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Refugee and Asylum Seeker Rights in Europe: Gendered Crimmigration Experiences in the Dutch and Spanish Cases

Abstract

Europe faces increasing patterns of crimmigration, or the merging of criminal and migration law, discourse and practices. Refugees and asylum seekers are conflated with more general migrant populations, and are likewise subjected to these phenomena as well. As part of this, increasingly restrictive legislative and administrative policies accompany the securitization of asylum systems within the European context, working against Member State and European Union (EU) fundamental rights obligations. Moreover, the literature has identified a gap in understanding the gendered dimensions of crimmigration, as well as lack of representation of the refugee, asylum seeker or migrant perspective in this field. As such, this paper asks how refugee or asylum seeker women experience or negotiate crimmigration rhetoric, policies and practices, particularly in light of the EU fundamental rights to asylum and non-discrimination. To answer this question, it first examines the recent sociopolitical context and current literature to date addressing crimmigration and gender or intersectionality in the case studies of Member States Spain and the Netherlands, before analyzing interviews with asylum seeker women in the former and their legal advocates in the latter. To better capture the dimensions of gender and intersectional disadvantage operating outside of bounded hierarchies, it adopts a definition of crimmigration that includes all processes, norms and narratives criminalizing migrants and immigration, and a multi-scalar approach that takes into account legal pluralism. It finds that asylum seeker women and their advocates find their rights to asylum or discrimination unrealized or inaccessible, and their corresponding perceptions and behaviors have implications for the current state of rule and law in Europe.

Suggested Citation:

Colleen Boland, "Refugee and Asylum Seeker Rights in Europe: Gendered Crimmigration Experiences in the Dutch and Spanish Cases" re:constitution Working Paper, Forum Transregionale Studien 30/2023, available at https://reconstitution.eu/working-papers.html

Refugee and Asylum Seeker Rights in Europe: Gendered Crimmigration Experiences in the Dutch and Spanish Cases

Colleen Boland[1]

Introduction

Europe faces increasing patterns of crimmigration, or the merging of criminal and migration law, discourse and practices. From a legal perspective, crimmigration can be understood as the intersection of immigration law and criminal law, which embeds criminal enforcement powers within a civil authority regime (Koulish, 2016). European legal scholarship on the topic particularly explores migration management through traditional law enforcement in terms of surveillance and detention, as well as via procedures of prevention and pre-emption (Mitsilegas, 2015). In recent years, underlying trends and apparatuses of securitization at the European Union (EU) and EU Member State policy level have impacted this type of policy and legislation.

However, "crimmigration" has also expanded to transdisciplinary use as a concept encompassing all of the processes, norms and narratives that criminalize migrants. This can entail non-state actors as well as the state as perpetrators of these practices, or as actors in crimmigration processes. For example, political, media and public discourses can influence crimmigration policy and legislation in a mutually constitutive process (Althoff, 2020; Van der Woude et al., 2014; Brouwer et al., 2017; Menjívar et al., 2018). Here, crimmigration will be used in this broader sense, understood as encompassing the procedures, narratives and practices of criminalizing migrants, including the migrant experience of these phenomena.

While crimmigration (and wider related) literature points to the questionable criminalization of migrants (or people on the move) as violating certain fundamental rights, the criminalization of refugees and asylum seekers entails an additional rights violation in breaching the specific right to international protection. Oftentimes, crimmigration patterns or processes are not articulated in a way that distinguishes between asylum seekers and refugees versus more general migrant populations, or between regular and irregular migration. While a migrant is a general term to refer to any individual "on the move" (including within national borders), and may often only refer to voluntary movement, refugees and asylum-seekers are

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legal terms referring to an individual who has involuntarily left their country of origin for reasons stated under the UNHCR 1951 Refugee Convention. Confusion between these categories can be witnessed, for example, in political parties' securitization or anti-immigration rhetoric, or European citizens' attitudes towards migration. Arguably, even certain EU border externalization and securitization efforts struggle to make this distinction, with a salient example including the border policing conducted by EU agency Frontex (Perkowski, 2018). In fact, asylum's securitization within the EU context, via increasingly restrictive legislative and administrative policies and practices, can oppose Member State and EU fundamental rights obligations and the spirit of EU refugee and asylum or fundamental rights protections (Atak and Crépeau, 2013).

As such, asylum seeker and refugee rights remain very relevant for crimmigration patterns and overall migration and asylum governance discussions in Europe. In particular, this work focuses on refugees and asylum seekers' rights to asylum (particularly based in the EU interpretations of the 1951 principle of non-refoulement and non-penalization principle) and non-discrimination. In a discussion of EU refugee and asylum rights, the state-centricity of refugee law comes to the fore, as it poses challenges in relation to the autonomy of states, particularly evident in examining EU versus Member State jurisdictions. On the one hand, many state governments can view implementing refugee rights as contradictory to national security, and may consequently engage in administrative detention, paperwork requirements and preventative practices, as well as policies of deterrence that reduce rights access (Gerard and Pickering, 2014). On the other, Member States have objected to a more horizontal anti-discrimination directive or implementation that would theoretically better protect the population under study, citing conflict with principles of subsidiarity and proportionality (European Parliament, 2021; Fokas and Richardson, 2017). In light of this, any discussion of how crimmigration practices affect asylum seekers or refugees in EU Member States necessitates a lens of legal pluralism: understanding that state immigration legality intersects with international and transnational legality, natural legality and informal administrative legality.

Indeed, on the one hand, the need for improved European asylum systems has been identified as pressing, by stakeholders including EU institutions, Member States and civil society actors. On the other, the relatively nascent literature and global evidence on crimmigration to date demands a better understanding of the gendered and intersectional disadvantage underlying crimmigration practices, particularly in that crimmigration phenomena can have differentiated and understudied consequences for women (Abji 2020; Hartry 2012).

Consequently, the research questions ask how asylum seeker or refugee women experience or negotiate crimmigration rhetoric, policies and practices, alongside inquiring into their access to or understanding of EU fundamental rights to asylum and non-discrimination, in the context of two different Member States. It seeks their underrepresented perspectives in understanding which crimmigration processes of inclusion and exclusions they find important, with which actors they negotiate in these processes, and how their strategies and projects reflect or even leverage aspects and understandings of fundamental rights to asylum and non-discrimination, or affect these individuals' perceptions of rule of law.

To answer this inquiry, this work looks at the EU Member States the Netherlands and Spain. They provide unique case studies with differing institutional mechanisms, as well as separate and changing sociopolitical contexts within which migration policies, processes and experiences take place. The paper first provides a framework as to the concept of crimmigration and how asylum seekers, refugees and migrants fall within that framework, noting how a multi-scalar legal perspective is relevant in addressing these topics. In particular, a multi-scalar approach (taking into account legal plurality) is adopted with a view to understand how gender and intersectionality operate outside of hierarchical, hermitic categories of criminal and immigration law and the traditional nation-state, including in relation to EU fundamental rights guarantees, discourses and realities.

The paper then proceeds to map out scholarship on crimmigration and gender or intersectionality, typifying the literature to date. Then, in the differing cases of Spain and the Netherlands, it overviews the study of and sociopolitical context of crimmigration generally, as well as specifically any work or understanding linking it to gender and intersectionality. This framework and context preface an analysis of interviews (conducted with a view to the research questions) with women asylum seekers in Spain, and their legal advocates in the Netherlands. Finally, concluding observations note that in each case study context, the exercise or even knowledge of EU fundamental rights to asylum and non-discrimination are negotiated tentatively given perceptions of potential penalization by systems in both countries. This entails gendered consequences for women asylum seekers, migrants and refugees, and provokes reflection on impacts on European rule of law.

1. Refugees' and asylum seekers' fundamental rights versus the multi-scalar dimensions of crimmigration

In framing this examination, again, crimmigration in this work is used as a broader transdisciplinary concept, understood as the procedures, narratives and practices of criminalizing migrants. The dynamics of the concept often entail that refugees and asylum seekers are subject to migration control or discourses surrounding migrants and migration generally (including irregular migration), regardless of their distinct legal status and right to international protection. Here, the focus is on women refugee and asylum seekers' experiences of crimmigration and highlights the criminalization of asylum rights. In doing so, the work sidesteps debates as to the risk of crimmigration theory resting on the "premise of faulty doctrine" that constitutional rights do not necessarily apply to certain migrants (for example, irregular migrants) (Hudson, 2018). Analyzing solely experiences of asylum seekers and refugees would theoretically limit the scope of the study and refrain from entering into a lengthier debate as to rights-conferring in the context of what is perceived to be sociopolitical membership or citizenship.

Moreover, examining asylum seekers and refugees in particular can help to measure the extent to which asylum remains an EU fundamental rights issue, versus one of law enforcement and national security (Battjes et al., 2016). Various actors and narratives articulate and leverage key refugee and asylum rights and state obligations under EU law. Any violation, dilution or deprivation of access to such rights in experiences of crimmigration

illustrates the ongoing dilemma of the tension between such rights and multi-actor, multi-scalar regimes and spaces that shape migrant inclusion and exclusion.

In brief, refugees are individuals recognized under the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol, where they are defined as individuals who are unable to avail themselves of the protection of their country of nationality "owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion" and are unable or unwilling to return to that country (this definition also applies to stateless persons unable or willing to return to the country of last residence for the same reasons). The UNHCR notes that every refugee is also initially an asylum seeker. Asylum seekers may thus be considered refugees and therefore entitled to protections and rights granted to refugees, with non-refoulement and non-penalization serving as key principles, along with the right to non-discrimination. It is important to note that in this paper, asylum seeker is defined from the potential applicant's perspective. In particular in the empirical section, it defined asylum-seekers according to how the interviewee identified themselves, rather than the state. For example, this definition would include an asylum seeker whose application did not receive a favorable decision, or if it may be an individual with irregular status who has not been able to access the asylum system.

The rights to asylum and non-discrimination are particularly the focus of this work. [2] They are examined in light of the tensions between international and EU legal frameworks of refugee protection and the criminalization of migration by multiple actors. On the one hand, these rights guaranteed in frameworks like the Charter of Fundamental Rights of the EU can be challenged by national authorities and legal systems, either via formal measures or in practice. Fundamental or human rights narratives[3] can be employed by these states or European institutions, regardless of compliance with such rights (Oomen et al., 2021). On the other hand, with the advent of "sanctuary cities," particularly in the context of post-2015 migrant "crisis" municipal politics in Europe, an "urban politics of human rights" has arisen that base urban policies in international human rights frameworks, and links the local with alternative global governance (Wonders and Fernández-Bessa, 2021). Here, the notion of citizenship and membership can be contested and migrant rights advocated, as human rights language, agendas and implementation take shape and are negotiated, and rights violations can be grounded in specific, local instances.

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[2] *Regarding legal framework informing the understandings of fundamental rights to asylum and non-discrimination examined here, the following were considered: Regarding asylum seeker considered refugee*: UNCHR 'Note on International Protection: Submitted by the High Commissioner' (31 August 1993) UN Doc A/AC.96/815, 5; *Regarding rights they are entitled to*: UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, UN Doc. HCR/IP/4/Eng/REV.3 (2011); *Regarding non-discrimination in EU law/policy:* TEU 2 and 3; TFEU 18 and 157; EU Charter of Fundamental Rights Art. 21; Racial Equality Directive; Employment Equality Framework Directive; Qualification Directive; CJEUC-713/17 Ayubi.

[3] It should be noted that 'fundamental rights' expresses the concept of 'human rights' within the EU context, and has been chosen as the expression of the EU toolkit. However, this work will also refer to "human rights" based in international law according to the literature cited, as this formulation is often employed in crimmigration literature, and for the purposes of analysis or description outside of the EU context.

In light of these considerations, in examining the case studies of Netherlands and Spain, this work takes as a point of departure the crimmigration literature that adopts a multi-scalar perspective. It finds that this perspective fits within the broader interdisciplinary literature questioning social and political membership within the confines of national identity and configurations (Flynn 2017; Oomen et al., 2021; Van Houtum and Van Naerssen, 2002). Some scholars even point to the limitations of understanding legal pluralism in terms of bounded entities and fixed hierarchies, i.e., a clean-cut separation between an EU directive or a national immigration policy. They rather point to the usefulness of untangling the asymmetrical laws, techniques and relationships, as well as the geospatial, temporal and thematic jurisdictions of law that inform crimmigration and its manifestations; in particular, they draw upon social theory to emphasize networks of power and discretionary practices, along with their discursive and multi-actor dimensions, which ultimately result in multi-level inclusion and particularly (and often) exclusion (Moffette, 2020; Oomen et al., 2021).

2. Crimmigration theory addressing gender and intersectionality

Within this discussion, there is room to further incorporate a gender or intersectional perspective in the study of crimmigration, in particular as it relates to the experiences of those subject to it. The work conducted to date on the intersection of crimmigration and gender has been relatively underdeveloped, including within the European context (Ogg, 2019; Van der Heijden, 2017). As further detailed below, some studies have addressed the gendered impacts and implications of crimmigration (with gender as a variable), and others have presented gendered crimmigration experiences. Indeed, these coincide with how feminist theory calls for explaining gender differences in knowledge production. However, feminist knowledge and women's perspectives of migration and criminalization have not substantially shaped the trajectory of crimmigration scholarship (Hartry, 2012; Ogg, 2019). Moreover, while feminist research on migration and crime may thematically coincide with crimmigration theory, the latter may rest on a series of gendered assumptions and biases, and largely does not explicitly assume a critical feminist lens.

Adopting an intersectional approach, this analysis emphasizes the importance of employing gender as a category of analysis, seeking to understand the multidimensional and intersectional ways in which class, race, ethnicity, age, and sexual inequalities produce or reflect oppressive of hegemonic social systems and structures, as first articulated in Black feminist theory (Crenshaw, 1989). In this case, such systems include post-colonialist, neoliberal economic conditions and human rights systems, among others. Indeed, particularly given the subject matter of crimmigration, in that it treats of migrants, an account of multiple disadvantage along lines of race, class, and national difference is inextricable from an understanding of how gender shapes the crimmigration concept, or vice versa. Especially in addressing human or fundamental rights, the intersectional can assist in a critical evaluation of how perceptions of gender equality or human rights achievements, and current human rights data, are articulated in a very narrow sense, and can be based within biased and constricted systems (Nykänen, 2012). As Ogg suggests, without engaging crimmigration

theory in reference to such a critical gender or intersectional lens, further law and policy reform can reinforce such systems (2019).

In this vein, these systems of power, oppression or inequalities are inherent to knowledge production itself, as transnational and postmodern feminist theory has already signalled (Basu, 2000; Butler, 2011). For example, when approaching crimmigration via a gendered lens, there can be tendencies to do so from the perspective of victimization and vulnerability, in terms of binaries, from the standpoint of the Global North, or generally within a Western normative framework (Abu-Lughod, 2015). Even within transnational feminist theory, critiques include that it is built upon or embedded in neoliberal, White and postcolonial structures (Briggs, 2008). Especially in examining gender dynamics within differing sociocultural contexts, and gender as performative or a social construct, this study bears in mind the importance of keeping the meaning of agency open (Mahmood, 2011). In other words, as Mahmood posits, it examines agency in its different forms, as placed the sphere of concepts within which its meaning or modalities take shape (Ibid). This approach, combined with an intersectional or gender lens that is not disjointed from material inequalities, seeks to step out of traditional or normative Western knowledge production and framing, albeit remaining cognizant that inevitable biases remain (Bracke, 2014).

Literature to date at the intersection of gender and crimmigration could be classified into several categories, with some falling into multiple categories at the same time. These works include those that: (a) explore gender as a variable, particularly differentiating gendered consequences of crimmigration; (b) record the lived experiences of different groups of women in understanding crimmigration; (c) note gendered social constructions within the crimmigration context, or how crimmigration practices and attitudes are predicated on the gendering of certain migrants by crimmigration both state and non-state actors; (d) observe configurations or reconfigurations of unbalanced or oppressive crimmigration systems of power with gendered and racialized dimensions; I specifically frame the study of crimmigration via a feminist, gendered, or intersectional critical lens.

Firstly, existing literature has identified how gender as a variable can entail different or unequal consequences of crimmigration, particularly as relates to detention and deportation. It largely bases these findings on the lived experiences of migrant women. For example, North American literature addresses how detained women and men may experience vastly inequal treatment in detention (Brané and Wang, 2013). This can include criminalization and dehumanization in terms of sexual misconduct on the part of state officials or legal authorities (Hartry, 2012). Access to women's health services in crimmigration systems, or how reproductive services are administered within them, also create differentiated experiences, as detailed by Brané and Wang (2013) in the United States (U.S.) example, or by Bosworth et al. in in their fieldwork with detained undocumented migrants in Greece (2013). Ghandakly and Fabi note that sterilization of migrant women in U.S. immigration detention represents further human rights abuses within the context of immigrant detention and health (2021). Women's disproportionate role as primary caregivers can also create amplified consequences for their dependents when subject to different aspects of crimmigration (Hartry, 2012).

Moreover, crimmigration attitudes can limit women migrants' identification and protection as victims of violence and trafficking (Hartry, 2012). Several authors note that any violence or

abuse migrant women do experience may go unreported due to concerns about irregular status and criminal consequences (Abji, 2020; Dingeman et al., 2017; Menjívar and Salcido, 2002; Obinna, 2021). In Keygnaert et al.'s documentation of sexual and gender-based violence among refugees, asylum seekers and undocumented migrants in Belgium and the Netherlands, they find that security and police can act as the perpetrators (2012). Similar gendered impacts are also often explored at the border, as with Cochrane's account of lived experiences of asylum seekers entering the United Kingdom, or Gerlach's regarding migrants seeking to enter Australia (both 2018).

Literature exploring gendered social constructions in the criminalization of migrants can also incorporate or overlap with those that record lived experiences. In describing deportations in the U.S., Golash-Boza and Hondagneu-Sotelo note in both criminal justice practices and political or societal discourse, migrant men can be viewed and treated as a threat, rather than as a vulnerable group, in a gendered and racial removal project of the state (2013). De Angelis explains how the migration, crime and gender nexus is employed by the U.K. government in media, policy and public narratives to also paint migrant men as a threat, and women as either victim or also a bio-nationalist threat (2020). Beyond narratives and in relation to practices, women's status as a vulnerable class can result in legal aid or preferred treatment as compared to men, from a crimmigration standpoint (Dingeman et al., 2017). Finally, while not within the crimmigration literature per se, other disciplines have noted gender constructions of migrant threat. These can be illustrated by attitudes that migrant mothers look to cheat immigration laws in the U.S., or in how racialized securitization narratives can target migrant women in Europe, with Muslim migrant women viewed as dangerous pawns from patriarchal cultural backgrounds (Romero, 2005; Bracke and Hernández Aguilar, 2020).

Again, a few studies speak to the above themes or observations, but specifically conceptualize crimmigration or approach crimmigration theory via a feminist, gendered, or intersectional lens. Bourgois' work notes the shifting power and gender dynamics among generations of migrants in New York, and how the criminalization of poverty can entail exacerbated violence or domestic violence against women, with macro-structural factors also affecting men's experiences and performative masculinity (1996). In the Canadian context, Abji adopts an intersectional approach to note how the case study of undocumented women from Mexico experiencing detention and removal in response to their strategies to survive gender-based violence constitutes a criminalization of survivorship that highlights the gendered and racialized structural violence of crimmigration (2020).

Also in the North American context, Dingeman et al. comment on how experiences of Latin American women detained in U.S. immigration custody represents how modern deportation regimes are constituted via an exclusively enforcement-oriented approach, primarily linked with the management of gender violence, unauthorized migration, human trafficking, and street crime (2017). Holland explores female leniency in sentencing for immigration offenses in the U.S. from both in an intersectional analysis articulating gender as a social construct (2020). Several studies have pointed to the racial dimension of crimmigration systems as yet another formation of institutionalized racism, both in the United Kingdom (Bhatia, 2020) and the U.S. (Armenta, 2017). Bosworth et al. collect several global case studies, noting the

nationalization, racialization and genderization of borders, explaining how racist structures can be enabled or reinforced (Bosworth, Parmar and Vazquez, 2018).

Indeed, it seems important to examine, via an intersectional analysis, how crimmigration structures, practices and systems can operate in conjunction with other gendered attitudes and processes to produce an aggregate effect of systematic structural violence against women and LGQBTI+ individuals. In migration studies, some of this systematic violence along migrant trajectories has been addressed, particularly in the South and Central America to North America corridors, or on the Eastern, Central, and Western Mediterranean routes, as well as Western Africa Route, largely originating in Asia and Africa and proceeding on to Europe (Freedman, 2016; Obinna, 2021; Tyszler, 2019). Given the nature of the gendered and racialized patterns identified in human mobilities, crimmigration presents itself as obvious conceptual space within which to understand the modes of power continuously shaping these processes, and the social and political systems that mutually reinforce them.

Here again, the state enters into the discussion. International human rights and EU fundamental rights frameworks' recognition of – or deference to – sovereign states can translate to turning a blind eye to those global and transnational spaces and systems that perpetuate systemic violence. In her feminist view to human rights, Binion points certain criminal acts women suffer should be expanded to qualify as human rights abuses. Such abuses are not only characterized by the state's responsibility for perpetuating such systems, she argues, but private persons (outside of the private-public dichotomy) should be held guilty for denial of human rights (1995). This reflects a wider body of literature questioning systemic violence purportedly neglected by the international human rights order, by nature of its ambivalence or indifference regarding non-state or nongovernmental actors and any rights violations they commit.

In this sense, the importance of addressing the multi-scalar nature of crimmigration law comes hand in hand with a critical gender or intersectional lens. Traditional state power configurations and international rights frameworks are arguably largely structured in such a way that remain unresponsive to the needs of women and other groups that are positioned differently from men (Nykänen, 2012). As made clear in the brief overview so far, migrant women, LGQBTI+ individuals, and other groups at various intersectional points of disadvantage find themselves on the margin or outside of the scope of institutional protections and legal structures, operating in multi-scalar spaces that can either constrain or serve as fields of contestation and agency assertion.

Instead of pointing to gender as a variable, or outlining the (perhaps obvious) gendered consequences of crimmigration, the challenge lies in seeking to understand the spaces within which women engage with gender norms across transnational contexts, as well as contend with crimmigration in its various forms and in its dynamics with multiple actors. Individuals can influence, configure or contest these processes (Súarez, 2005). This work examines how asylum-seeking women's rights to asylum and non-discrimination are linked to and levied in these power dynamics of crimmigration, and in that sense to what extent these rights are included or excluded in women migrants' realities.

In sum, this study seeks to answer the research questions—as to how asylum seeker or refugee women experience or negotiate crimmigration phenomena in light of the EU fundamental rights to asylum and non-discrimination and any consequence for their perspective on rule of law—by examining women's lived experiences both first and second-hand. As part of the above theoretical framework, the analysis is conducted with a conscious view to the pervasive racialization and gendering of knowledge production, and via an intersectional lens that remains attentive to the power dynamics that perpetuate or reconfigure disadvantage or disproportionate consequences along lines like gender, race, and material inequality, including those surrounding EU fundamental rights. Again, such an examination will be conducted with a view to how migrant agency mutually shapes and renegotiates these systems, and in doing so attempts to understand that agency within the space it resides. As part of this, it notes the temporal, physical and discursive spaces in which techniques and processes of "crimmigration" become intertwined with power dynamic reformulations in complex, multilevel (from local to global) social systems.

3. Crimmigration, gender and intersectional difference in the Spanish context

With this broader literature review and theoretical framework in place, understanding crimmigration with respect to its multi-scalar (particularly as relates to the EU fundamental right to asylum) and gender or intersectional dimensions, this work now proceeds to how the Spanish and Dutch contexts illustrate these multi-scalar dynamics. Beginning with the Spanish example, there has been some foray into using the "crimmigration" lens as a critical tool for scholarship. However, much of it is not specifically couched in terms of the literature developed post-Stumpf (2006), and may not refer to "crimmigration" specifically. A significant amount of work has focused on bordering practices at the Spanish southern border and how it represents European border externalization, with attention to the increasing securitization of migration in both Spanish and European socio-political contexts (Brandariz García, 2016; Brandariz García and Fernández-Bessa, 2017; López-Sala and Barbero González, 2019; Martínez Escamilla and Sánchez Tomás, 2019). Important in this study, it is argued that securitization and crimmigration practices taking place at the southern border result from European pressures for restrictive external migration policies (Wonders, 2017). In particular, it often draws attention to the phenomenon of "pushbacks," or direct deportation (and collective expulsion) to Morocco without complying with legal procedures or observation of fundamental rights guarantees under international law (Barbero González and Illamola Dausà, 2018; Sosa Navarro, 2020).

At the same time, there is also scholarship looking at border practices at the maritime border in Spain's Canary Islands, as well as detention and expulsion at the Basque-French border, notable in that this is an EU internal border, with express expulsions evidenced there (Barbero González, 2018; Garcés Mascareñas, 2016). Moreover, it has been signalled that there is selective and racialized policing and detentions, as well as an increase in police control, administrative and criminal sanctions against activists for migrants (López-Sala and Barbero González, 2021). Finally, in terms of multi-scalar crimmigration, Fernández-Bessa has signalled that in the case of Barcelona, Spain has politically and institutionally endorsed narratives in

support of human rights claims at Spain's physical borders (2019). Barcelona City even supported local level initiatives for migrant rights and protections; however, authoritative actors are absent when it comes to Sub-Saharan African street vendors subject to crimmigration practices, and municipal support of irregular migrants can be constrained by national-level policies, thus indicating certain limits of local level initiatives and the reality of multi-scalar crimmigration (Ibid.). This multi-scalar phenomenon is noted particularly in the wake of the 2015-2016 refugee "crisis" and Spanish austerity measures which met calls for social change; the rise of Spanish "sanctuary cities," including Madrid and Barcelona, both demonstrated a "scaling down" of migration politics to the local level, and "jumping scale" to the international human rights arena (Fernández-Suárez and Espiñeira, 2021; Wonders and Fernández-Bessa, 2021).

In terms of the work to date examining crimmigration and gender in Spain, there have been several studies looking at women foreign nationals in prison as well as migrant detention (Bodelón González, 2007; Castillo and Ruiz, 2010; Jiménez Bautista, 2015; Ribas et al., 2005). While further gendered and intersectional studies will be outlined, there is consensus among authors that what work has been done on gendered crimmigration requires further examination, and that there is not sufficient attention to addressing considerations of race, ethnicity, gender and class (Ballesteros-Pena, 2020; Brandariz Garcia and Fernández-Bessa, 2017; Fernández-Bessa, 2019).

Spain's migratory regimes and policies in the past decades contextualize the existent body of literature at the intersection of gender and crimmigration. The country transitioned from a country of emigration to immigration beginning in the 1980s due to changes in Spain's political and economic profile, including integration into the transnational economic arena, joining the EU, and immigration policies receptive to labour migration (in light of Spanish economic growth) particularly taking off in the 1990s (Arango, 2013). As a result, migration flows became substantial at the turn of the century (Ibid). From the gender perspective, a "nuclear hetero-patriarchal," limited welfare regime (along with an aging population, gender imbalance in reproductive care, among other factors) invited feminized global care chains (Gil Araujo and González-Fernández, 2014). In these, women migrants largely from Latin America took on domestic work as part of Spain's informal economy, sending remittances back to countries of origin (Ibid.).

The context of these global care chains and informal work sets the stage in that migrant women undergoing irregularity and precarity can be particularly susceptible to crimmigration practices. Moreover, in addition to women migrant domestic workers, women migrants are disproportionally represented in international drug trafficking networks as well as sex work, again with few avenues in terms of legal entry to Spain or regularization once residing there (Arella et al., 2007). In their study of female sex workers in Barcelona, Arella et al. (2007) note that the majority of women sex workers interviewed were foreign nationals, and observed how participants reporting a crime were largely deported, rather than offered access to justice. In fact, much of the literature examining female migrant detention in Spain notes the confluence of globalization and securitization of migration, observing how female migratory processes also relate to the feminization of poverty and criminalization of migrants (Naredo Molero, 2005). While women migrants may have maintained flow volumes during and post-

2008 economic recession, the informal and precarious nature of the labour intensified (Gil Araujo and González-Fernández, 2014).

In light of this brief background, work on gendered crimmigration has been conducted using gender as a variable, exploring lived experiences of crimmigration, and in a few cases highlighting the intersectional consequences or performances of crimmigration via a feminist or intersectional frame. Firstly, there are several studies particularly looking at gender as a variable in the detention of foreign national women or migrants. A 2005 study of foreign women in Spanish prisons notes the gendered experiences of incarceration, particularly documenting various manifestations of discrimination leading to inequal treatment (Ribas et al., 2005). Jiménez Bautista looks at the sociodemographic profile of foreign women in Spanish prisons, concluding there is a feminization of poverty, with foreign national women's crimes minor and related to "citizen insecurity"; foreign inmates were more educated and less prone to drug abuse than Spanish national counterparts (2015). Castillo and Ruiz had similar findings in a case study in Andalucía (2010).

Ballesteros-Pena's recent work has explored Latin American and Caribbean women's experience of detention in the Spanish prison system, at the intersection of citizenship, gender, race and social class (2020). She explains that post-incarceration, either deportation or irregular status is virtually certain. Fernández-Bessa argues that in deportation practices, in fact, women are underrepresented, suggesting this is: because deportation is more focused on the Southern border (where migrant flows are largely male); due to lower participation of women in crime and less patrolled for it (as identified in other work); due to gender roles that affect migration roles and labour participation—which can protect from deportation—but amount to limited social and physical mobility overall (2019). In another examination of the Southern border, Cortés Maisonave points to how women migrants arriving to this border face structural and systemic violence as a result of the border externalization strategies of EU immigration control (2019).

Some literature examines migration control and penalization at an intersection with social class, ethnicity, race, or nationality. Brandariz García and Fernández-Bessa (2017) explain how examining migrant arrests, detentions and deportations can shed light on the targeting of certain demographic profiles. In particular, they note that post-colonial socio-political patterns can lead to privileging Latin American citizens in migration management and control, while targeting north and Sub-Saharan African origin-migrants. This results in higher numbers of detained and deported people of colour or African descent, with ethnic profiling in police practices (Ibid.). For example, studies note how Barcelona police actively targeted Sub-Saharan African street vendors via both municipal space ordinances and criminal law provisions (against counterfeit goods), with many vendors irregular and subject to other forms of oppression (Fernández-Bessa, 2019). Beyond the academic realm, claims that national detention centres are structurally racialized and violent are made in the media (*El Diario*, 2021).

In relation to this, as part of the wider global literature, Spanish analyses warn of policies, discourses and even academic framings that remove female agency and position migrant women as victims or in fixed gender roles as part of Global North-South relations, overall globalization and criminalization of immigration. This perpetuates stereotypes, assigns gender

roles and denies individual and group actors in migration, labour and livelihood strategies, as migrant women disrupt certain gender norms and regimes (Súarez, 2005; Agrela Romero, 2005). For example, Muslim-identifying women migrants in Spain can be othered and criminalized as either bio-threats or victims of a paternalized culture, despite their evident agency (Barbero González, 2017). In the case of Latin American women, narratives of women as victims (mules for drug trafficking rings or sexually exploited upon arrival in Spain) also can present narrow accounts that deny agency (Agrela Romero, 2005). At the same time, there are accounts from migrant women themselves confirming being involuntarily incorporated into such networks, and subject to harsh penalization (Ribas et al., 2005). Indeed, given these examples, it is important to seek to better understand viewpoints of migrant women themselves in the following analysis, capturing the nuances of individual and group agency negotiated throughout local and gendered global social systems and narratives.

In sum, Spanish crimmigration literature began with a focus on the EU external and Spanish southern border, but has expanded to look at bordering from a multi-scalar perspective, with some examination of intersectional disadvantage and the gendered dimensions of crimmigration phenomena in Spain. In exploring gender and intersectional disadvantage Spain's modern migration context, the unique relationship with Latin American origin countries, alongside dynamics of globalized migratory processes including care chains, are unique to the Spanish example. The literature also notes an increasing trend in crimmigration phenomena and response from multilevel actors involved in globalized processes, including localities or municipalities, where human rights narratives and certain mechanisms are leveraged in an attempt to combat increasing migrant criminalization. All of this offers necessary background in advance of the empirical analysis.

4. Crimmigration, gender and intersectional difference in the Dutch context

Separately from the Spanish context, the Dutch context presents a distinct case, both in terms of scholarship to date on crimmigration, related perspectives on its multi-scalar and gender or intersectional dimensions, and the socio-political context informing these. As a starting point, crimmigration literature in the Netherlands notes that public discourses on crime began to link to ethnicity in the 1980s and 1990s, grouping the threat of the "other" Moroccan youth of migrant origin with criminals (Brouwer, et al., 2017; Eijkman, 2010). Irregular immigration was also seen as a threat to the welfare state, and as of the 1990s, the Netherlands was one of the first EU Member States to enact extensive policies discouraging irregular immigration (Van der Woude et al., 2014). The 1998 Linking Act barred migrants from a range of public services, while expanding power in the Aliens Act and Identification Act remained somewhat limited in terms of irregular migrant surveillance (Ibid.). The Linking Act still affects denied asylum seekers to date (Ataç et al., 2020; Pitkänen, 2014).

While civic integration policies began at the turn of the century, critiques of the multiculturalist integration model also increased, and scholarship points to a national debate in 2000, and the 2002 elections, as pivotal for the immigration and integration policy discussion; public perceptions began to make linkages between immigration and social disorder (Duyvendak and Scholten, 2012; Geddes, 2003). Bonjour and Duyvendak argue that

political discourse beginning in 2007 contributed to the exclusion of the "migrant with poor prospects," at the intersection of race, gender and class (2017). As detailed further below, this continued discourse and public perceptions associate specific ethnic groups (conflated with migrants, refugees and asylum seeker as well) with crime and societal problems in the Netherlands (Svensson and Saharso, 2014).

In addition to the public discourse linking the migrant and threat, crimmigration scholarship points to the expanding grounds for deportation or administrative detention on the basis of an immigrant's criminal background (Legomsky, 2007). This lower threshold for being held criminally liable can be traced to national implementation of the EU Returns Directive in 2011 (Leerkes and Broeders, 2010; Van der Woude et al., 2014). An amendment to the Alien Decree (Alien Decree 2000, Sec. 3.86, cited in Van der Woude et al., 2014) in 2012 reflected a zero tolerance policy, in that it established migrants as deportable on the basis of any imprisonable offense during their first fifteen years of residence (Van der Woude et al., 2014).

Indeed, with regard to EU dynamics, transnational influence can both mitigate and foster crimmigration in the Netherlands, as the increased mobility in European integration has led to practices of heightened state coercion, surveillance, and criminalizing migration, albeit alongside discourses of a cosmopolitan EU and increased mobility (Barker, 2012; Mutsaers, 2014). In particular, the scholarship notes policy measures in recent years that have been implemented to prevent, exclude and remove migrants, with detention, detection and deportation procedures (Van der Woude et al., 2014).

However, even when criminal penalty may not be deployed or implemented, the Dutch system is observed to remain coercive in its state control and use of welfare as a policing tool (Van der Woude et al., 2014). Leerkes and Broeders argue that while Dutch administrative immigration detention is not "criminal" per se, it functions to deter irregular residence, control poverty and mange public anxiety via symbolic state control (2010). Administrative practice of deterrence and expulsion have virtually penal effects for migrants themselves (Ibid.). Unauthorized migrants are heavily dependent on humanitarian organizations that provide relief, but also collaborate with migration authorities in the Dutch migration control system, led by the Dutch Immigration and Naturalisation Services (IND) (Kox and Staring, 2022). To receive public financial support, these organizations must usually only assist those migrants meeting certain pre-determined eligibility criteria, like legal residency or compliance with voluntary return, leading to indirect bordering effects and exclusion of migrants (Serpa, 2021).

Currently, in addition to its immigration control responsibilities, the IND is also responsible for processing and deciding asylum claims. Regarding recent asylum flows and procedures, 2021 experienced an over 70% increase as compared to 2020 (AIDA, 2021). While some nationalities received higher overall recognition rate at first instance (95.5% for Afghans and 91.7% for Syrians for instance), others experienced very low rates, including Algerians and Moroccans receiving a rejection rate of 100% and 91.5%, respectively (Ibid.). In 2019, the IND paid high penalties to asylum seekers whose application had not been decided upon within the legal time frame of six months; in 2019, the regular asylum procedure took an average of 27 for asylum claim assessment, with extended procedures taking an average of 44.5 weeks (Ibid.). Despite orders to leave, these rejected asylum seekers can often remain unsupported and undocumented in the Netherlands, susceptible to practice and discourse.

Given this context, the literature that adopts an intersectional or gendered lens in the study of crimmigration in the Netherlands particularly notes the ethnic or racial dimension and disadvantage highlighted in more general migration studies. From a historical perspective, Van Eijl notes the gendered dimensions of historical treatment of "illegal aliens," in the Netherlands (2008). Van Liempt looks at gendered experiences of men and women migrating through "illegal channels" to the Netherlands from Iraq, Horn of Africa and the former Soviet Union in the early 2000s (2008).

Turning to the present, some studies can fall within an intersectional approach in that the racialized dimension of crimmigration has been examined at various levels of law enforcement in the Netherlands. For example, Nahra examines how sentencing guidelines in 2014 reflect ethnic and gender biases with disproportionate consequences for "racialized others" (2019). Van der Woude investigates the paramilitary Royal Netherlands Marechaussee (RNM), responsible for implementation of the Schengen Borders Code, which involves border checks at the Dutch external borders like international airports and ports (2020). She points to a court case filed against them by claimants who argue they are repeatedly checked based on skin colour. In confronting the challenges of their work, "street-level bureaucrats" like RNM officers were aware of the sensitive nature of racial or ethnic profiling, but explained it still played a role in their selection of who to stop, all with the goal of preventing irregular immigration. Certain patterns in stereotyping prevailed, although it was difficult to disentangle indirect or direct discrimination, or identify whether race and nationality were the sole factor, versus one in a range of considerations. The author questioned whether stereotypes of nationality, ethnicity and racialization can be separated from migration and border control, with the political and media climates exacerbating the securitization of migration (Ibid.).

Similarly, in an observational study with focus group interviews of Dutch police officers, Brouwer et al. explain that "foreign appearance" and skin colour factor into migration related controls, with stops not only related to irregular entry or stay, but assumptions regarding Northern African ethnic minorities and Eastern European nationals influencing stops for crime-related reasons as well (2018). The Dutch government's policy towards that manifests as akin to targeting Sub-Saharan African street vendors in Barcelona, a multi-scalar system of migration control can intersect with crimmigration at different administrative levels (Kox and Staring, 2021). The Dutch government implemented a law in 2013 that allowed police to apprehend that users, which usually drew from a select group of migrants originating from the Horn of Africa (Ibid).

Finally, perspectives on crimmigration from the point of view of migrants themselves are more recently being recorded, including accounts of their perception of internal migration controls (Kox et al., 2020). In sum, the Dutch crimmigration and wider migration literature has particularly noted the multi-scalar dimension of crimmigration practices, structures in the Netherlands. It also reflects on how crimmigration can be understood beyond a strictly legal sense to encompass an overall political, media or socio-political climates and narratives that may have interrelated consequences not only for law and policy but for migrants themselves. It has emphasized increasingly exacerbated intersectional disadvantage for minorities associated with migrant backgrounds, alongside amplified securitization that conflates

migration and crime, and how this multi-scalar and rising securitization is impacted or mutually influenced by EU policies. However, there is room for more exploration of the gendered dimension of crimmigration practice and discourse as part of the intersectional consequences of crimmigration phenomena, as well as for further understanding of lived experiences of crimmigration.

5. First-hand accounts of lived experiences of crimmigration: the Spanish case

Finally, this work now turns to an analysis of qualitative, empirical evidence of women asylum seekers' or refugees' lived experiences of crimmigration in order to understand asylum seeker and refugee women's rights exercise and access in facing multi-scalar regimes of crimmigration in Europe. The Spanish case study discussed in this section deals with first-hand accounts. Semi-structured interviews were designed with a series of thematic sections asking about: experiences of discrimination; experiences with border and asylum procedures and authorities; perspectives on crimmigration, including concerns about detention or deportation; and gendered roles, dynamics and exclusions.

Informed consent forms provided information about the project, the purpose of data collection, voluntary participation, potential risks and a 20 euro food voucher participation incentive. Researchers collaborated with trained NGO interviewers to administer the interviews in Catalonia, with four Venezuelan asylum seeker or refugee women between the ages of 26 and 35 in Barcelona and Manresa municipalities. All four participants had been educated to university level. Participants were selected and understood as asylum seekers according to their understanding of whether they meet the requirements for constituting a beneficiary of international protection. This meant that rejected asylum seekers were considered for interview. Venezuela was selected as an origin country for participants due to the high numbers of asylum applications to Spain from Venezuela, and the favourable recognition rates they receive.

A series of observations follows from analysis of the accounts. Firstly, all four interviewees explained they did not have criminal records, and none had an experience of being detained or arrested by law enforcement in Spain. In fact, the interviewees largely emphasized that they did not feel criminalized or unfairly treated by border authorities or law enforcement. However, when attempting to understand the multi-scalar dimensions of crimmigration, it is notable that some found they faced discrimination in terms of administrative legality or in treatment by public officials at the municipal level, or illegal discrimination in the search for housing. One interviewee expressed a fear of deportation after interaction with a public official, particularly when her application from asylum was rejected. She explained, "after the official treated me that way and, of course, they really scare you... I haven't seen deportation here and I've heard that's very unlikely to happen, unless you break the law or something. But yes, it scared me a bit and that's why I was also very quick to make the appeal privately and not wait for a lawyer, because I said, what if the police stopped me? I'm going to be illegal, right?" (O-003-004).

Secondly, from the perspective of the interviewees, three had faced rights violations in their work, including gender discrimination. They had or were presently engaged in informal labour, either because they had not yet been granted working rights in the asylum seeker process, or because their asylum request had been rejected and they remained in Spain with irregular status. These jobs largely included domestic work in two cases, and one factory job that was described as precarious conditions with only female employees. This reflects the earlier context as to women migrants originating from Latin America forming part of accepted international care regimes in Spain (Hierro, 2016). The gendered nature of irregular work emerged as a frequent pattern, which could be examined from the crimmigration frame.

Regarding the factory job, one participant explained her work in an assembly line in a company packaging electronics. "Apart from the work, which was very intense, the treatment of the workers was awful—they were all women, and with the new women it was awful. I emphasize this because I thought it was only my experience, but I spoke to other girls that also had the same experience" (O-003-003). When asked whether she had ever been afraid of approaching authorities or the police, she explained, "When I worked under the table, I never would have made a complaint."

Usually, employing workers without authorization to work and not declaring would constitute civil infractions, particularly in defrauding the Social Security and Tax administrations. In Spain, employers are prosecuted for tax and social security fraud when engaging irregular workers in undeclared work (Fita Ortega, 2018). These sanctions are in place partially to protect the rights of undocumented workers, which are frequently violated. However, criminal liability is also a possibility, particularly in the case of employing several workers at a factory. Under article 312 of the Penal Code, Organic Law 10/1995, criminal fines and a prison sentence is possible for "those who employ foreign nationals without a work permit under conditions that harm, suppress or restrict the rights that they would otherwise have recognized by legal provisions, collective agreements or individual contract" (Spanish State Bulletin, 2022).

The informal domestic jobs carried out by two of the participants have been previously addressed by the literature on Spain's gendered migrant labour in providing domestic care in a family welfare state. Both participants had faced rights breaches that could make their employers criminally liable, but explained why they felt they could not report it. The first explained how she was deprived of wages. "I was working in black, taking care of an elderly person. Something happened and even though people knew what was happening, the family pretended they didn't and didn't want to pay me. That month I wasn't paid, and it was really something, because in my family at that moment only my mother and myself were working. I told them please, I need you to pay me, but they didn't want to. A lot of people I know here said I should report them but I couldn't report them because it isn't legal. If I reported the lady, I also broke the law, because I was an asylum seeker and I couldn't work until a certain date" (¡ O-003-002).

The other participant explained she faced gender discrimination consistently from her employer, as well as withheld wages, and low wages of 25 euro for a 12-hour shift. In terms of the gendered nature of work, she explained, "I think it is the vulnerability of having to work in black…. well, yes, being a woman exposes you to certain jobs …. if you're a man you're going to be a delivery guy, not a caretaker. So that's it, it's like there are some rules of the game

where the first thing they tell you when you migrate is 'well, women get more work, there are more opportunities for women in black, because what they get is to clean houses'…The law says they can't ask you a series of questions, but they do. If you're married, where do you live, if you want to have children…I notice it when the immediate point of comparison is my husband. When we are asked the same questions and reactions are different" (O-003-003).

She also expressed concern about reporting unfair treatment and unpaid "right now, I have a barrier to certain things out of fear. That is indeed a women's issue, it has nothing specifically to do with Spain. And two, if I went through something, it would cost me, because I'm working in black, this is not legal. If something happened, they wouldn't pay either, when I was with the girls, they didn't pay me" (O-003-003). These accounts echo literature to date that signals how women migrants may be victims of crimes and reluctant to report them for fear of penalization for their migration status (Hartry, 2012).

Finally, in considering the intersectional dimensions of crimmigration practices, one interviewee noted that she felt her lack of experiences of discrimination was due to visible racial or ethnic characteristics, "I have clearly seen discrimination towards others [non-Venezuelans]. At the end of the day, I feel how I have light eyes and brown hair" (O-003-001). She compared herself as in a more favourable situation than a Paraguayan co-worker. This is notable given the literature to date on profiling of migrants. In fact, two of the four participants spoke to this, observing in response to the questioning that they personally had not suffered experiences of discrimination or deportation, but felt or had witnessed that other populations could be subject to it in Spain. This speaks the literature's findings that deportations reflect racialized and hierarchical, privileged relationships of a post-colonial nature in Spanish migration control; namely, that Sub-Saharan or North African migrants may be subjected to policing or deportation with significantly more frequency than those migrants hailing from Latin America in targeted practices of deportation (Brandariz García and Fernández-Bessa, 2017). Racialized crimmigration of migrants in a post-colonial context is of course commented upon in the wider literature beyond the Spanish example.

Ultimately, accounts also reflect literature indicating that while there may be evidence of rhetorical or procedural criminalization, or fear of criminal penalty or consequence from the participants' point of view, and perhaps even experiences of criminal treatment, the participants themselves did not encounter criminal law as such. This seems to reflect how actual implementation of criminal law to govern irregular migration is limited in Spain. However, while such law might not be enforced, societal perceptions and narratives affect refugee, asylum seeker or migrant perspectives, with social and material consequences for these individuals. Narratives or policies speaking to "illegal" immigration can criminalize asylum seekers or migrants working without authorization as well. Moreover, migration policies, laws and their implementation can instigate "criminal" behaviours from otherwise law-abiding individuals in their attempt to make a living. In examining migration control, criminal law and gender in the experience of Venezuelan women seeking international protection in Spain, while none had criminal records, some did fear consequences and criminal-like "punishment" for falling into irregular status or working irregularly. They felt compelled to engage in this work, however, given waiting periods in the asylum system making livelihoods otherwise unsustainable.

This irregular work was heavily gendered in nature, and the women observed gender discrimination as well. Accounts reflected that their employers consciously employed them with irregular status in a way that could entail criminal liability under Spanish law, even if not enforced. The women felt they could not remedy rights breaches, including withheld wages or gender discrimination in employment, because of their irregular status. Finally, two participants communicated that they witnessed racialized or intersectional discrimination in Spain linked to deportation. This coincides with literature to date that points out racialized differentiation in a post-colonial context when it comes to police stops or deportation practices. However, it also points out that selective implementation of penal mechanisms can contribute to an overall threat of criminalization that informs and structures thoughts and actions, taking on the form of real consequences.

6. The Dutch example: legal advocates and second-hand accounts of crimmigration experiences

As part of better understanding the Dutch case in the context of the research questions, in collaboration with the Dutch Council for Refugees, a survey was administered to Dutch migration and asylum lawyers, which sought to shed light on legal advocates' own understanding of the Dutch context in the securitization of migration or the criminalization of asylum seekers, refugees and migrants generally. The research also offers second-hand accounts of asylum seeker women themselves. Questions were divided into four thematic sections, including insights as to: legal advocates' or their clients' experience of the asylum system; client experiences of discrimination; client experiences with law enforcement; and legal advocates' work to date within Dutch migration and asylum law in general. Interviewees were contacted via snowball sampling method, as well as through mass outreach via the Dutch Council for Refugee's asylum and migration lawyers networks.

In both in-person interviews and written responses, two key patterns emerged in light of the discussion. Firstly, that the asylum process is noted as requiring a high burden of proof, and unsuccessful applications, while clients were willing to appeal, with clients feeling that their right to asylum was not duly supported within the Dutch system. As one interviewee explained of women asylum-seeking clients, "They feel that the system doesn't hear them or believe them or are looking for what they've gone through or that there are assumptions" (O-002-001). Another added as to accessibility of the right to asylum from the legal advocate perspective, "For most people, the burden of proof is too high and lies entirely with the asylum seeker. There is no obligation for the immigration service to investigate as long as the high burden of proof is not met. Inequality of arms plays a significant role here" (O-002-002).

Secondly, unsuccessful applications resulted in falling into irregularity with gendered consequences, with the lack of access to social services noted in the literature playing into this. Participants observed that women asylum seekers who are rejected in the first instance or who are awaiting case processing, do not receive adequate support or protection, and in their experience are specifically vulnerable to gendered abuse and exploitation. A participant working with clients in Amsterdam noted, "undocumented women on the street are

vulnerable, and then they get trafficked or get in touch with individuals who want sex in exchange" (O-002-001).

This is reflective of previous studies noting state control and use of welfare as a policing tool; impeding access to social security, education and employment for the undocumented or those with irregular status is an exclusionary tactic or form of control that works in a punitive way, even if it does not represent criminal prosecution or imply criminal justice system intervention, per se (Kox and Staring, 2021; Van der Woude and Van der Leun, 2017; Van der Woude et al., 2014). Similarly, a participant noted that this has been a change in Dutch policy over time: "When I started long ago irregular people could work and could pay taxes …. before that people who were irregular could have kind of a normal life…now they may live on the streets …because of the risk of being reported …. they are afraid to get in contact with the police" (O-002-001). Also in this reflection, as with the Spanish case, migration control intersects with criminal law in that unsuccessful asylum seekers or migrants as potential crime victims do not turn to the criminal justice system. As one participant noted, "They are not allowed to work legally and they cannot open a bank account, which puts them on the fringes of society. Subsequently, they are checked more regularly for preliminary searches, cycling without a light and traveling by tram without a ticket" (O-002-002).

Notably, according to participants, deportation practices seemed less dependent on any racialized or gendered dimensions playing into discretionary decision-making, but rather an administrative practicality regarding the EU's Dublin III Regulation. They believed that rather than any type of stereotyping or profiling taking place at the street-level, it was those migrants who were found to be registered in another EU country were more likely to face deportation than those that were not. They theorized that authorities found the Dublin Regulation made it easier to facilitate return to another EU country presumably responsible for asylum application examination, rather than returning a third-country national to a third-country. However, regarding the Dublin deportations, they did not speak to the nationalities that were stopped or detained (and whether this had to do with visible characteristics), and to the decision-making that went into this by the corresponding authority. In terms of stops in general, as noted by the participant earlier, it seems that undocumented migrants are targeted.

In short, from the second-hand accounts of legal advocates, asylum-seeking women feared potential criminalization and felt that formal state asylum law, systems and processes in the Netherlands did not correspond to what they believed to represent their right to asylum. Moreover, the accounts of participants corresponded to crimmigration literature that has observed a trend of migration control and irregular migrant exclusion via policy changes impeding access to social security or employment. They provided new insight that this exclusion can have gender-specific consequences, particularly leaving women vulnerable to exploitation. Finally, women asylum seekers' negotiation of the right to non-discrimination was less apparent in the Dutch empirical study than the findings in Spanish study.

Concluding Observations

Again, the research questions were chosen given the visibility of crimmigration on the rise in Europe, and continued debate and concern as to the evolution of European asylum systems and their functioning in light of EU fundamental rights. Particularly in light of the EU asylum system and its Member States' jurisdiction, the multi-scalar dimensions of crimmigration came to the fore as important in providing a framework. On the one hand, EU, state or national authorities can, via crimmigration processes or practices, challenge EU fundamental rights; on the other, there is often not a clear delineation between EU or nation-state jurisdictions in crimmigration phenomena, but rather a series of asymmetrical relationships, with state immigration legality, international and transnational legality, natural legality and informal administrative legality, along with their discursive and multi-actor dimensions (Oomen et al., 2021).

Moreover, while a review of the literature addressing these issues noted power dynamics that perpetuate or reconfigure disadvantage or disproportionate consequences along lines like gender, race, and material inequality, a gap in gendered or intersectional approaches to the study of crimmigration discourse and practices, as well as lack of migrant or asylum seeker viewpoints, further guided the inquiry. As a result, the research questions asked how asylum seeker or refugee women experienced or negotiated crimmigration phenomena, with particular reference to the EU fundamental rights to asylum and non-discrimination, and framed this in terms of understanding crimmigration dynamics in relation to a multi-scalar dimension and intersectional disadvantage.

The context provided in the literature review of work to date speaking to crimmigration, gender and intersectional difference in the distinct Spanish and Dutch contexts offered necessary background before exploring these accounts. In overviewing crimmigration literature from a multi-scalar and gender perspective in both case studies, it was noted that EU policies influenced overall securitization, with not only externalization but domestic policies that resulted in crimmigration dynamics. This often with gendered consequences in the Spanish example, or impacts on intersectional dimensions with ethnic or racial components in the Dutch context (Garcés-Mascareñas, 2016; Miranda and Martín Palomo, 2007; Van der Woude, 2020; Wonders 2017).

Turning to first and second-hand accounts of crimmigration experiences in relation to the rights under examination, particularly in the case of the women asylum seekers in Spain, they felt they could not or were constrained in the exercise of their right to non-discrimination, and perceived that the system and certain actors left them exposed and potentially subject to criminalization in a way that prevented bore gendered consequences. Here, an understanding of the legal remedies available is missing on the one hand; on the other, what a human right means to the individual is influenced by much more than the law itself (Oomen and Durmus, 2019). In the Dutch case, second-hand accounts noted that women asylum seekers felt that formal state law or the bureaucracy of state asylum procedures did not consider what they believed to be their legitimate right to asylum. Moreover, legal advocates noted that failed asylum applicants found themselves in a Dutch "migration control" system observed in the literature, that excluded them via social services and other policies, which could translate to distinct impacts on vulnerabilities for women.

In both the Spanish and Dutch cases, in interpreting that their rights to non-discrimination and asylum were not upheld or accessible in the actual functioning of the official law system, women asylum seekers could respond by withdrawing from the official state "legal" system, engaging in irregular work or declining to pursue their rights claims. Moreover, the perceived threat of criminalization, embodied by various actors (administrative, societal), even if not implemented or drawing from the criminal justice system, itself, speaks to how crimmigration processes, practices and narratives—from the perspective of the asylum seeker, refugee or migrant—extend beyond the law itself. In both separate case studies, the fear of criminalization, avoidance of the criminal justice system and reluctance to claim or exercise rights to non-discrimination, in addition to perceptions of the right to asylum as administratively or bureaucratically inaccessible, offers an interesting interpretation of the current state of European rule of law.

On the one hand, in the case of fear of criminalization and how it informs thought and action, "social construction of certain phenomena and their apprehension as social facts" puts a symbolic criminalization at odds with the law (Kubal, 2014). In that sense, European rule of law seems to be impacted by the phenomena of crimmigration and its multi-scalar, gendered dynamics in relation to EU asylum systems and related fundamental rights frameworks. On the other hand, women asylum seeker, refugee and migrant responses or resistance by withdrawing from a legal environment that they view as inconsistent with human rights principles—i.e., choosing to live on the margins of two Member State systems that from their perspective do not uphold fundamental rights to asylum or non-discrimination—also begs the question of respect for and trust in rule of law in Europe by this population. In this case, the weakened trust in rule of law and response of women asylum-seekers in withdrawing themselves clearly results in societal fragmentation, as women were left vulnerable in particularly gendered ways, at compounded, intersectional disadvantage.

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