¹⁸GREVIO’s (Baseline) Evaluation Report, Italy (2019), pp. 83-84; Aida, Country report Italy, 2016 Update (2016), ed. by ECRE, 31 December 2016, pp. 65-66; Freedman, J. & Bahija, J. (2008) “Violence against migrant and refugee women in the Euromed region. Case studies: France, Italy, Egypt & Morocco”, Euro-Mediterranean Human Rights Network, December 2008, p.48.

²¹⁹Tazzioli, M. (2018). “Containment through mobility: migrants’ spatial disobediences and the reshaping of control through the hotspot system”, *JOURNAL OF ETHNIC AND MIGRATION STUDIES* 2018, VOL. 44, NO. 16, 2764–2779 <https://doi.org/10.1080/1369183X.2017.1401514>; Sapanski-Lumley, A. (2022) “It will kill your dreams, your goals, your everything” Humanitarian migrants, governance through containment and the Italian accommodation system”, *Political Geography* 94 (2022) 102573, [“It will kill your dreams, your goals, your everything”—Humanitarian migrants, governance through containment and the Italian accommodation system - ScienceDirect](https://doi.org/10.1016/j.polgeo.2022.102573)

²²⁰Pallister-Wilkins, P. (2020) “Hotspots and the geographies of humanitarianism”, *Society and Space* 2020, Vol. 38(6) 991–1008, DOI: 10.1177/0263775818754884

²²¹Giles, W. & Hyndman, J. (2011), “Waiting for what? The feminization of asylum in protracted situations”, *Gender, Place and Culture*, Vol.18, No. 3, June 2011, 361-379. DOI: 10.1080/0966369X.2011.566347

humanitarian actors²²². Reception centers are therefore liberal states' instruments for the containment and control of the asylum seeking and migrant populations through the enforcement of norms, rules, behaviors, and prison-like regimentation²²³. Asylum-seeking women are especially subjected to forms of control as they represent a threat to the accepted notion of citizenship in the western nation-state, rooted in biopolitics and security theories²²⁴. The control of women's bodies is characterized not only by the imposed immobility due to the slowness of bureaucratic proceedings but as Schmoll asserts, women's mobility is subject to particular regulations that revolve around the control of asylum-seeking women's sexualized bodies²²⁵. In the case of emergency reception centers (CAS) in Italy the scholar highlights that especially for Black African women who are suspected of being trafficking victims, control is justified by the center personnel, as necessary to prevent women from engaging in sexual work or falling back again into sexual exploitation rings²²⁶. This highly racialized perception of Black African women as sexually uninhibited, is used to validate the control of their mobility at the exterior of the centers but also the separation of women and men, even from husbands and the interdiction of receiving male visitors. These regulations represent instances in which the State intervenes in the control of women's intimacy and private sphere while at the same time it denies them access to the public and social sphere. Pinelli, argues that the form of extreme control exerted upon migrants on the one side and institutional abandonment on the other, shows that the state and its institutions is responsible for the creation of vulnerability and violence affecting the life of asylum

²²²Tazzioli, M. (2018). "Containment through mobility: migrants' spatial disobediences and the reshaping of control through the hotspot system", JOURNAL OF ETHNIC AND MIGRATION STUDIES 2018, VOL. 44, NO. 16, pp.2776–2777 <https://doi.org/10.1080/1369183X.2017.1401514>

²²³Sapanski-Lumley, A. (2022) "It will kill your dreams, your goals, your everything" Humanitarian migrants, governance through containment and the Italian accommodation system", Political Geography 94 (2022) 102573, ["It will kill your dreams, your goals, your everything"—Humanitarian migrants, governance through containment and the Italian accommodation system - ScienceDirect](https://doi.org/10.1016/j.polgeo.2022.102573)

²²⁴Conlon, D. (2010) "Ties that bind: governmentality, the state, and asylum in contemporary Ireland", Environment and Planning D: Society and Space 2010, volume 28, 95 -111, Pp.96-97. doi:10.1068/d11507

²²⁵Schmoll, C. (2020), "Les Damnées de la mer. Femmes et frontières en Méditerranée ", Éditions La Découverte, 2020, p147

²²⁶Ibid p.150

seekers²²⁷. The structural violence inflicted by an international and European system of protection aiming more at the control of lives rather than to offering instruments that would grant to asylum seeker to rebuild their lives in autonomy recognizing them as political subjects, marginalizes migrant subjects excluding them from the possibility of integration and equality²²⁸. The unforgiving slowness of bureaucratic and institutional proceedings for the recognition of refugee status or another form of international protection, often leaves women living in a limbo for years, during which the impossibility to access to the labor market and the absence of a stable residence reduces migrants to extremely miserable and precarious living conditions. Due to the insecurity of their situation, migrants are inevitably subject to violence and the abandonment of the State is a form of institutional violence itself²²⁹. This is the consequence of the still widespread lack of recognition of gender-based persecution asylum claims, which depends on the “credibility” of women’s gender-based violence experiences before and during migration. Such need of justifying their claim, shows how asylum authorities’ attitudes towards asylum seekers are still biased by racism and securitarian logics that depict migrants not as bona fide asylum seeker, but as assumed underserving “invaders” endangering the security of European society. The recognition of an asylum claim requires that the claimant experience corresponds to the racist and stereotyped image of the migrant woman from the Global South deeply embedded in the European migration governance discourse. Such narratives produce further stigmatization and victimization.

3.3 The depoliticization, stigmatization and victimization of migrant women’s bodies

In paragraph 3.1 it has been anticipated how the recognition of gender-based asylum claims advanced by migrant women is still linked to a humanitarian narrative that victimizes, stereotypes and depoliticize their experiences as individual and autonomous subjects. The racialized and sexist representation of women frames them as victims of

²²⁷Pinelli, B. (2013), “Silenzio dello Stato, voce delle donne. Abbandono e sofferenza nell’asilo politico e nella sua assenza”, *Antropologia – Migrazioni e asilo politico*, 5 Luglio 2013, P.93

²²⁸Ibid, Pp-65-108

²²⁹Ibid

their own backwards cultures, while depicting white Europeans as their “saviors”. For instance, Sub-Saharan Black African women are stereotypically represented as victims of trafficking and sexual exploitation, with aid workers describing in a degrading way their sexuality as irresponsible and uncontrolled²³⁰. The link with trafficking entails that black African women are passive subjects dominated by the Black African males, who on the contrary are perceived as aggressively masculine and dangerous²³¹. Said stereotypical gender roles are encapsulated in the European xenophobic and nationalistic rhetoric towards migration, where migrants especially the young male economic migrants from Africa, are portrayed as sexually violent, uncontrollable, aggressive, and as potential rapists posing a threat to the security of European women, and thus a threat to the nation-state, as women are considered the biological reproducers of the nation²³². In the case of Muslim women their identity is summed up uniquely in relation to a racialized view of their culture and especially of Islam. In humanitarian rhetoric Muslim women, with their headscarves and hijabs as symbols of their supposed oppression, embody the perfect harmless victim, passive and subordinated. This assumption is reflected by the attitude with which migrant Muslim women are treated by humanitarian care staff and in the ways they are expected to behave. Freedman found out that refugee Syrian women wearing hijabs are treated as less educated and inferior to the Muslim man or the European woman whilst in relation to childbearing, Syrian women are perceived as subordinate and not in control of their reproductive choices. Moreover, as subordinated subjects more reliant on humanitarian aid it is expected that they show more gratitude than men towards asylum institutions²³³. As Spini affirms, the

²³⁰Schmoll, C. (2020) “Les Damnées de la mer. Femmes et frontières en Méditerranée“, Éditions La Découverte, 2020, pp.147

²³¹Spini, D. (2019), “Unveiling Violence: Gender and Migration in the Discourse of Right-Wing Populism.” *Women and Migration: Responses in Art and History*, edited by Deborah Willis et al., Cambridge, UK, Open Book Publishers, 2019, pp.135-154

²³²Yuval-Davis, N. (1996), “Women and the biological reproduction of “the nation”, *Women's Studies International Forum*, Vol. 19, Nos. 1/2, 6 Elsevier Science Ltd, 1996, pp.17-24.

²³³Freedman, Jane. (2019) “The uses and abuses of «vulnerability» in EU asylum and refugee protection: Protecting women or reducing autonomy?”, *Papeles del CEIC*, vol. 2019/1, papel 204, 1-15. <http://dx.doi.org/10.1387/pceic.19525> pp.9-10

erasure of Muslim women's identity and personal histories, is a form of symbolic violence that deprives women of their agency and autonomy²³⁴.

Humanitarian policies and gendered rationalities in migration governance that institutionalize stereotyped, racialized, and gendered perceptions of migrants and asylum seekers, can work against the agency of migrant women, creating depoliticized subjects and social marginalization. In her work Malkki asserts that humanitarianism and humanitarian intervention universalizing the political, historical, and cultural differences that characterize refugees' individual experiences, dehistoricize and depoliticize them²³⁵.

This process of victimization disempowers and silences refugees who stop being people and become helpless victims. In this sense, Malkki argues that the image of women and children epitomizes the helplessness that defines that "refugeeness"²³⁶ that establishes who is worth of receiving humanitarian aid and the granting of asylum and who is not. In her analysis Pinelli catches on the concept of silence but referring to the silence of migrant women as "subjects deprived of their voices" by political and social structures that entrap them in a dimension of sufferance and marginalization where States are responsible of abandoning asylum-seeking women in a situation of poverty and misery that gives way to vulnerability and violence²³⁷. Depoliticizing the sufferance of migrant women also serves to shift the responsibility of such sufferance from European bordering practices and exclusionary politics of asylum.

²³⁴Spini, D. (2019), "Unveiling Violence: Gender and Migration in the Discourse of Right-Wing Populism." *Women and Migration: Responses in Art and History*, edited by Deborah Willis et al., Cambridge, UK, Open Book Publishers, p.144

²³⁵Malkki, Liisa H. (1996), "Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization" *Cultural Anthropology*, Vol. 11, No. 3, Aug.1996, pp. 377-404. Available at [Speechless Emissaries: Refugees, Humanitarianism, and Dehistoricization on JSTOR](#)

²³⁶ Ibid, p.388

²³⁷ Pinelli, B. (2013), "Silenzio dello stato, voce delle donne. Abbandono e sofferenza nell'asilo politico e nella sua assenza", *Antropologia – Migrazioni e asilo politico*, 5 Luglio 2013, Pp-65-108

4. International, European, and Italian legal instruments addressing GBSV

This final chapter will provide an overview of the relevant legal and political international framework for the protection of migrant, asylum seeking, and refugee women's rights from a gender-sensitive approach. The objective of such review is to argue and highlight a discrepancy between the development of a gender based and human rights-sensitive approach to asylum in the EU and the simultaneous adoption of repressive policies which in practice hamper the respect and granting of those rights that the EU proclaims to defend.

4.1 Relevant UN instruments addressing GBVS.

Violence against women englobes forms of violence that specifically and disproportionately affect women such as sexual harassment, rape, and domestic violence and it constitute a violation of the human rights, dignity, and equality of a woman. A distinction can be made between direct and indirect forms of gender-based violence. The former includes physical, psychological, sexual, and economic violence in which fall the crimes discussed in the previous paragraphs, that is rape, trafficking in human beings, sexual exploitation, harassment, threats, and mocking. Whereas indirect violence against women can be defined as “a type of structural violence, characterized by norms, attitudes and stereotypes around gender in general and violence against women in particular”²³⁸. This means that structural violence is inflicted upon women by social structures and institutions which prevent women from enjoying their human rights and normalize violence against women. Indeed, the motives of gender-based

²³⁸Lombardi, Lia. “Violence Against Refugee and Migrant Women. The Reproduction of Gender Discrimination and Inequality”, FONDAZIONE ISMU INIZIATIVE E STUDI SULLA MULTIETNICITÀ, May 2017, p.2.

violence against women can be ascribed to the historically unequal position of women in society and to the subordination of women by men in the patriarchal society and a mean of maintaining that position of supremacy within society. In this view rape, which is one of the most widespread forms of violence inflicted upon women, can be intended as an imposition of males' power and domination upon women²³⁹.

Notwithstanding the absence of a comprehensive legal instrument specifically addressing the protection of migrant women affected by a dual vulnerability due to their gender and to their status, there are still numerous international instruments that provide forms of protection. These are instruments that concern the protection of women, migrants, and workers. When addressing international protection, it must be firstly recalled the 1951 Refugee Convention and the 1967 Protocol Relating to the Status of Refugees. Though as the majority of human rights treaties, the Refugee Convention was thought and conceived from a male perspective²⁴⁰ and thus was initially blind to the questions of gender and women's security, there have been significant evolutions in the recognition of gender-related forms of persecution specifically affecting migrant women. In fact, at the time when the Convention was signed, references to "sex" or "gender" were not included whilst forms of gender-related persecution such as FGM, honor killings, forced marriage and others, were not considered forms of persecution. This is because gender-based violence mostly happens in the context of family or community, which is considered the private sphere as opposed to the public sphere. Therefore, States have been historically reluctant to intervene and consequently women have always struggled more than men to get the recognition of refugee status. This explains why it is still hard for women to obtain a refugee status on the grounds of gender-related persecution. Nevertheless, during the 1990s and the 2000s UNHCR established new guidelines for a gender-sensitive interpretation of the Refugee Convention. Among these the 2002 Guidelines on Gender Related Persecution and the 2002 Guidelines on International protection concerning Membership of a particular social group were decisive for the recognition of gender-based forms of violence as

²³⁹ Giddens, Anthony, "Fondamenti di Sociologia", Il Mulino, 2014 pp.214-216; Anderson, Margaret L. & Taylor, Howard F. "Sociology. The Essentials", Wadsworth, Cengage Learning, 2011 pp.282-283

²⁴⁰ Freedman, J, (2020), "Gender and Population Movements", in De Jonge Oudraat, C. and Brown, E.M. (eds.), *The Gender and Security Agenda. Strategies for the 21st Century*, Routledge Studies in Gender and Security, Routledge, pp.113-134.

persecution and for the interpretation of women as “members of a particular social group” on the grounds of gender, within the meaning of the 1951 Convention, and so entitled to refugee status. These advancements were possible thanks to a change in the legal interpretation of acts of violence perpetrated in the private sphere as forms of “persecution” if State authorities do not provide any protection to the victim. However, as Freedman argues, the recognition of refugee status on the grounds of gender-related persecution is still applied by judges only in individual cases, since they fear that a generalization would open the way to huge influxes of asylum-seeking women.²⁴¹

Another fundamental human rights instrument is the 1979 CEDAW, which is the first legal comprehensive international instrument formulated from a female perspective that recognizes the intersectional nature of the discriminations affecting women and the need to combat them. Although CEDAW is a soft law instrument, it engages the signatory State parties to actively work in order to change norms, the social and cultural constructions that discriminate women in every aspect of their economic, political, social and cultural life and to promote equality between men and women. To attain this objective the Convention provides a set of programmatic norms that States are called to apply. In addition, through the CEDAW Committee, the Convention monitors the implementation of said norms by the State parties. One of the most significant aspects of the Convention is its broad definition of gender-based violence and the acknowledgment that it can occur in both the private and public dimension²⁴². In this regard, the 1992 General Recommendation No.19 on Violence Against Women and 2017 General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, clearly state that violence against women is gender based and that it is the product of historically unequal power relations between men and women and that “*gender-based violence against women is one of the fundamental social, political and economic means by which the subordinate position of*

²⁴¹Freedman, J, (2020), “Gender and Population Movements”, in De Jonge Oudraat, C. and Brown, E.M. (eds.), *The Gender and Security Agenda. Strategies for the 21st Century*, Routledge Studies in Gender and Security, Routledge, Pp.123-124

²⁴² Degani, P. (2001), “Nazioni Unite e “genere”: il sistema di protezione internazionale dei diritti umani delle donne”, Centro diritti umani - Università di Padova, N.1, pp. 1-74. Available at: <https://unipd-centrodirittiumani.it/it/pubblicazioni/Nazioni-Unite-e-genere-il-sistema-di-protezione-internazionale-dei-diritti-umani-delle-donne-12001/297>

women with respect to men and their stereotyped roles are perpetuated”²⁴³. The General Recommendation No.35 has been inspired by the 2011 Istanbul Convention²⁴⁴, which will be addressed in the next paragraphs. Another important advancement of the Convention is General Recommendation No. 30 on women in conflict prevention, conflict, and post-conflict situations. The CEDAW Convention remarks that women and girls in conflict and post-conflict situations are more vulnerable to gender-based violence having discriminatory character, among which sexual assault and trafficking. However, in defining “vulnerability” the Committee refers to a universal definition of the term and implies that women are more vulnerable because of their gender, but it seems to recognize the existence of different gradations of vulnerability²⁴⁵. Concerning States’ obligations toward the phenomenon of trafficking, the Convention calls on States parties to persecute and punish trafficking and sexual exploitation, including act perpetrated by border police, humanitarian actors and immigration officials and to adopt a gender- sensitive and human rights-based approach to migration²⁴⁶. Moreover, the text of the Convention stresses that detention should respect the gender-sensitive needs of women and girls and that it should take place only when unavoidable²⁴⁷, but as seen in the chapter 3 of this dissertation, European Member States still fail to implement these norms in their asylum systems.

CEDAW’s recommendation No.30 also integrates and supports the Women, Peace and Security Agenda (WPS) resolutions for the protection of women in conflict and post conflict situations. The WPS agenda to the UN Security Council was set in 2000 with Resolution 1325, which brought to worldwide attention the necessity of integrating women’s rights to in the global peace and security discourse. The WPS agenda calls upon States to take into account the role that gender inequalities, gender norms and

²⁴³ Ibid p.43

²⁴⁴“CEDAW, *General Recommendation No.35 on gender-based violence against women*”, Council of Europe, 17 November 2017.

<https://www.coe.int/en/web/istanbul-convention/-/cedaw-launches-general-recommendation-35-on-gender-based-violence-against-women> (Accessed 17 September 2022)

²⁴⁵Flegar, V. and Iedema, E. (2019), “The Use of the ‘Vulnerability’ Label by the Committee on the Elimination of Discrimination Against Women: Protecting or Stigmatizing Women and Girls in the Forced Migration Context?”, Brill Open Law, 2019, pp.1-41. doi:10.1163/23527072-20191021

²⁴⁶CEDAW,(2013), *General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations*, 1 November 2013, CEDAW/C/GC/30

<https://www.refworld.org/docid/5268d2064.html> (Accessed 17 Sep. 2022)

²⁴⁷Ibid

gender relations have in conflict situations and most importantly to empower women-led civil society actors and to increase their participation in conflict preventive diplomacy, international negotiations, mediation, humanitarian assistance, peace negotiations at all levels²⁴⁸. Resolution 1888 of 2009²⁴⁹ and Resolution 2106 of 2013²⁵⁰ both focus on the issue of sexual violence against women in situation of armed conflicts and reiterates that States and the UN Security Council must engage more in monitoring and combating it while also reaffirming the obligations of member states parties to the CEDAW. On a final note, as mentioned in the introduction to this dissertation, the UN adopted an intersectional approach in the interpretation of discrimination and violence against women, which in General Recommendation No.28 is defined as follows:

“Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men.”²⁵¹

Despite this innovation, Degani and De Stefani argue that such definition of intersectionality fails to take into account the subjectivity, agency and identity of the individual affected by discriminatory social patterns that have impact differently on each subject. Instead, they propose an interpretation of intersectional a methodological

²⁴⁸Swaine, A. and O’Rourke, C. (2015), “Guidebook on CEDAW general recommendation no. 30 and the UN Security Council resolutions on women, peace and security”, UN Women, 2015, Pp.28. <https://www.unwomen.org/en/digitallibrary/publications/2015/8/guidebookcedawgeneralrecommendation30-womenpeacesecurity>

²⁴⁹UN Security Council, *Security Council resolution 1888 (2009) [on acts of sexual violence against civilians in armed conflicts]*, 30 September 2009, S/RES/1888 (2009), <https://www.refworld.org/docid/4ac9aa152.html> (accessed 22 September 2022)

²⁵⁰ UN Security Council, *Security Council resolution 2106 (2013) [on sexual violence in armed conflict]*, 24 June 2013, S/RES/2106(2013), <https://www.refworld.org/docid/51d6b5e64.html> (accessed 22 September 2022)

²⁵¹UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, 16 December 2010, CEDAW/C/GC/28, p.4. <https://digitallibrary.un.org/record/711350>

and theoretical tool that should be used to meet the needs, agency, expectations, and rights of the most marginalized women²⁵².

Significative for the case of migrant women in Libya seen in chapter 2 is the CEDAW general recommendation No.38 on trafficking in women and girls in the context of global migration. The legal instrument frames trafficking in women and girls as a form of gender-based violence “rooted in sex-based and gender-based discrimination, gender-based structural inequality and the feminization of poverty”. In the second chapter it has been argued how migrant women who are smuggled along migratory paths in Libya are at higher risks of being trafficked and fall into the sex work exploitation cycle.

A third instrument of importance to women migrant is the is the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Crime (the Protocol). As General recommendation No.30, the Protocol declares that States must combat and prevent the phenomenon and persecute it as a criminal offence. Although not being a human rights instrument, the Protocol it is still relevant to women rights because it establishes States’ obligations that indirectly advocate for the rights of women²⁵³.

In 1995 in the context of the United Nations Fourth World Conference on Women, the UN adopted the Beijing Declaration and Platform of Action, a progressive blueprint for the advancement of women’s rights and combating discrimination. The Declaration contains Articles of interest that include migrant and refugee women. Special attention goes to the strategic objectives grouped under strategic area D. This section of the text defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether

²⁵²Degani, P. and De Stefani, P. (2020), “Addressing Migrant Women’s Intersecting Vulnerabilities. Refugee Protection, Anti-trafficking and Anti-violence Referral Patterns in Italy”, *Peace Human Rights Governance*, 4(1), March 2020. Pp.113-152. DOI: 10.14658/pupj-phrg-2020-1-5

²⁵³Redpath, J. (2006) “Human rights of migrant women and international protection mechanisms”, female migrants: bridging the gaps throughout the life cycle, Selected Papers of the UNFPA-IOM Expert Group Meeting, 2-3 May 2006, pp. 85-92. <https://www.aidsdatahub.org/sites/default/files/resource/female-migrants-bridging-gaps-throughout-life-cycle.pdf#page=94n>

occurring in public or private life”. In addition, it states that violence against women hampers the achievement of equality, development and peace and all States should be concerned to combat it. Most importantly, point 116 of strategic area D underlines that migrant, asylum seeking, and refugee women, women in institutions or detention, women living in poverty, in situations of conflict and repatriated women, are particularly vulnerable to violence. Continuing, point 118 recognizes violence against women as the product of the historically unequal relations of power between men and women; point 122 underlines that trafficking in women and girls for sexual exploitation purposes is an issue of international concern. The Declaration entails that in order to combat violence against women, governments, and an array of other actors among which international organizations, NGOs, the media, and the third sector, should adopt a gender mainstreaming and a gender-based approach in their policies.

In 2016 the UN adopted the New York Declaration for Refugees and Migrants and the negotiation that followed brought to the development of a Global Compact for Safe, Orderly and Regular Migration, which represent the effort of the international community to establish a comprehensive approach to migration and enhance cooperation at the global level. The Global Compact is the first international legally nonbinding instrument that tackles all dimensions of international migration²⁵⁴. It establishes that States must review the current policies that might indirectly increase the vulnerability of migrants; it understands the vulnerable situation of migrant women victim of gender-based sexual violence and of trafficking victims and calls on the need to develop gender-based migration policy responses.

In 2005 the Council of Europe issued a binding regional legal instrument for the protection of trafficking victims, entered into force on 1 February 2008, the Council of Europe Convention on Action against Trafficking in Human Beings. The intention of the Council is to strengthen the minimum standards for protection set by previous legal instruments and to establish a monitoring mechanism for the implementation of the obligations envisaged by the Convention, the Group of Experts on Action against Trafficking in Human Beings (GRETA).

²⁵⁴Global Compact on Migration: Recommendations for a Compact with a Rights Based Approach, January 2018
<https://www.refworld.org/docid/5b2a56504.html> (Accessed 23 September 2022)

4.1.1 *The Council of Europe Istanbul Convention*

A European regional legal instrument that has much potential to develop a more effective and comprehensive international protection of migrant, asylum seeking and refugee women from gender-based violence is the Council of Europe 2011 Istanbul Convention. The Convention has universal aspiration, and its ratification is also open to non-Member States of the Council of Europe and to States who have not taken part in the negotiation process. In 2017 the EU signed its accession to the Convention, even though the ratification process on part on the MS has been slow and at present only 12 EU member States have ratified the Convention and are now legally bound to its obligations. In its Explanatory Report the Convention understands gender-based violence as a manifestation of the historically unequal power relations between men and women, the domination and discrimination of the former on the latter. It also recognizes gender-based violence against women as a form of structural violence exerted both in public and private dimension in order to keep women, subordinate to men and to prevent their advancement²⁵⁵. According to De Vido the Convention could play a key role in providing protection to women victims of crimes committed during conflict situations which do not qualify as crimes against humanity or war crimes, and for refugees in emergency and post-conflict situations.²⁵⁶ The Articles significant in this sense are Art. 59 on Residence status, Art. 60 on gender-based asylum claims and Art.61 on non-refoulement. Art. 60 is especially important, because it urges state parties to recognize gender-based violence against women as a form of persecution under the 1951 Convention, and as a form of serious harm qualifying victims for subsidiary protection. The Convention therefore establishes a link between the 1951 Convention and the provision of subsidiary protection provided in the European Parliament and Council's Directive 2011/95 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted. The Istanbul Convention also set a monitoring mechanism for the

²⁵⁵Council of Europe Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul 11 May 2011, par. 43-44
<https://rm.coe.int/1680a48903>

²⁵⁶De Vido, Sara. (2016) "*Donne, violenza e diritto internazionale. La Convenzione di Istanbul del Consiglio d'Europa del 2011*". Mimesis, 2016, p.208

implementation of its obligations, the Group of Experts on Action against Women and Domestic Violence (GREVIO), which produces evaluation reports of the countries that have ratified this instrument. At the policy level, the Council of Europe adopted the Gender Equality Strategy 2018-2023, which set as a new strategic objective protecting the rights of migrant, refugee and asylum-seeking women and girls. The document acknowledges that migrant, asylum-seeking and refugee women are exposed and subjected to gender-based violence in their country of origin, during the journey to Europe and after reception in the destination countries. It stresses the need to provide gender sensitive protection measures to victims of trafficking and sexual violence. In developing the tools that would enable the implementation of adequate measure for the treatment of women victims of violence it also refers to the norms contained in the Istanbul Convention²⁵⁷.

On the same line, the 2011 Istanbul Convention addressed in the previous section, represents a step forward in its definition of GBSV. Moving from art. 3 which defines gender as “the socially constructed roles, behaviors, activities and attributes that a given society considers appropriate for women and men” the Convention, proceeds for the first time, to define gender-based violence against women as a form of violence “directed against a woman because she is a woman or that affects women disproportionately”. The recognition of trafficking as a gender-based form of violence along with art. 60 “Gender-based asylum claims” and “non-refoulement”, specifically protecting asylum seeking and refugee women²⁵⁸ could be taken as the legal basis for the reception of refugee status by women victims of gender-related persecution²⁵⁹. According to the United Nations High Commissioner for Human Rights, violence against women can take place in one of the following three dimensions: family,

²⁵⁷Council of Europe, Gender Equality Strategy 2018-2023, pp.29 <https://rm.coe.int/ge-strategy-2018-2023/1680791246> (accessed August 2022)

²⁵⁸De Vido, S. (2016), “Donne, violenza e diritto internazionale. La Convenzione di Istanbul del Consiglio d’Europa del 2011”. Mimesis, 2016, p.212.

²⁵⁹ European Network of Migrant Women, (2018), “Eu Migration and Asylum Pact through the eyes of a woman”, 12 Dec. 2018. <http://www.migrantwomennetwork.org/wp-content/uploads/MIGRATION-PACT-THROUGH-THE-EYES-OF-A-WOMAN.pdf>

community, and State²⁶⁰. In the specific case examined in this study, violence against migrant women in detention centers, which can take the form of rape, forced prostitution and trafficking, takes place both in the community and the State dimension, since violence is carried out by state officials in places of detention, is tolerated by State authorities and is perpetrated by those authorities under the direct control of the State. However there still exist important limitations in the text of the Convention. One is the absence of enforcement provisions of articles 60 and 61 so that the lack of accountability on the part of signatory states makes the hard the implementation of the Convention²⁶¹. Another point worth stressing is the lack of references to prostitution as a form of violence against women, on which the Convention intentionally does not take a specific stance, given the diverging position on the matter of feminist and sex workers groups; lastly, it also does not make a direct mention of violence against women in prisons and detention sites²⁶². It derives that the Convention would not be relevant in the case of migrant and refugee women forced into prostitution by DCIM guards in detention centers and prisons.

4.2 Protection Instruments at the EU level

In 1999, following the meeting in Tampere, the EU set the Common European Asylum System for the protection of refugees. It was in this framework that the European migrant protection system started to work towards the recognition of gender-based violence as a form of persecution valid for claiming refugee status. The first Directive²⁶³ in this direction is the 2004 Qualification Directive which intends gender-specific forms of violence as acts of persecution under the 1951 Refugee Convention and the 1967 Protocol Relating to the Status of Refugees. With this legislation, the Union

²⁶⁰UN General Assembly, *Declaration on the Elimination of Violence against Women*, 20 December 1993, A/RES/48/104, <https://www.refworld.org/docid/3b00f25d2c.html> (Accessed 4 February 2023)

²⁶¹Ibid

²⁶²De Vido, S.(2016),“Donne, violenza e diritto internazionale. La Convenzione di Istanbul del Consiglio d’Europa del 2011”. Mimesis, 2016, p.212.

²⁶³Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [2004] OJ L 304,

introduced a form of subsidiary protection that can be requested by individuals who do not qualify as refugees under the 1951 Convention but who still, would be at serious risk if returned to their country of origin. Thus, it calls upon States to respect the principle of non-refoulement. The 2011 Recast Directive refers to the concept of vulnerability and asserts the need to take into account the notion of vulnerability when considering the situation of among others, victims of human trafficking, rape or other serious forms of psychological, physical and sexual violence, and pregnant women. As ECRE points out, the lack of territory restrictions in the application of the directive's provisions makes its Art. 24 particularly relevant for the protection of refugees outside the territories of the Union. Indeed, the Article entails that MS issue a residence permit valid for 3 years as soon as the status of refugee is granted to the claimant²⁶⁴. The extra territorial application of the Directive can also trigger another instrument that contains special procedures guarantees for refugees, the European Charter of Fundamental Rights. The Charter promotes the respect of human rights within the territories of the Union, but it can be applied to protect asylum seekers from refoulment once they come under the jurisdiction of a MS. Relevant in this sense are the provisions contained in Art. 18 (right to asylum), Art. 19 (protection in the event of removal, expulsion, or extradition), and Art.47 (right to effective remedy). Another significant Directive is 2013 Recast Directive laying down standards for the reception of applicants for international protection.²⁶⁵ Its text contains several provisions for the safeguard of vulnerable people who must be granted "special protection procedures" which must safeguard the applicants 'physical and psychological health. Notwithstanding this interest in the specific needs of vulnerable persons, the Directive does not exclude the possibility of detention, even for minors as a measure of last resort. An interesting instrument for the protection of conflict affected asylum seekers is the 2001 Temporary Protection Directive²⁶⁶ that was adopted following the War in Yugoslavia. Even though

²⁶⁴Falzon, N. and Wijnkoop, M. (2017), "Protection in Europe: safe and legal access channels ECRE's vision of Europe's role in the global refugee protection regime: policy paper 1", European Council of Refugees and Exiles, February 2017, pp. 13-14.

<https://ecre.org/wp-content/uploads/2017/04/Policy-Papers-01.pdf>

²⁶⁵ Ibid, p. 24

²⁶⁶Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. [2001] *OJ L 212*

the Directive could have been activated during and after the 2015 migrant crisis to ensure a faster and more effective protection of Syrians, Somalis and Afghans asylum seekers fleeing from the conflicts ravaging their respective countries, it was only triggered in 2022 following the Russian invasion of Ukraine which triggered an unprecedented influx of refugees in the territories of the Union. The Directive not only provides asylum seekers with a residence permit from 1 to 3 years and the access to asylum procedure, but also guarantees the access to employment and most importantly to the freedom of movement within and outside the territories of the Union. Such guarantee is clearly striking if confronted with the control of mobility and movement that the rest of asylum seekers and migrants are subjected to once they are registered in the EURODAC and under the Dublin III systems.

In 2011 the Council and European Parliament issued the Directive 2011/36 on combating trafficking in human beings and protecting its victims. In the text of the Directive, it is expressed the objective of protecting trafficked persons from further victimization, however it does not specify how protection is going to be granted and most of all, there is no mention of gender and women's vulnerability to the trafficking phenomenon. Indeed, the directive generally addresses all trafficking victims, including men whilst the document stresses several times the necessity to protect children and to provide special assistance to trafficked children or human trafficking victims' children²⁶⁷. Building on the legal and policy framework set by the Trafficking Directive, in 2021 the EU adopted a new EU Strategy on Combatting Trafficking in Human Beings (2021-2025). The strategy aims to establish a more comprehensive and effective framework for preventing and combatting trafficking and to empower trafficking victims. This time the document emphasizes the necessity to focus both on women and children, taking account of the intersecting vulnerabilities that make them more subject to being trafficked. Point 5 of the Communication on the EU strategy on Combatting Trafficking in Human Beings, highlights the gender dimension of the issue providing

²⁶⁷Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, [2011] OJ L 101, p.1-11
<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32011L0036>

that 72% of all trafficking victims and 92% of trafficked victims for the purpose of sexual exploitation are women and girls²⁶⁸.

In the aftermath of the 2015 migrant crisis, the European Parliament adopted a series of resolutions that acknowledge the situation of vulnerability of migrant, asylum seeking and refugee women in Europe. Particularly, on 8 March 2016 the European Parliament adopted the resolution on the situation of women refugees and asylum seekers in the EU, providing recommendations to national governments for the integration of refugee and asylum-seeking women in the labor market, in education, political participation and access to basic services. The European Parliament emphasizes also in this document. that migrant women and girls are subject to discrimination and are vulnerable to specific forms of gender-based violence in their country of origin, in transit and in destination countries, arguing that there are still shortcomings in the treatment of vulnerable subjects either in the CEAS, which lacks a consistent gender-sensitive protection system, either in the Member States' national asylum systems²⁶⁹.

More recently the EU adopted a New Action Plan on Gender Equality and Women's Empowerment in External Relations 2020-2025 (GAP III), that building on the 1995 Beijing Declaration, aims at accelerating the process of empowerment of women and girls in all societies and at achieving gender equality. The Plan pays attention to the intersecting forms of discrimination affecting migrant women and girls, and it aims at combating structural causes of gender-inequality and gender-based discrimination. As previous international instruments, the Action Plan paves the ground for increasing the participation of women in peace and security building²⁷⁰.

²⁶⁸European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions empty on the EU Strategy on Combatting Trafficking in Human Beings, 14 April 2021, COM (2021) 171 final <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021DC0171>

²⁶⁹Honeyball, M. (2016), "Report on the on the situation of women refugees and asylum seekers in the EU", (2015/2325(INI)), Committee on Women's Rights and Gender Equality, European Parliament, 10 February 2016, A8-0024/2016, p.1-22. <https://ec.europa.eu/migrant-integration/sites/default/files/2016-03/EuropeanParliamentsituationofwomenrefugeesandasylumseekersintheEU.pdf>

²⁷⁰"Gender Action Plan – putting women and girls' rights at the heart of the global recovery for a gender-equal world", European Commission, 25 Nov. 2020. [file:///C:/Users/Espos/Downloads/Gender Action Plan putting women and girls rights at the heart of the global recovery for a gender-equal world%20\(1\).pdf](file:///C:/Users/Espos/Downloads/Gender%20Action%20Plan%20putting%20women%20and%20girls%20rights%20at%20the%20heart%20of%20the%20global%20recovery%20for%20a%20gender-equal%20world%20(1).pdf)

Despite the great normative and legal evolution of the EU system of protection, the CEAS still presents serious implementation gaps and the strategy of border closures, repressive policies against migrants and a general tendency toward migration securitization carried out by the EU in the wake of the 2015 migrant crisis, obstacles the effective applicability of human rights oriented and gender-sensitive responses to the needs of migrant women victims of GBSV. There are two main points of concern that hamper the practical applicability of protection measures: one problem is the difficulty to access to protection caused by the legal and physical barriers that result from the European border externalization system that pushes many asylum seekers to use illegal and dangerous migration routes; the second is the lack of safe and legal pathways for migrants. The EU has shown a lack of engagement on the creation of refugee specific channels or the issuing of humanitarian visas. The only viable legal path for refugees is the resettlement pathway operated by the UNHCR, which involves the relocation of refugees from an asylum country to another country. However, States can decide the amount of refugee quotas that can be resettled in their territory if they decide to adhere to the relocation program at all. States can eventually reject resettlement requests. At EU level this system is similar to the relocation program set by the Dublin III, that as notably been unsuccessful because of the little willingness of MB (especially the Visegrád group), to share migrant quotas. In addition, the Schengen Visa regime is known for being unfair to refugees and asylum seekers since the requirements and criteria requested in the application (passport photo size, identification documents, travel medical insurance policy, and others), have gradually become increasingly restrictive making access to asylum in Europe more challenging²⁷¹. Legal immigration paths are very limited and mainly favor highly skilled workers migration. The only applicable legal path for asylum seekers and refugees would be the family reunification path, which nonetheless would require for one family member to legally reside in the territory of one MS.

4.3 Protection Instruments in Italy

²⁷¹Falzon, N. & Wijnkoop, M. (2017), “Protection in Europe: safe and legal access channels ECRE’s vision of Europe’s role in the global refugee protection regime: policy paper 1”, European Council of Refugees and Exiles, February 2017, pp. 13-14. <https://ecre.org/wp-content/uploads/2017/04/Policy-Papers-01.pdf>

The Italian asylum system for the protection of asylum seekers and refugees does not provide for an ad hoc instrument but rather it builds on the 1998 Consolidated Act of Provisions concerning immigration and the condition of third country nationals (Testo Unico sull'Immigrazione), and over the years it has incorporated in its legislation the EU instruments for international protection and asylum regrouped under the CEAS. Italy has transposed in its national legislation the EU Directives concerning the protection of vulnerable subjects and of subjects with special reception needs. Starting with the 2004 Qualification Directive and the 2011 recast Qualification Directive, transposed into Decree Law 251/2007, and amended by Legislative Decree 18/2014; the 2013 Asylum Procedure and Reception Directives incorporated by the Law Decree 142/2015 or Reception Decree.

Concerning the definition of vulnerability in the Italian international protection framework, the LD 25/2008 or Procedure Decree follows the definition adopted in the EU legislation of group vulnerability, which includes “minors, unaccompanied minors, pregnant women, single parents with minor children, victims of trafficking, disabled, elderly people, persons affected by serious illness or mental disorders; persons for whom has been proved they have experienced torture, rape or other serious forms of psychological, physical or sexual violence; victims of genital mutilation”²⁷². In this group definition some categories of asylum seekers such as victims of trafficking can either request refugee status or subsidiary protection status.

In what concerns the notion of gender-based violence, Italy has ratified the CEDAW in 1985, therefore it abides to the definition of gender-based violence provided by the Convention, as “violence that is directed against a woman because she is a woman or that affects women disproportionately”. Through the ratification Italy is obligated to respect and to enforce the legal obligations contained in the Convention as well as to put into practice a series of measures to end discrimination and violence against women and to promote equality between men and women. As previously said in paragraph 4, Italy

²⁷²Article 2(1) (h-bis) LD 28 January 2008, n.25 “Attuazione della direttiva 2005/85/CE recante norme minime per le procedure applicate negli Stati membri ai fini del riconoscimento e della revoca dello status di rifugiato”, <https://www.gazzettaufficiale.it/eli/id/2008/02/16/008G0044/sg>

ratified the 2011 Convention on Preventing and Combating Violence against Women and Domestic Violence (“Istanbul Convention”) in 2012 and is now bound to its provisions and to be the object of periodic evaluations about the state of implementation of the Convention carried out by the GREVIO. As ratifying party to the 1951 Refugee Convention and the 1967 Additional Protocol, and as a member of the UN, Italy has also gradually integrated in its asylum and reception system the gender sensitive approach to international protection established by the 2002 UNHCR Guidelines.

Concerning the recognition of GBSV in the normative framework of international protection in the Italian system, the D.lgs 251/2007 states in Art.19, that evaluating authorities must take into consideration the situation of vulnerable individuals, such as minors, the elderly, single parents, pregnant women and people who have suffered torture, rape or other serious forms of physical, psychological, or sexual violence. Art. 7 specifically addresses sexual violence and gender, establishing that violent acts directed against a specific sex can amount to acts of persecution under the Geneva Convention; Art.8 in identifying acts of persecution directed against a particular social group, includes gender as innate and unchangeable characteristic apt at defining the membership of an individual to a social group. The national and international legislation concerning the recognition of victims of gender-based violence has been widely acknowledged by the Court of Cassation, also thanks to the ratification of the 2011 Istanbul Convention which has established a link between gender-based violence and international protection in the form of refugee status or subsidiary protection. The Court has found that domestic violence can amount to inhuman and degrading treatment and can thus be considered as grounds for the granting of subsidiary protection as provided under art. 14 of D.lgs 251/2007²⁷³. D.lgs 142/2015 implementing the EU Directive 2013/33/UE laying down standards for the reception of applicants for international protection, introduces new reception measures for vulnerable individuals in need of special reception needs, including victims of torture, rape, or other forms of serious

²⁷³Commissione territoriale per il riconoscimento della protezione internazionale di Ancona, “La violenza contro le donne nella protezione internazionale”, Ministero dell’Interno, 21 Giugno 2021.
<https://www.interno.gov.it/it/notizie/violenza-contro-donne-nella-protezione-internazionale-guida-cura-commissione-territoriale-ancona>

psychological, physical, and sexual violence including trafficking and FGM²⁷⁴. The identification of vulnerabilities during the examination of the asylum request is carried out by the Italian Ministry of Health, according to its guidelines for the assistance, treatment and rehabilitation of refugee and subsidiary protection status holders who have suffered from torture, rape, or other forms of psychological, physical, or sexual violence²⁷⁵. Whilst the identification of trafficking victims can take place at any stage of the examination procedure and it is performed by specialized third sector operators (NGOs, lawyers, reception center staff)²⁷⁶. Vulnerable asylum seekers are entitled to special procedures in the context of reception, detention, returns or expulsion, including support during the interview such as social workers, interpreters, medical personnel, psychologists. In addition, vulnerable asylum seekers can access to a prioritized procedure and have their interview scheduled as soon as possible by the TCs (Procedure Decree, Art. 13(2)). Other special norms are contained in the Procedure Decree (25/2008) envisage that TCs receive a specific training to recognize asylum seekers' vulnerabilities. Despite of these provisions there are still plenty of implementation gaps in assessing vulnerability, and visible vulnerabilities such as signs of torture or a pregnancy are usually the only identified at disembarkation²⁷⁷. Regarding detention, there really are not any safeguards except in Art.7 of D.lgs 251/2015 which states that should not be detained asylum seekers whose health conditions are incompatible with detention. As far as expulsions, art.19 of the Consolidated Act on Immigration provides that should not be expelled people that would risk serious harm or persecution in their home country, minors, and pregnant women. Pregnant women are granted additional forms of protection, consisting of the prioritized procedure, entitlement to free health care and expulsion is banned up to 6 months after giving birth²⁷⁸. Art. 17 of D.lgs

²⁷⁴Art.17(1) DL 18/2015

²⁷⁵Ministero della Salute, Linee guida per la programmazione degli interventi di assistenza e riabilitazione nonché per il trattamento dei disturbi psichici dei titolari dello status di rifugiato e dello status di protezione sussidiaria che hanno subito torture, stupri o altre forme gravi di violenza psicologica, fisica o sessuale, Roma, 22 marzo 2017.

https://www.salute.gov.it/imgs/C_17_pubblicazioni_2599_allegato.pdf

²⁷⁶AIDA, (2017), "Country Report: Italy (Update 2017)", pp.114.

https://asylumineurope.org/wp-content/uploads/2017/04/report-download_aida_it_2016update.pdf

²⁷⁷Marchetti, S., Palumbo, L., (2021), "Vulnerability in the Asylum and Protection System in Italy: Legal and Policy Framework and Implementing Practices". 2021. VULNER Research Report1

²⁷⁸ Ibid p.48

142/2015 mentions specific support measures for victims of trafficking to which is dedicated an ad hoc program as established in Art. 18(3 bis) of D.lgs 25/1998 whilst for victims of torture, rape or other forms of serious violence are dedicated the measures stated in Art. 27 (1bis) of D.lgs 19/2007. The following section is going to overview the special protection measures dedicated to these particular groups, which are relevant to the case of migrant, asylum seeking and refugee women.

4.3.1. Special Protection Measures and reception in the Italian asylum system

In Italy the asylum procedure is implemented by the Territorial Commissions (TC) for international protection and through a network of decentralized reception structures scattered on the Italian territory, such as ‘hot-spots’ and first line and second-line hosting structures. Depending on the decision of the TCs, if the claim is considered founded, migrants are entitled to one of the following types of protection: the refugee status (asylum), the subsidiary protection, or a special protection after the abrogation of humanitarian protection by the Security Decree in 2018²⁷⁹, whose consequences will be discussed at the end of this paragraph. In addition, there are other types of special permits that do not grant international protection but provide migrants with a residency permit for “special cases” among which the residence permit for victims of trafficking for the purposes of sexual exploitation is particularly relevant in the context of mixed migration flows interesting Italy as well as for the Libyan case study of GBSV against migrant and asylum seeking women tackled in chapter 2.

Trafficking in human beings is a complex phenomenon that in the context of mixed migration flows, which have been increasingly affecting Italy since 2011²⁸⁰, has been gradually overlapping with the *smuggling in migrants*. The triggering cause of this phenomenon can be ascribed to the shrinking of legal migration paths to Europe which have forced migrants to rely on smugglers. Criminal organizations engaged in human trafficking, profiting from the situation, have started to use migrants smuggling paths to

²⁷⁹D.l. 4 ottobre 2018, n. 113 Disposizioni urgenti in materia di protezione internazionale e immigrazione, sicurezza pubblica, nonché misure per la funzionalità del Ministero dell'interno e l'organizzazione e il funzionamento dell'Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata. (18G00140) (GU 04 ottobre 2018)

²⁸⁰Nambiar, D., and Scarabello, S. (2021), “Women Victim of Trafficking Seeking Asylum in Italy an Ethnographic Perspective on the Regularisation Processes”, in *Stuck and Exploited Refugees and Asylum Seekers in Italy Between Exclusion, Discrimination and Struggles*, edited by Della Puppa, F and Sandò, G., 27 October 2021, p.2 DOI 10.30687/978-88-6969-532-2/004

traffic their victims, who consequently arrive in Europe among asylum seekers and other migrants²⁸¹. Trafficking for the purpose of sexual exploitation is not the only form of trafficking but is the one that affects women the most. According to Eurostat data, in 2020 two-thirds of registered victims of trafficking were women and girls (64%) and half of them (55%) were victims of sexual exploitation²⁸². GRETA reports show that Italy as country on the forefront of Mediterranean migration flows, is one of the principal trafficking destinations and that the majority of trafficking victims are Nigerian nationals²⁸³. IOM documented that when questioned, 71% of interviewees showed at least one indicator of trafficking declaring of having been exploited, trafficked, held captive, and having suffered other exploitative practices while in Libya²⁸⁴. This entails that trafficked women could be among international protection seekers and migrants who apply for asylum in Italy. The complexity of this issue, which challenges the traditional distinction between smuggling and trafficking as established by international conventions²⁸⁵, between the rigid categories of forced and voluntary migration, refugee, and economic migrant²⁸⁶, has called for a connection and collaboration of the international protection system and the anti-trafficking system²⁸⁷. The experiences of women interlapping such rigid categorizations require the adoption of a multi-factors perspective on vulnerabilities on the part of the asylum and anti-

²⁸¹Nicodemi, F. (2015), “La tutela delle vittime della tratta di persone in Italia oggi. Riflessioni sulla capacità di risposta del sistema italiano alle vittime del trafficking rispetto alle evoluzioni del fenomeno, in *Diritto, immigrazione e cittadinanza XVII, 2-2015*, p.83

²⁸²Eurostat, (2022) “Human trafficking in the EU”, 13 December 2022.

<https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20221213-2> (Accessed 8 February 2023)

²⁸³GRETA, (2016), “Report on Italy under Rule 7 of the Rules of Procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings”, 30 January 2017, pp. 23, <https://rm.coe.int/16806edf35> (Accessed 8 February 2023)

²⁸⁴IOM, (2016), 2 Analysis: Flow Monitoring Surveys the Human Trafficking and Other Exploitative Practices Prevalence Indication Survey, (Reporting Period : June 2016 - September 2016), pp.11 <https://reliefweb.int/report/world/analysis-flow-monitoring-surveys-human-trafficking-and-other-exploitative-practices-0> (Accessed 8 February 2023)

²⁸⁵See Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, <https://www.refworld.org/docid/4720706c0.html>; Council of Europe Convention on Action against Trafficking in Human Beings (Warsaw Convention), <https://rm.coe.int/168008371d>

²⁸⁶Baldoni, E., Caldarozzi, A., Giovannetti, M., Minicucci, C. (2014), “Vittime di tratta e richiedenti / titolari protezione internazionale. Rapporto di ricerca”, No Tratta, Osservatorio nazionale sulla tratta tra i rifugiati e richiedenti asilo: formazione, strumenti e campagna di sensibilizzazione, 30 Giugno 2014, p75

²⁸⁷Nicodemi, F. (2015), “La tutela delle vittime della tratta di persone in Italia oggi. Riflessioni sulla capacità di risposta del sistema italiano alle vittime del trafficking rispetto alle evoluzioni del fenomeno, in *Diritto, immigrazione e cittadinanza XVII, 2-2015*, pp.85-86

trafficking institutions and policymakers²⁸⁸; it fosters the rethinking of these systems from a gender-based approach which considers intersectionality and structural vulnerabilities in order to provide an adequate response through the coordination of the international protection and anti-trafficking programs²⁸⁹.

The anti-trafficking system was set in Italy even before the European standards were established²⁹⁰, through Art.18 of D.Lgs 286/1998, known as Consolidated Act on Immigration. In addition, in the Italian legal framework, trafficking and other forms of serious exploitation are recognized as a criminal offence punishable under arts. 600-601 of the Penal Code. Article 18 of D.Lgs 286/1998 entitles trafficking survivors to the right of a residence permit “for social protection” now denominated for “special cases” which was initially predisposed for the protection of individuals victim of serious forms of exploitation and victims of crimes punishable under arts.600-601 of the Penal Code. The residence permit can be issued both in cases where the claimant accepts to follow the “judicial path”, that is when the survivor reports the crime for prosecution and decides to collaborate with the judicial authorities; and in cases where the victim decides to follow the “social path”, which does not require any collaboration or contact with the judicial authorities. Both paths foresee aid programs for trafficking victims, implemented by public and²⁹¹ private actors²⁹², which offer protection and social reintegration. However, it is still a widespread practice of the Questura (the organ in charge of issuing the permit) to deny the grant of the special residence permit under art.18 when the trafficking or any experience of violence and exploitation took place *en*

²⁸⁸Marchetti, S., Palumbo, L. (2021), “VULNER: Policy Brief. Italy”, September 2021, pp.5.

https://www.vulner.eu/78597/VULNER_PB_Italy_20211.pdf

²⁸⁹Nambiar, D., Scarabello, S. (2021), “Women Victim of Trafficking Seeking Asylum in Italy. An Ethnographic Perspective on the Regularization Processes”, *Stuck and Exploited. Refugees and Asylum Seekers in Italy Between Exclusion, Discrimination and Struggles*, ed. By Della Puppa, F. and Sanò, G., 27 October 2021, p.95. DOI 10.30687/978-88-6969-532-2/004; Nicodemi, F. (2015), “La tutela delle vittime della tratta di persone in Italia oggi. Riflessioni sulla capacità di risposta del sistema italiano alle vittime del trafficking rispetto alle evoluzioni del fenomeno”, in *Diritto, immigrazione e cittadinanza XVII*, 2-2015, pp.85-86

²⁹⁰Degani, P. and De Stefani, P. (2020) “Addressing Migrant Women’s Intersecting Vulnerabilities. Refugee Protection, Anti-trafficking and Anti-violence Referral Patterns in Italy”, *Peace Human Rights Governance*, 4(1), March 2020, p.126 DOI: 10.14658/pupj-phrg-2020-1-5

²⁹¹Marchetti, S., Palumbo, L. (2021) “Vulnerability in the Asylum and Protection System in Italy: Legal and Policy Framework and Implementing Practices”. 2021. VULNER Research Report1

²⁹²Art.18, D.Lgs. 25/1998

route, considering the trafficking experience as concluded in the past²⁹³. This practice is problematic especially for the case of women who survived violence and trafficking in Libya, given that according to the statistics seen in the previous sections of this paragraph and the case study seen in chapter 2, migrant and asylum-seeking women can fall victims of criminal organizations, human traffickers, and corrupted members of the military. These individuals subject them to physical violence, captivity and force them into connection houses, prostitution rings and ultimately traffic them to Europe²⁹⁴.

GRETA also highlights that the issuing of a residence permit through the “social path” is still rarely applied and the waiting periods to obtain it are far often too long²⁹⁵. As recent research²⁹⁶ argues, this tendency has in practice made the issuing of a residence permit under Art.18 dependent upon the victim’s cooperation with the judicial authorities.

Italy has also integrated into its legislation ad hoc international and EU instruments against trafficking in human beings, notably the 2000 Palermo Protocol and the 2011 EU Trafficking Directive. The latter is currently, one of the most advanced instruments for the protection of trafficking victims for it acknowledges the “gender specificities” and the condition of vulnerability affecting individuals, in this study women, coerced into trafficking²⁹⁷. This directive has been transposed by the Italian anti-trafficking system of protection through the adoption of D.Lgs 24 of 04/03/2014 (Anti-Trafficking Reform Act), which recognizes the necessity to set a direct collaboration between the anti-trafficking and asylum systems. Art. 10 of D.Lgs 24/2014 also establishes a collaboration between administrations engaged in the protection of trafficking victims

²⁹³Santoro., E. “Asilo e tratta: il tango delle protezioni”, in *Questione di Giustizia*.

https://www.questionegiustizia.it/rivista/articolo/asilo-e-tratta-il-tango-delle-protezioni_540.php

(Accessed 08 February 2023)

²⁹⁴Baldoni, E., Caldarozzi, A., Giovannetti, M., Minicucci, C. (2014), “Vittime di tratta e richiedenti / titolari protezione internazionale. Rapporto di ricerca”, No Tratta, Osservatorio nazionale sulla tratta tra i rifugiati e richiedenti asilo: formazione, strumenti e campagna di sensibilizzazione, 30 Giugno 2014, p.101.

²⁹⁵GRETA, (2019) “*Report Concerning the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy SECOND EVALUATION ROUND*”, 25 Jan. 2019. P.49 <https://rm.coe.int/greta-2018-28-fgr-ita/168091f627>

²⁹⁶Marchetti, S., Palumbo, L. (2021), “Vulnerability in the Asylum and Protection System in Italy: Legal and Policy Framework and Implementing Practices”. 2021. VULNER Research Report1

²⁹⁷Nicodemi, F. (2015), “La tutela delle vittime della tratta di persone in Italia oggi. Riflessioni sulla capacità di risposta del sistema italiano alle vittime del trafficking rispetto alle evoluzioni del fenomeno, in *Diritto, immigrazione e cittadinanza XVII, 2-2015*, pp p.93

and international protection organs. These provisions entail that trafficking victims can benefit from the protection measures foreseen by the anti-trafficking path without giving up an international protection request that can grant them refugee status. In addition, art.10 set up an organ in charge of managing the coordination between the anti-trafficking and the asylum system administration, the National Mechanism of Referral (Mnr). Nevertheless, Italian Association for Development (AIDOS) maintains that there are problems in the integration of these two systems and in the recognition of international protection during the anti-trafficking path procedure carried out by the Territorial Commissions (TC), whilst it has found more acceptance before national courts²⁹⁸. It is still widespread practice on the part of TCs to immediately refer to anti-trafficking organs individuals who show distinctive traits of trafficking in order to present a request of a residence permit under art.18 rather than considering the same traits as grounds for claiming international protection.²⁹⁹

4.3.2. The UNHCR Guidelines for the identification of trafficking for the Territorial Commissions

The first direct contact between the anti-trafficking system and the international protection system was established by the *UNCHR Guidelines for the International Protection: Application of Art. 1A(2) of the 1951 Convention and its 1967 Additional Protocol*. In an effort to contrast the phenomenon, UNHCR established through these guidelines the granting of international protection status under the 1951 Refugee Convention in presence of specific circumstances: if the victim fled their country of origin upon well-founded fear of being trafficked; if the victim has been trafficked in their country and fled abroad to seek international protection; if the victim who has been trafficked abroad, seeks international protection in the state they currently live in³⁰⁰. In

²⁹⁸AIDOS, (2019), “Violenza sessuale e di genere. L’applicazione della normativa europea nei confronti di richiedenti asilo e rifugiate/i nel contesto italiano”, 2019, p.27.

https://aidos.it/wp-content/uploads/2020/03/Guida-IT_WEB_211219-1.pdf

²⁹⁹Baldoni, E., Caldarozzi, A., Giovannetti, M., Minicucci, C. (2014), “Vittime di tratta e richiedenti / titolari protezione internazionale. Rapporto di ricerca”, No Tratta, Osservatorio nazionale sulla tratta tra i rifugiati e richiedenti asilo: formazione, strumenti e campagna di sensibilizzazione, 30 Giugno 2014, p.115

³⁰⁰Nicodemi, F. (2019), “Protecting victims of human trafficking among mixed migration flows and the link with international protections”, *Gender and International Law*, Vol.22 Issue2,2019, March 2020, P.105 <https://gjil.scholasticahq.com/article/12343-protecting-victims-of-human-trafficking-among-mixed-migration-flows-and-the-link-with-international-protections>

addition, under the guidelines women can be considered as individuals belonging to a *particular social group*, therefore women victims of trafficking can obtain the refugee status on the grounds of persecution for belonging to a particular social group under the Geneva Convention³⁰¹. To answer to the serious human rights situation affecting migrant women in Libya and the growing problem of human trafficking from Libya to Italy, UNHCR developed a new set of Guidelines for Territorial Commissions for the identification of trafficking victims. The Guidelines were published in collaboration with the Italian National Commission for Asylum and were updated in 2021. The main innovative points of the guidelines' updated version concern the role of TC in recognizing international protection to trafficking victims, the referral mechanism, and trafficking indicators for the identification of victims³⁰². The TC plays an important part in establishing a connection between the asylum system and the anti-trafficking institutions in Italy. Their coordination function is carried out through the implementation of the *referral mechanism*, which in the context of the procedures for the recognition of international protection, allows the Territorial Commissions to assess the presence of one or more traffic indicators and to refer the individual in question to the specialized NGOs and institutions present on the territory, in order to ensure the correct identification and consequent assistance to the victim of trafficking³⁰³. The organizations to which the TCs make their referral are those in charge of administering the program of emersion, assistance and social integration under art. 18 D.Lgs 286/98. More notably the new guidelines provide that the TC, upon assessing the presence of all

³⁰¹Santoro, E., "Asilo e tratta: il tango delle protezioni", in *Questione di Giustizia*, https://www.questionegiustizia.it/rivista/articolo/asilo-e-tratta-il-tango-delle-protezioni_540.php (accessed 10 February 2023)

³⁰²Nambiar, D., Scarabello, S. (2021), "Women Victim of Trafficking Seeking Asylum in Italy. An Ethnographic Perspective on the Regularization Processes", *Stuck and Exploited. Refugees and Asylum Seekers in Italy Between Exclusion, Discrimination and Struggles*, ed. By Della Puppa, F. and Sanò, G., 27 October 2021, p.97. DOI 10.30687/978-88-6969-532-2/004; Giammarinaro, M.G., and Nicodemi, F. (2021), "L'edizione aggiornata delle linee guida su "L'identificazione delle vittime di tratta tra i richiedenti protezione internazionale e procedure di referral", in *Questione di Giustizia*, 18 Maggio 2021, <https://www.questionegiustizia.it/articolo/l-edizione-aggiornata-delle-linee-guida-su-l-identificazione-delle-vittime-di-tratta-tra-i-richiedenti-protezione-internazionale-e-procedure-di-referral> (Accessed 10 February 2023)

³⁰³UNHCR, (2020), "L'identificazione delle vittime di tratta tra i richiedenti protezione internazionale e procedure di referral", *Linee Guida per le Commissioni Territoriali per il riconoscimento della protezione internazionale*, 2020, pp.119. <https://www.unhcr.org/it/wp-content/uploads/sites/97/2021/01/Linee-Guida-per-le-Commissioni-Territoriali-identificazione-vittime-di-tratta.pdf> (Accessed 8 February 2023)

necessary elements to start procedures for the granting of international protection, can nevertheless start the referral procedure to the anti-traffic authorities without interrupting the international protection procedure³⁰⁴. By adopting this stance, the TC can favor the early identification of trafficking survivors among asylum seeking individuals and promptly referring them to specialized authorities whilst recognizing their right to international protection³⁰⁵. Even though this practice has had a positive impact allowing to increase the identification of trafficking survivors, there are still problems in consolidating the practice as TC still tend to directly activate the referral mechanism to the anti-trafficking system or the Questura rather than considering the recognition of international protection³⁰⁶. In order to ensure the correct identification of trafficking survivors, TCs must follow the “trafficking indicator” provided by the Guidelines, bearing in mind that such indicators are not exhaustive and the absence of one or more does not preclude the possibility of identifying others *traits* that could conceal a trafficking experience. More evident traits, such as age, body language, visible signs of violence can be identified during preliminary screening procedures which can be activated at the arrival in Italy by any official or specialized figure who comes into contact with the individual. Others trafficking indicators however could be harder to detect and emerge only during an interview in presence of specialized personnel during the international protection procedure or when the person has already been moved to a detention or reception facility. Often, especially in the case of Nigerian women victims of trafficking, the survivor might not identify themselves as a victim of trafficking for a variety of reasons, among which a sense of gratitude towards the person who “helped” them leave the country, a sense of shame, a lack of conscience over their exploitation experience, or trauma³⁰⁷. The lack of a self-identification on the part of the

³⁰⁴Giammarinaro, M.G, Nicodemi, F (2021), “L’edizione aggiornata delle linee guida su “L’identificazione delle vittime di tratta tra i richiedenti protezione internazionale e procedure di referral”, in *Questione di Giustizia*, 18 Maggio 2021, <https://www.questionegiustizia.it/articolo/l-edizione-aggiornata-delle-linee-guida-su-l-identificazione-delle-vittime-di-tratta-tra-i-richiedenti-protezione-internazionale-e-procedure-di-referral> (Accessed 8 February 2023)

³⁰⁵ Ibid

³⁰⁶Santoro, E, “Asilo e tratta: il tango delle protezioni”, in *Questione di Giustizia*, https://www.questionegiustizia.it/rivista/articolo/asilo-e-tratta-il-tango-delle-protezioni_540.php (accessed 10 February 2023)

³⁰⁷Nicodemi, F. (2019), “Protecting victims of human trafficking among mixed migration flows and the link with international protections”, *Gender and International Law*, Vol.22 Issue2,2019, March 2020,

survivor might negatively impact the recognition of international protection during the asylum procedure with the result of a denial of asylum. Nevertheless, Nicodemi highlights that thanks to the new Guidelines it can be noticed an evolution stemming from the decisions of Italian Courts, in the recognition of international protection to survivors of human trafficking when the trafficking indicators emerge during court hearings, following a refusal of the asylum claim³⁰⁸.

Moving to the special group of GBV victims, consequently to the ratification of the Istanbul Convention, the Law 119/2013 introduced Art.18-bis of the Consolidated Act on Immigration entitling victims to a residence permit issued for humanitarian reasons and was adopted to implement art.59 of the Istanbul Convention. Humanitarian protection has been later abrogated in 2018 with the Security Decree 04/10/2018 n.113 until the reintroduction of a similar form of protection, dubbed “special protection” dedicated to specific groups, with the 2020 Lamorgese Decree.

The most concerning changes brought about by the Law concern above all the abrogation of humanitarian protection, the SPRAR reform, and the extension of detention periods at hotspots and at CPRs. Starting from the first point, the Security Decree 04/10/2018 n.113 has abrogated the protection for humanitarian reasons and has modified the Consolidated Act on Immigration replacing humanitarian protection with a series of “special cases” to which is granted a temporary form of “special protection”, which are: victims of labor exploitation (Art 22.12-quarter,-sexies); victims of gender-based violence, victims of FGM (Art.18-bis); victims of trafficking for the purpose of sexual exploitation (Art.18) seriously ill individuals unable to receive treatment in their country of origin (Art.19 d-bis); people fleeing from a natural disaster (Art-20- bis); a permit awarded to people who have performed acts of valor (Art.42-bis). The limited

P.110 <https://gjid.scholasticahq.com/article/12343-protecting-victims-of-human-trafficking-among-mixed-migration-flows-and-the-link-with-international-protections>; Nambiar, D., Scarabello, S. (2021), “Women Victim of Trafficking Seeking Asylum in Italy. An Ethnographic Perspective on the Regularization Processes”, *Stuck and Exploited. Refugees and Asylum Seekers in Italy Between Exclusion, Discrimination and Struggles*, ed. By Della Puppa, F. and Sanò, G., 27 October 2021, p.100-105. DOI 10.30687/978-88-6969-532-2/004; Giammarinaro, M.G., Nicodemi, F. (2021) “Aggiornate le linee guida per l’identificazione delle vittime di tratta”, in ASGI, 19 May 2021. <https://www.asgi.it/notizie/aggiornate-le-linee-guida-identificazione-delle-vittime-di-tratta/#easy-footnote-bottom-3-44362> (Accessed 8 February 2023)

³⁰⁸ Nicodemi, F. (2022), “L’emersione tardiva della vicenda di tratta nel procedimento giurisdizionale per il riconoscimento della protezione internazionale”, in *Questione di Giustizia*, 5 May 2022, P.6. <https://www.questionegiustizia.it/articolo/emersione-tardiva-tratta> (Accessed 7 February 2023)

scope of application of special protection entails that after the reform, those who do not fall under one of these categories will lose their status and become irregulars. Observers at ASGI³⁰⁹ and ISPI³¹⁰ have estimated that the reform was going to increase the number of irregular migrants with the consequence of creating more situations of vulnerability. The permit provided is valid for one year and can be converted into a work or study permit. GREVIO reports that the issuing of a residence permit for *special protection* (ex-humanitarian protection) is dependent upon the recognition by the prosecuting authorities of a condition of a real danger for the safety of the claimant³¹¹. This is detrimental to women victims of violence in the cases where the woman's residence permit is dependent upon their marital status with the author of the violence. The risk of losing the residence permit as consequence of the separation from the violent husband or partner and the fear of falling into irregularity, can deter victims from reporting their situations to authorities³¹². In addition, the difficulties detected in the recognition of subtler forms of violence has resulted in very few concessions of residence permits on the grounds of gender-based violence, demonstrating that the system still present serious implementation flaws and that it is not really known to law enforcement authorities and to women victims of violence³¹³.

Migrant women result particularly affected since the previous humanitarian protection covered all violations of the rights enshrined in the Italian Constitution and in International Conventions and was granted to those who, though not meeting the requirements for refugee status, were still entitled to a residence permit as vulnerable individuals³¹⁴. The Security Decree 21/10/2020 n.130 partially reintroduced the

³⁰⁹ASGI, (2018), "Il decreto immigrazione e le implicazioni per la salute", 29 ottobre 2018
<https://www.asgi.it/asilo-e-protezione-internazionale/immigrazione-decreto-sicurezza-salute/>(Accessed August 2022)

³¹⁰Villa, M. (2018), "I nuovi irregolari in Italia", ISPI, 18 dicembre 2018. Published online at:
<https://www.ispionline.it/it/pubblicazione/i-nuovi-irregolari-italia-21812> (Accessed August 2022)

³¹¹GREVIO, (2019)18, "Baseline Evaluation Report Italy", 13 January 2020, p.79
<https://rm.coe.int/grevio-report-italy-first-baseline-evaluation/168099724e>

³¹²Pigato, C. (2022), "Il permesso di soggiorno per vittime di violenza domestica: applicazione e criticità alla luce della Convenzione di Istanbul", in Donne straniere diritti umani questioni di genere Riflessioni su legislazione e prassi", eds. Brambilla A., Degani P., Paggi. M, Zorzella N., 18 Ottobre 2022, pp.218-219.
<https://www.asgi.it/wp-content/uploads/2022/10/Volume-Completo-Donne-straniere-del-17-10-22-CON-COPERTINA.pdf>

³¹³Ibid

³¹⁴AIDOS, (2019), "Violenza sessuale e di genere. L'applicazione della normativa europea nei confronti di richiedenti asilo e rifugiate/i nel contesto italiano", 2019, p.28

humanitarian protection abrogated by Security Decree 04/10/2018 n.113, introducing the *special protection*, which is linked to the principle of non-refoulement and expulsion if there are well-founded grounds that the individual would be exposed to the risk of torture or inhuman and degrading treatment; to the respect of private and family life; the right to health and Italy's international obligations³¹⁵. Though positive for the respect of migrant and asylum-seeking women's rights, ASGI argues that art.1 para.2 is concerning because it leaves way to the Libyan Coast Guard to exercise the same authority as the Italian Ministry of Interior, in denying rescue ships the access and transit in territorial waters³¹⁶. Clearly this article not only appears in contradiction with European principles for the respect of human rights, but materially endanger the lives of migrants and asylum seekers who cross the Mediterranean.

Changes were also made in the reception system, denominated System of reception and integration (SAI, formerly SPRAR). The SAI essentially marks a return to a decentralized reception system (SPRAR), giving priority access to foreign unaccompanied minors, asylum seekers and international protection holders whilst the Security Decree 04/10/2018 n.113 had limited the access to system to foreign unaccompanied minors and to subsidiary protection or refugee status holders.

However positive for being more inclusive, the reform brought about by Lamorgese Decree presents some criticalities: first the categories of potential beneficiaries of the SAI system have been extended to also includes those who hold a residency permit for "special protection", but the numbers of places available in SAI structures is still very limited³¹⁷. Therefore, international protection holders and people who have presented a formal request for international protection are forced to stay for extended periods of time in CAS centers. CAS centers are notably overcrowded and do not respect the reception requirements that should be provided to vulnerable people, having deep

https://aidos.it/wp-content/uploads/2020/03/Guida-IT_WEB_211219-1.pdf

³¹⁵De Chiara, C. (2020), "Il diritto di asilo e il d.l 130/2020: progressi e occasioni mancate", ASGI, 9 December 2020. <https://www.asgi.it/notizie/asilo-dl-130-2020-progressi-e-occasioni-mancate/> (Accessed 11 February 2023)

³¹⁶ Ibid

³¹⁷Giovanetti, M., Somai, A. (2021) "Rapporto annuale SIPROIMI/SAI 2020 Sistema di protezione per titolari di protezione internazionale e per minori stranieri non accompagnati, Sistema di accoglienza e integrazione Atlante Siproimi, SAI 2020, p.13.

https://www.retesai.it/wp-content/uploads/2021/06/Rapporto-SIPROIMI_SAI_leggero.pdf

repercussions on the mental and physical health of women survivors of GBSV or other forms of GBV³¹⁸. Damaging is also the extension of periods of detention in CPRs up to seven months where women cannot access to associations and NGOs providing legal assistance for sexual abuse survivors. Living conditions in CPRs affected by the lack of financing and by severe overcrowding, are degrading to human rights. During the detention period women are unlawfully deprived of their freedom, and their life ends up in a limbo and their situation of uncertainty and precarity exposes them to further vulnerability and violence.

Notwithstanding the improvements of the Italian protection system, the lack of a national unitarian system of reception, protection and integration creates many operational challenges that leave way to implementation gaps negatively affecting the rights of asylum seeking and refugee women. Paragraph 3 has shown how the structural vulnerabilities generated by the social context, institutions and asylum system create precariousness and uncertainty in the lives of migrant and asylum-seeking women, exposing them to dynamics of abuse and social exclusion.

European border control practices and their focus on combating migration rather than protecting migrants' human rights are responsible in the first place, for endangering the lives of asylum seeking and migrant women. In Italy the migrant question has been often used strategically as political battleground by political parties in order to gain consensus and advance their political projects, with very little regard for the rights of asylum seekers and migrants.

³¹⁸AIDOS, (2019), “Violenza sessuale e di genere. L’applicazione della normativa europea nei confronti di richiedenti asilo e rifugiate/i nel contesto italiano”, 2019, p.28
https://aidos.it/wp-content/uploads/2020/03/Guida-IT_WEB_211219-1.pdf

Conclusions

Considering the research question “is migration dangerous to women” this dissertation has taken as object of analysis the Mediterranean migration setting, focusing on the EU migration governance strategy and asylum framework from the aftermath of the so-called 2015 “migrant crisis” to the most recent developments. Adopting as reading keys the concepts of intersectionality, vulnerability and gender, the study has examined the condition of migrant, asylum seeking and refugee women before, during and after their journey to Europe, assessing to what extent are these notions included in the EU international protection system and how it answers to GBSV asylum claims. This study has explored the motives that push women to migrate and how the decision to migrate is often determined by the necessity to escape violence that can either be conflict-related or produced by gendered social norms that exercise forms of dominance over women. However, it has been seen that migration can either represent a solution to violence but can also become a source of it. Migrant and asylum-seeking women face specific challenges created by structural factors of oppression determined by the historically unequal power relations between men and women. These structural factors pose gender-specific constraints to women’s migratory journey beginning in their home country. Economic dependency and childbearing duties might hamper women from taking the decision to migrate. When migrating their journey is characterized by violence at every stage and male actors, be it smugglers, traffickers, other migrants, border authorities, detention centers guards, may exercise forms of violence especially in the form of gender-based sexual violence, with rape being systematic and institutionalized especially at border crossings and in detention in transit countries.

The selective nature of the European migration and asylum regime, together with policies of border externalization contribute to create further forms of vulnerability that affect asylum seeking women and expose them to the risk of violence. Despite an apparatus of European norms and values that extols the protection of human rights at

the core of the EU itself, the Union has adopted a logic of containment and rejection of migration flows centered on policies of border externalization, delegating responsibility for managing applications for asylum to third countries, as in the case of Libya. The militarization of European borders, the criminalization of migrants and the Union's emphasis more on countering human trafficking rather than on migrants' human rights-based policies has exacerbated the danger and risks involved in the journey and paradoxically led migrants to rely more heavily on traffickers to attempt the crossing to Europe. The intent of the Union to control the free movement of the masses from the "Global South," the effort to categorize migrants and refugees to distinguish between those who "deserve" and those who "do not deserve" to be welcomed, demonstrates how the borders of the Western world are becoming increasingly militarized, selective, racialized, gendered, and deadly. Humanitarian narratives that victimize, stereotype, and depoliticize migrant women's experiences as individual and autonomous subjects whilst equally racialized and sexist representations frame them as victims of their own backwards cultures and white Europeans as their "saviors". Humanitarianism has been increasingly used by the EU to justify migration control practices that exercise forms of government control on human being and to manipulate the language of human rights in order to justify securitization in refugee discourse in such a way to legitimize the push-back of those who are not considered enough vulnerable to be saved. Paradoxically, securitization and border closing tendencies in European migration policies occur at the same time as the increasing recognition of gender and vulnerability in the international protection normative framework.

A more gender-sensitive interpretation of the 1951 Refugee Convention, the 2002 UNHCR Guidelines on Gender Related Persecution, the 1975 CEDAW and especially the 2011 Istanbul Convention have acknowledged that vulnerability and gender expose women to specific forms of violence affecting women both in the private and public sphere. However, as it has been pointed out in this study, the great potential that these instruments have to protect migrant and asylum-seeking women victims of GBSV is obstructed by humanitarian and securitization policies that criminalize migration. In addition, the obstacles to the recognition of international protection claims on the grounds of gender-based violence are also related to the problem of credibility. At the

European level, the New Pact on Migration and Asylum, has been criticized for its failure to recognize the intersectional dimension of migrant women's vulnerability, while the provisions regarding vulnerabilities appear too vague and limited in their implementation. The new border screening procedures that are supposed to ensure the identification of the vulnerabilities in question, are not effectively implemented, on the contrary accelerated procedures at borders and hotspots are inadequate for the identification of the less visible forms of violence. An excessive focus on highly "racialized" forms of violence, such as female genital mutilation or sex trafficking, which only exacerbates the stigmatization and stereotypical representation of migrant women as "oppressed" by their culture, relieves European institutions from the responsibility they have in creating situations of violence and vulnerability against migrant women through their border militarization policies.

What emerges is that migration per se does not necessarily have to represent a danger to women. On the contrary, the decision to migrate and the possibility to do it can in many cases, benefit the condition of women, not only those who are forced to escape from conflicts, but also those who are oppressed by patriarchal societies and gendered-social norms that exercise control on their lives. Migration can represent an occasion to assert their freedom of will, impose their agency, become independent and acquire a better social status. Migration is made dangerous by structural and institutional factors that create compound vulnerabilities that increase the risk of falling victims to violence and by repressive asylum regimes, such as the European and Italian, which are incapable to reconcile their normative frameworks with the material interests of different departments, institutions, political parties, and civil society actors. Exclusionary asylum regimes fail to respond to the needs of asylum seeking and refugee women. Humanitarian and securitarian approaches to migration, that tend to victimize and stereotype the figure of the migrant woman, depriving them of agency and autonomy as political actors, obstacle their mobility through the control of bodily autonomy, hindering the chances of integration in destination countries and producing social marginalization. Scholars as Freedman (2020) and Mackenzie (2016) call for the necessity to stop the victimizing narrative that has characterized the representation of migrant and refugee women in the international protection framework. Excluding the

concept of autonomy from the ethics of vulnerability obstacles the achievement of equality and increases, rather than freeing from, the exercise of forms of domination upon women. Western States should consider women as right-bearing individuals capable of asserting their agency and autonomy in pursuing their own migration project. Rather than treating them as charity cases in need of subsistence, States should provide to migrant and refugee women the instruments to achieve autonomy and should increase their participation in studying policy solutions capable to effectively answer to the specific challenges that migrant women have to overcome.

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