

UNIVERSITY COLLEGE STOCKHOLM

DEGREE PROJECT

School of Human Rights and Democracy

Spring, 2023

Non-refoulement cases before the ECtHR and CAT

A case study on women alleging gender-based violence
at the hands of private actors

Author: Hodan Abdi

Supervisor: Maria Bexelius

University College Stockholm

Acknowledgments

Firstly, I would like to thank God for giving me the strength to finish this thesis despite all the obstacles. Secondly, I would mention the continued support I have received from my family and friends throughout the writing of this thesis. Without you, I would not have come this far. I would like to thank my supervisor Maria Bexelius, for her much support and constructive criticism that helped me write this thesis. More importantly, my two groupmates Emma and Gisele that have shown great support, advice, and feedback to me and this thesis. Without you guys this writing process would have been lonely so thank you very much.

Abstract

This study aims to analyze if the assessment of the European Court of Human Rights and Committee Against Torture in cases concerning women alleging violation of the principle of non-refoulement takes gender into consideration. Therefore, this study compares four cases from the Court and the other four cases from the Committee with feminist legal theory analysis. The method chosen for this study is a comparative legal method and textual analysis to investigate the research problem. The findings of this study are that the Committee's evaluation is more in line with the intersectionality perspective than the Court's. Further, the Court showed stereotypes and gender discrimination with their assessments. Although the Committee is also lacking in considering gender as far as the observed cases the Committee is more advanced with the intersectionality lens. The Court frequently depends on the "male or social network," which is another distinction between the two monitoring organizations. Because the Court does not mention "male network" to European women alleging domestic violence, this contributes to the already discriminations refugee and asylum seeker women experience. The thesis concludes that women seeking asylum or refugee cases experience the most discrimination before the Court, though occasionally before the Committee as well. The refugee law still has a long way to go before it can assist women who claim that private actors have abused them.

Keywords

Non-refoulement, human rights, monitoring bodies, private actors, feminism.

1. Introduction	5
1.1 Background	5
1.2 Research problem	8
1.3 Purpose and research questions	9
1.4 Outline	9
2. Previous research	10
2.1 Women in Refugee Law	10
2.2 The principle of non-refoulement under ECHR and UNCAT	11
2.3 The Assessment of women applicants' Cases	14
2.4 Male network/protection	15
2.6 Summary	16
3. Theory	17
3.1 Feminist legal theory	17
3.2 Outcome of the theory	20
4. Method and Materials	20
4.1 Comparative legal method	20
Textual analysis method	21
4.3 Material	22
4.3.1 List of the cases	22
4.3.2 ECtHR and CAT	23
4.3.2. Case selections	23
4.4 Limitations	24
4.5 Ethical Considerations	25
5. Analysis of the material	25
5.1 ECtHR cases	25
5.1.1 A.A. and Others v. Sweden	26
5.1.2 Izevbekhai and Others v. Ireland	28
5.1.3 R.H. v. Sweden	29
5.1.4 N. v. Sweden	31
5.2 CAT cases	34
5.2.1 A.A.M. v. Sweden	34
5.2.2 F.B. v. Netherlands	35
5.2.3 Njamba and Balikosa v. Sweden	37
5.2.4 A.S. v. Sweden	38
5.3 The assessment of the ECtHR	40
5.4 The assessment of the CAT	42
5.5 Summary	43
6. Conclusion	44
6.1 For further research	45
References	47

1. Introduction

In the last few decades, there have been many people fleeing from their Country of origin for different reasons. It is estimated by the United Nations High Commissioner for Refugees that the number of people fleeing from their origin country is over one hundred million people (UNHCR, 2022). The principle of non-refoulement, according to international, refugee, and human rights law protects refugees' and asylum seekers' rights in the receiving country. The principle prohibits the hosting state from deporting or transferring refugees and asylum seekers to a country where they face persecution, inhumane, degrading, and other serious human rights violation. The United Nations Refugee Convention dated 1951 covers the principle of non-refoulement. In international human rights law discourse, this principle protects both refugees and asylum seekers without looking at their criminal background (De Weck 2016, 41). According to Mathew (2021, 900-902), the principle of non-refoulement is covered in many international and regional conventions. To mention a few of them, the United Nations Refugee Convention, the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), and the International Covenant on Civil and Political Rights as well as the American Convention on Human Rights, European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union. Human rights monitoring bodies such as the Committee Against Torture, the European Court of Human Rights (ECtHR), and the Human Rights Committee (HRC) continuously receive petitions concerning the principle of non-refoulement (UNHCR, 2018).

The legal implications of the non-refoulement principle affect both states and private citizens. This principle gives refugees and asylum seekers a legal means of resisting state attempts to deport them to a place where they could face serious human rights violations. The notion of non-refoulement is significant and intriguing because it demonstrates how legal requirements and persistent global difficulties involving refugee protection are intertwined.

1.1 Background

To give an insight into how the principle is covered in different conventions and is practiced the author presents the definition of this principle in two conventions. The United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or

Punishment (UNCAT) and the European Convention on Human Rights (ECHR). Article 3.1 of the Convention Against Torture (1948) says:

“No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

The definition of torture is stated in Article 1.1 of UNCAT and says:

“For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

De Weck (2016, 41-42) says Article 16 of the same convention that covers Inhuman, degrading treatment and punishment does not extend to Article 3. The reason was that during the UNCAT drafting time, many of the representatives thought the “inhumane part” was too broad to be accepted in all legal systems worldwide and therefore came to the conclusion that inhumane or degrading treatment was not under the CAT obligations to refer.

When applicants bring cases before the Committee concerning the principle of non-refoulement they rely on Article 3 and the Committee refers to Article 1 if they deem it necessary.

According to CAT’s General Comment No.4 (2017), the prohibition of the definition of torture mentioned in Article 1 is absolute. Further, the Committee states that other forms of ill-treatment are also prohibited and that there is no exception to the prohibition of ill-treatment. Further, the Committee investigates if the individual has been or would be a victim of gender-based or sexual violence in public or private, gender-based persecution, or genital mutilation amounting to torture, without the intervention of the competent authorities of the State concerned for the protection of the victim, in the individual's State of origin or in the State to which the individual is being deported.

The European Convention on Human Rights does not explicitly mention the principle of non-refoulement in its Articles. However, the principle of non-refoulement is inherent to Article 3 of the European Convention on Human Rights (1950)

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

In this Article, it is very clear the prohibition of torture, inhuman, degrading treatment or punishment, unlike the UNCAT. However, this Article does not explicitly mention the principle of non-refoulement. The protection as well as the prohibition includes everyone in the jurisdiction of the member state. Moreover, the Court recognized in one of their judgment in a case concerning the non-refoulement principle that danger can emanate from persons and groups that are not officials. This is the Court’s definition of private actors in relation to the principle of non-refoulement (De Weck 2016, 164-165).

The vast majority of countries in the world have made the principle of non-refoulement a part of their domestic law and are obligated by one or more international or regional conventions. Non-refoulement is regarded as a standard of international customary law. Accordingly, whether or not states have ratified the aforementioned conventions, they are all subject to the principle. It is asserted that the jus cogens norm status of the non-refoulement principle has been attained (De Weck 2016, 3-4). Therefore, many people take their cases concerning the non-refoulement principle to the European Court of Human Rights (ECtHR) and the Committee Against Torture (CAT).

Both the Court and Committee have stated that the right not to be subjected to torture and inhuman degrading treatment is about absolute rights and that right relates to the right not to be subjected to gender-related violence/gender discrimination. The Committee mentions this in their General Comment No. 4 (2017) and the Court notes this in Article 6 of the European Convention on Human Rights.

1.2 Research problem

According to a report by the World Health Organisation (WHO), a worldwide survey conducted between the years 2000-2018 shows that thirty percent of women suffer violence against them at the hand of an intimate partner or a private individual. This violence was described as both physical and sexual violence against women (WHO, 2021). Therefore, refugee or asylum seekers women bring their cases concerning the principle of non-refoulement before both the Court and the Committee for decades now. Both human rights monitoring bodies have been for years assessing cases concerning private actors violating the human rights of the applicants upon return. When a case concerns women alleging serious harm and violation of human rights by private actors, both the Court and Committee look at if the receiving State takes the necessary measures to prevent this violation. According to De Weck (2016), the Court argues for appropriate actions from the State to prevent the private actors to violate the applicant's human rights and guarantee a sufficient level of safety. The Committee on the other hand requires the receiving State to immediately stop the torture and even punish the private actor. However, a crucial point Hamden (2016) mentions is that the Committee's comment concerns only torture by the State or private actors, whereas the Court requires the receiving State to take actions according to what is mentioned in Article 3 (Hamden 2016, 339). However, it is important to stress that both the Court and the Committee absolute prohibition of asylum seekers to be sent back to any country where they are facing any treatment contrary to the respective Article 3.

Therefore, this study's focus will be on these above-mentioned human rights monitoring bodies and how they assess cases concerning women alleging the violation of the principle of non-refoulement upon deportation. The problem this thesis tries to identify and research is whether the assessment of the two monitoring bodies considers gender when they are assessing the cases concerning gender-based violence at the hand of private actors. The comparison of these two monitoring bodies is important since previous research shows that refugee women face discrimination in the legal system. Therefore, comparing the assessment of the Court and Committee will tell us if these women receive justice and if the two monitoring bodies go beyond "stereotypes" that label refugee women as "victims" of backward societies. It is necessary to investigate this problem in order for the women applicants to receive justice when they present their cases to the Court and Committee,

therefore, this study gives information on how these cases are assessed as well as whether any adjustments should be made.

1.3 Purpose and research questions

The main purpose of this study is to analyze how the European Court of Human Rights and Committee Against Torture assess cases concerning the principle of non-refoulement with gender into consideration. The cases selected for this study concern women applicants alleging they will be facing serious violations of human rights at the hand of private actors in the country of origin. Moreover, there will be a comparison between the Court's and the Committee's statements and justification in their assessment. The previous research has shed light on the importance of considering gender when assessing cases concerning private actors committing gender-based violence against the applicants. Although there is previous research on feminist analysis of the Court's assessment, there are barely any studies that look at the Committee's assessment from a feminist perspective. Therefore, this study is trying to fill the gap and even more compare the two monitoring bodies with feminism analysis. For these reasons, these questions were formed and will be answered throughout this master thesis:

- How do the Court and Committee incorporate gender analysis in their assessment of cases concerning women applicants claiming violation of their human rights by private actors upon deportation?
- What are the differences in the ways the Court and the Committee assess women applicants' cases concerning non-refoulement in relation to private actors?

1.4 Outline

This thesis will be divided into six chapters where the first one introduces the principle of non-refoulement and how it emerged in human rights discourse. Moreover, this first chapter covers the research problem, purpose, and research questions as well as an outline. The second chapter focuses on previous research on the principle of non-refoulement and refugee women in human rights law. The third chapter focuses on the theoretical framework. The method is presented in chapter four where the material used for this thesis are cases brought

before the Court and Committee. In chapter five, the analysis of the material will be presented. The last chapter of this thesis will focus on the conclusion of the thesis as well as suggestions for further research.

2. Previous research

This chapter introduces the previous research that covers the principle of non-refoulement and cases concerning women alleging the violation of this principle brought before the European Court of Human Rights and Committee Against Torture. This chapter will end with a summary and what this study contributes to the previous research.

2.1 Women in Refugee Law

Nykänen and Nykänen (2012, 109-112, 121) in their study on private actors in refugee law say that recognizing violence against women as violating human rights in the human rights discourse was a latecomer. Even after recognition, it became apparent that there are no universally applicable strategies to tackle this gender discrimination. The feminist critiques have demonstrated how deeply gendered the process of applying for and receiving refugee status is, demonstrating the need for a gender-sensitive interpretation of refugee law.

However, despite this clear advancement of human rights, the Refugee Convention's handling of claims involving gender-specific abuse still has significant problems. This is especially true when private actors are involved in acts of violence. Although the authorities have, for example, in theory, acknowledged sexual assault as a form of persecution, Nykänen and Nykänen (2012, 126-127) contend that there is still a significant, albeit not universal, propensity in administrative and judicial practice to deny that such treatment is inflicted on its victim on the basis of the Convention. As a result, allegations of this kind of assault frequently, fall outside the purview of refugee protection and into the realm of additional protection or even no protection at all.

Dauvergne in “Women in Refugee Jurispendence” (2021, 728-729), discusses refugee women and the principle of non-refoulement. Dauvergne (2021), decides to focus on the definition in refugee discourses regarding women and how it can harm them as well as benefit them. The

author argues that women claimants are more believable in Western countries. However, the reason why women claimants are more believable is due to the evidence that women's human rights are poorly recognized as well as poorly respected in many countries. Yet this harms women in so many ways as it stereotypes them and associates them with "victimhood". Western societies portray refugee women from the Global South as "victims" that the Western decision-makers need to save and "lead" the trend law of refugees. However, it cannot be denied that scholars and advocates stay silent on this matter. As mentioned earlier, these negative stereotypes served some refugee women well. Serious harms mentioned in refugee law are forced marriage, female genital mutilation (FGM), forced abortion, etc. The reason why FGM gets a lot of attention from Western societies is that to them it is a serious gendered harm and that it is an unspeakable violation. Therefore, the need for white saviors is fulfilled when they "save" women from those "backward" societies. Nonetheless, claims of domestic violence do not get the same sympathy because it is also common in Western countries. Therefore, acknowledging domestic violence as serious harm to refugee women cannot confirm the "saving from backward societies" (Dauvergne 2021, 731-734).

2.2 The principle of non-refoulement under ECHR and UNCAT

Hamden (2016, 211-212) and De Weck (2016, 350-389) are two authors who study the principle of non-refoulement under Article 3 of the European Convention on Human Rights and the United Nations Convention Against Torture. In their respective books, they go into depth about the content of the principle of non-refoulement, the individual complaint procedures, and also the assessment of the risk of being subject to ill-treatment. According to them, some of the personal circumstances both of these monitoring bodies take into consideration are religion, age, political opinion, ethnicity, etc. However, the Committee looks at past torture that some applicants allege in their origin country. Blöndal and Arnardóttir (2018), claim that the potential for internal flight is the most frequent factor that increases resilience; however, other significant ameliorating factors have been identified, such as the presence of a local support network, family, the applicant's characteristics, such as education, independence, and/or resourcefulness; the presence of local NGOs or UN organizations in the receiving country. Alternative flight is always considered by the ECtHR as sometimes the applicant faces a localized danger of mistreatment and might, therefore, reduce that risk by relocating to a different area of her country. However, the committee does

point out that "the notion of an internal flight alternative does not allow for quantitative criteria and is not sufficient to totally eradicate the personal danger of being tortured. It must be determined if the complainant would personally be in danger of being tortured in that area, even if that area of the receiving state is deemed safe for the group to which he belongs (Hamdan 2016, 298-299).

Cali et al. (2020) studied the principle of non-refoulement while comparing four United Nations Treaty Bodies (UNTB) and the European Court of Human Rights (ECtHR). The authors investigated how UNTBs are interpreted in relation to the non-refoulment principle and whether they adhere to the Court's concept of non-refoulment. They chose cases from four UNTBs—the Committee on the Elimination of Discrimination Against Women (CEDAW), the Committee Against Torture (CAT), the Committee on the Rights of the Child (CRC), and the Human Rights Committee—as well as cases heard by the European Court of Human Rights (ECtHR). The authors discovered that CAT and CRC deserve more of the vanguard label as they attempt to approach the non-refoulment principle in a progressive manner while examining whether the UNTBs are soft courts and the ECtHR hard courts. The authors concluded their research by saying there are times when some UNTBs do take a more liberal approach than their "harder" regional court counterparts, but there are other circumstances in which they closely adhere to the rulings of the regional courts and occasionally take a more conservative posture.

According to both De Weck (2016) and Hamden (2016), in cases concerning deportation, the Court does not rely on material submitted by the deporting State, instead, they compare materials made from other reliable sources. The reliable sources are reports from independent organizations such as Human Rights Watch (HRW) and Amnesty International (AI), as well as the UN human rights bodies like HRC and CAT. Further, the Committee relies on reliable and objective sources such as the ones mentioned above. According to Hamden (2016), when assessing information brought by the two parties, in contrast to the CAT, the ECtHR has established several standards to evaluate the importance of the country information presented to it in Non-Refoulement cases. The ECtHR has accorded the general state of violence or human rights breaches in the recipient State more weight than the CAT. However, if the receiving State is a party to the CAT, the Committee is more likely to have information on whether torture is practiced there. Owing to the fact that the Committee has the authority to receive and examine periodic reports from States parties to the Convention, (Hamden 2016,

216-217). However, De Weck says that the Court is more active compared to the Committee in seeking further information (De Weck 2016, 257). Although, she does not give more explanation on how the Court is more active than the Committee.

However, when Vogelaar (2016, 309-311) studies COI and the information the Court relies on, she notes that it is not entirely apparent if COI relied on cases presented by the parties or the ECtHR in cases concerning the principle of non-refoulement. In one of the observed cases, the Court draws the conclusion that Article 3 was violated only on the basis of the COI that the petitioner and a third party had presented. Vogelaar (2016, 313–315) claims that the Court's use of sources is contradictory and that the sources' justifications are not included in the judge's conclusion. The author uses the comparison of two cases involving the deportation of Somalis to Mogadishu as an example. One of the examples is the use of COI by NGOs like HRW and AI by the Court to evaluate whether or not Article 3 would be violated. In the case of *R.H. v. Sweden*, however, the court mainly relies on COI reports compiled by the Swedish, Danish, and Norwegian authorities and did not find that the extradition of the applicant to Somalia violated Article 3. Vogelaar (2016), criticizes the court's approach in the latter case and how it was too limited to base its decision on evidence acquired by the expelling government, despite reports from HRW stating that the general security situation in Mogadishu was intense.

The human rights of women in the receiving country are quite significant when assessing these cases and in the eye of the Court, women can be victims of persecution in some countries based on gender as well as transgress social mores (Hamden 2016, 235-236). In situations where a woman is being removed to a State where there is widespread violence against women committed by non-State actors and where the authorities of that State fail to protect them, the Committee has determined that women are a “vulnerable group” in the receiving State and has applied Article 3 without asking for any personal information from the complainant (Hamden 2016, 291-292).

2.3 The Assessment of women applicants' Cases

In her article, Peroni (2018, 348) explores how the Court evaluated cases involving women asylum applicants who claimed to have experienced gender injustice in their home countries.

She contends that the court moves further away from creating equal standards of protection for female asylum seekers each time it over-examines an individual's competence to handle the risk while under-examining the gendered causes of the threat of maltreatment. Peroni claims that the Court considers whether the country of origin has laws that forbid any form of gender discrimination, but it ignores whether such laws are actually upheld. The Court reportedly ignored claims that even while there are laws against female genital mutilation (FGM), they are not actually enforced or that there are no FGM prosecutions in the destination countries in some of the instances that were brought before the court. This is demonstrated in the case of *Izevbekhai and Others*. The court failed to consider the fact that, despite states' best efforts, it takes years to effectively remove gender-based violence like FGM. In addition, the court orders the applicants to contact the government in their origin country but does not inquire as to whether the applicants who are female have access to the protection and justice systems.

Peroni (2018, 356-357) criticizes the court's rulings as conflicting because one of the rulings mentions that the applicant will find it challenging to migrate to the destination country, while the court does not determine that the applicant will face any difficulties following the move in another case involving gender discrimination. The Court ignores the larger sociocultural and institutional constraints that constrain how much access women have to state protection and migration such as the case of *A.A. and Others v. Sweden*. Furthermore, if negative stereotypes are overemphasized, they may be used to justify how vulnerable women are to mistreatment. This is because women are strong, independent, and resourceful. It is believed that the deserving female victim will be abused because she is helpless, reliant, and uneducated.

Wessels (2019), also joins the authors mentioned in this section and studies migrant women and domestic violence before the Court. Further, she compares domestic violence cases concerning a contracting state of the ECHR, to a case concerning a migrant woman seeking asylum in Sweden with her kids. The migrant woman in this case alleges domestic violence in her country of origin Yemen at the hand of her husband as well as her daughters will be facing gender-based violence such as forced marriage. This contradiction between the requirements resulting from Article 3 ECHR hinders the protection of women's human rights who migrate, or more precisely, those who seek international protection, in comparison to women experiencing domestic violence inside a European State. A divide between "here" and

"there" replicates the division between "we" and "them." However, this spatial bias in the Court's case law is not the only border limiting the human rights protection of migrant women that results from the reviewed case law. It creates inequity between internal and external domestic abuse situations (Wessels 2019, 342, 348).

Spikerboer (2017) is an author that discusses asylum seekers that bring their cases before the ECHR. He discusses gender, sexuality, asylum, and European human rights and their relation to each other. He argues that those labeled as non-Europeans cross the boundary separating them from other people by adopting the idealized European self-image and requesting protection from non-Europeans. However, their asylum request could be rejected if they are regarded as uneducated or pose a threat to the normative order. Spikerboer (2017, 227) asks in the *A.A. and Others* case how the Court is so sure that the male family members would help the women applicants. Furthermore, the author criticizes the Court's reasoning that forced marriage that included non-consensual sex is not sufficient enough to amount to Article 3. This indicates that the decision is supporting patriarchal ideas that women belong to men. The Court accepts this as true and replicates this by assuming that women in Yemenite families must have a male relative (father, spouse, brother, or son) in order to be safeguarded from the aggression of other males.

2.4 Male network/protection

In her study Querton (2022, 447) criticizes the "male network" or "male protection" that the Court relies on when sending back women applicants to their country of origin. Moreover, she describes the term "male network" as vogue and undefined by the Court. Furthermore, the Court fails to assess that relying upon this male network can cause dependent on a male family member and reinforce gender discrimination acts such as forced marriage, rape, and domestic violence. Therefore, it is concerning that a vital human rights monitoring body like the Court reinforces these harmful risks to women applicants. Although Querton criticizes, she acknowledges that the international refugee law lacks the limits to hold accountable non-state actors, especially if it is a family member (Querton 2022, 456). This is where international refugee law fails to protect women refugees.

Querton (2022) criticizes the European Court of Human Rights' inconsistent jurisprudence, which is characterized by its reliance in expulsion cases on a concept of protection against gender-based violence by male family members and "male networks" that is at odds with the standards of protection established by the Court in "domestic" cases brought by European citizens. The Court's rulings seem to be based less on real facts and more on an implied gender stereotype that men defend women.

The idea is that the sons or brothers would stand up for the female family members because they are men and adults. Instead, some male defenders are among those who inflict violence against female applicants. Spikerboer (2017) mentions the Yemeni case of *A.A. v. Sweden* and says that even in its most brutal form, patriarchy does not offer women any protection under Article 3 of the ECHR. It expects women to follow its rules: look for kinder men to serve as your protectors, and pray that your alternative dependency won't degenerate into violence as well.

The instances involving the "male protection network" raise a more significant problem that has remained in international human rights law: how to acknowledge a gendered reality without reintroducing gender norms and women's inferior status in the legal system (Peroni 2018, 364-365). According to this concept of male protection, male family members and other unspecified social networks possess the skills needed to offer easily accessible and reliable protection to women who are at risk of gender-based violence in nations where women are legally discriminated against (Querton 2022, 462-466).

2.6 Summary

The previous research has presented an insight into the practice of the principle of non-refoulement by the two monitoring bodies. The Court and Committee have shown in different cases that women could belong to "vulnerable groups" and even though this benefits women in certain situations, however, it is very necessary to abstain from generalizing all women. Both human rights discourse and monitoring bodies need to move on from stereotyping women and portraying them as "victims" of backward societies. What the author of this study takes from the previous research is that women in refugee law need more studies and research, moreover, shedding light on the importance of how women's cases in relation to

this principle are assessed in front of the monitoring bodies. The author thinks it is very crucial to investigate if there is gender sensitivity when the two monitoring bodies assess the cases. The author could not find previous research on the Committee's assessment of women's cases alleging gender-based violence with a feminist lens therefore, this is the shortcoming of this chapter. Studies comparing the Court and Committee and their assessment of women applicants claiming violation of the principle of non-refoulement by private actors with a feminist perspective have not been done before. Therefore, this study fills the gap with the comparison using a feminist lens.

3. Theory

This chapter will introduce the theory that will be used for analyzing the results of this thesis. The theory discussed in this chapter is feminist legal theory and critiques. In the end, there will be a summary of this chapter.

3.1 Feminist legal theory

The author of this master's thesis sees that feminist theories and critiques of international human rights law and refugee law will be helpful to analyze the cases that will be studied in chapter five. The theoretical framework of this thesis is based on Gunnarson's et al. (2018) *Genusrättsvetenskap* as well as Alice Edwards' (2011) *Violence against women under international human rights law*. The feminist legal theory is too big for this master's thesis, therefore, the author will not go thoroughly into this chapter.

According to Gunnarsons et al. (2018, 28-29), the purpose of women's rights was and can continue to be to problematize the law's gender neutrality based on women's experiences. Women's rights were from the beginning to argue for an adaptation of the laws to women's lives. The focus on legislative strategies was a response to the fact that the law completely disregarded women's lives or did not provide the economic and social protection needed for women's situation. The concept of feminism expresses a research approach that is critical with the aim of identifying, analyzing, and changing the power structures that are connected to gender. Feminism in this sense does not represent a single theory or a single method.

The first feminist critique Edwards (2011) introduces is how women have always been and continue to be excluded from participating, negotiating, and decision-making in the human rights system. As a result, this has led to women's rights, concerns, needs, and desires being failed by the system. Although there was a presence of women in 1948 when drafting the Universal Declaration of Human Rights (UDHR), however, they were fixated on a set of ideas about women that did not deliberate on a feminist agenda of formal equality. Feminists assert that women's lives within the law are created from a male-centered perspective when the interpretation of laws is carried out by men (which, they remark, it often is), or by women who have been socialized to accept the norms and interests of the male elite as their own (Edwards 2011, 44-46). Furthermore, another critique of the feminist is that the international human rights law was drafted as a "male" rights. Therefore, the system fails women by default as the system of international law is gendered. Edwards raises this important awareness and says this is exemplified in the United Nations Convention Against Torture (UNCAT) where the definition of torture under this convention, violence committed while a person is in state custody is given priority; this type of harm is frequently meted out to men rather than women (Edwards 2011, 52-53).

Gender research has shown that women who tell about their experiences and interpretations of reality are not believed, as their experiences and interpretations do not match the objective truth, that is, the ideas about what it is like. Matters that women raise in the legal process are not seen as relevant to the legal assessment of the event. Therefore, women's experiences and interpretations are silenced. Gender research has focused on the dogmatic nature of criminal law, which makes it difficult and places obstacles against the handling of men's violence against women. The first problem is that legal rules are expected to be gender-neutral and thus objective. The research shows that the law and science of it are characterized by a positivist ideal of objectivity, which means that the norms and values that are common to those who interpret and apply the rules of law are made invisible and appear normal, natural, and necessary. This does not mean that we need to give up the idea of striving for objectivity, but that we need another ideal of objectivity, where the person who has to see and interpret the law and ultimately judge must examine himself and see his own values. (Gunnarson's et al. 2018, 155-156)

The public and private sphere is a major feminist critique of the international system. The claim is that because international law favors the public domain, it ignores the "specificity of

the female life in the domestic sphere”. The absence of women from international law is attributed to this so-called public/private divide, which is particularly apparent in the doctrine of state responsibility for violations of human rights. The division of male and female roles into the "public" and "private" spheres is described poignantly as the "gendered fault line" because it is "highly political and essentially created." (Edwards 2011, 65)

Feminist scholars have criticized Western feminists for seeing the world through middle-class glasses. Moreover, the portrayal of non-Western women as “victims”. They have also criticized the use of the "authentic victim subject" and international human rights legal discussions that have mainly disregarded Third-World women as change agents and instead depicted them as sufferers of culturally repugnant, "primitive," or "backward" injuries. Evidence suggests that the perception of women from the developing world as victims is due to a lack of knowledge and scant documentation of action in these areas. (Edwards 2011, 74-75). This as discussed in the previous chapter harms women applicants that brought their cases before the Court and Committee. Therefore, in the analysis chapter, these critiques will be analyzed with the way the two human rights monitoring bodies assessed the cases selected for this master’s thesis.

Intersectionality coined by Crishnaw (1989) is a term that takes account into how gender interacts with other identity-based traits including race, caste, class, religion, sexual orientation, or ethnicity. The theory of intersectionality can be helpful analytical tools for the objectives of individual human rights lawsuits (as opposed to strategic feminist advocacy, outlined above), and they must be used more effectively. Therefore, it will help the case analyses that will be presented in chapter five. There is a clear process in legislation and practice that contributes to making immigrant women from especially certain parts of the world the "other" woman, so-called “otherification”, who is not equated with for example "Swedish" women. So that women's vulnerability to men's violence and the violence's nature of power and control over women's lives should be at the center of an intersectional approach when it comes to the legal examination (Gunnarson et al. 2018,161-162, 336).

Edwards (2011, 84-85) argues that gendered presumptions about how women should act or react when they are harmed can be challenged by new victim categories based on sex/race, sex/class, or sex/sexuality. It is important to be aware of how human rights discourse influences how women are portrayed as victims and advocates for a rebalancing of the

emphasis of international human rights legislation on all aspects of women's life from various geographic, social, racial, and political origins. This does not mean a rejection of human rights law or feminist notions of oppression.

3.2 Outcome of the theory

The author of this study is aware of the critique of the feminist legal theory and will keep it in mind when analyzing the material with this theory. The feminists presented in this chapter suggest that refugee law still discriminates against refugee/asylum seeker women, and this will be tested against the assessment of the two monitoring bodies. The feminist legal theory argues for women to be included in the human rights discourse and for the legal system to be fair to this group of women. Therefore, the analyzing chapter will show if the critiques discussed in this chapter will be confirmed. Moreover, intersectionality will be focused on to see if the two monitoring bodies take gender into consideration when they are assessing the cases since this is a big argument of the feminists.

4. Method and Materials

In this chapter, the author presents, discusses, and justifies the chosen method of this study. Thereafter, there will be a description of the material and a discussion of ethical considerations will be concluded.

4.1 Comparative legal method

The method used in this master thesis is a comparative legal method. This study will compare the Court and Committee's assessment of cases concerning the principle of non-refoulement. According to Farran (2018), the comparative approach entails analyzing how several legal systems or authoritative sources address a specific issue. Moreover, a comparative approach may also be used to identify differences and/or similarities so that, if some sort of consensus is desired, such as to create a unified legal framework for a problem or reach a transnational understanding of a particular legal issue, the difficulties, and obstacles can be identified at the outset. Comparative perspectives may also give a better and broader understanding of how the law functions in various situations. This is especially important for human rights because

the situation calls for us to consider political, cultural, and socioeconomic elements (Farran 2018, 134-137). In this study, the author tries to see the differences and similarities between the Court and Committee's assessment when they are assessing cases brought by women applicants in relation to the principle of non-refoulement. The comparative method will help us understand if both monitoring bodies take gender into consideration when they are assessing the cases as this is the aim of this study.

Moreover, when using comparative legal as a method, it is important to strive for reliable information that allows you a level of generalization about the differences and similarities. Therefore, the information gathered for this thesis can be generalizable. Further, the next stage is to create an appropriate study design that enables research questions concerning actual events to be translated into observations and methodically analyzed. In contrast to purely descriptive research, comparative analysis seeks external validity or a certain degree of generalization. A fundamental need of research is that it should be reproducible by other researchers, a concept known as internal validity (Andreassen 2017, 237-238). This study's design and research question were conducted carefully so that it could harmonize with both the method and analysis chapter. Moreover, the validity of the study can be demonstrated, increasing reliability, by repeatedly referring to the aim of this study and utilizing the subject it is intended to investigate.

Textual analysis method

In addition to the comparative legal method this master thesis adopts textual analysis. Textual analysis is concerned with the micro-level activities and procedures that socially create reality in and through texts. Case study research can benefit from textual analysis. It offers a place to carefully and imaginatively analyze texts that evoke meanings in a specific setting.

Researchers can acquire data about how other people see the world using textual analysis. It is a methodology - a way of acquiring data - for researchers who wish to comprehend different texts written by different people with different backgrounds (Pälli et al 2009, 923-925). Therefore, this method will help the analysis of the different texts by the different researchers mentioned above, including the texts of the Court and Committee. The analysis will also include the different articles mentioned in the different conventions. Moreover, the textual analysis will assist in analyzing how the Court and Committee judged the chosen

cases. The textual analysis will be based on the feminist legal theory discussed in the previous chapter.

When analyzing how the Court and Committee assessed the cases, the author will try to look into these factors in every case. The analysis of the Court and Committee will focus on the current situation in the country of origin and the source the monitoring body relies on because this has a relation to how they rule the cases. Further, if alternative flight/relocation is suggested and if it is deemed safe for the applicant. More importantly, the author will analyze if the two monitoring bodies take into consideration gender and women's rights when assessing these cases. The author will look if every case takes into consideration the feminist legal criticism raised in the theory chapter, such as what assumptions are made about women as subjects in front of the Court and Committee.

4.3 Material

The material used for this thesis is eight cases from the Court and Committee concerning the principle of non-refoulement. In the next section, there will be a justification of the reason chosen for ECtHR, CAT as well as the cases.

4.3.1 List of the cases

A.A. and others v. Sweden

Izevbekhai and others v. Ireland

N. v. Sweden

R.H. v. Sweden

A.A.M. v. Sweden

A.S. v. Sweden

F.B. v. Netherlands

Njamba and Balikosa v. Sweden

4.3.2 ECtHR and CAT

This master's thesis compares the two international monitoring bodies, the ECtHR and CAT. However, it is important to note that comparison is on a micro-level as the author only compares how the two monitoring bodies assess cases concerning women applicants claiming violation of the principle of non-refoulement at the hand of private actors. The reason for these two international monitoring bodies is that it is interesting to compare one that is based on a convention that explicitly refers to the non-refoulement, i.e., the Convention Against Torture. Whereas the European Convention on Human Rights does not have an Article that explicitly refers to the non-refoulement principle. Therefore, the comparison will be interesting for this reason, however, the author keeps in mind that this could perhaps contribute to the differences between the assessment of the Court and the Committee.

Another crucial point to mention is that one of these two international monitoring bodies is a global committee that does not have a binding assessment and is seen as a monitoring body with declaratory powers only. The Court, on the other hand, is a regional monitoring body that has its judgment as a binding assessment (De Weck 2016, 453). Another reason is that the previous research shows that women applicants suffer gender discrimination at the hand of private actors in their origin country. Further discrimination they suffer is at the hand of refugee law both in theory and practice and these two monitoring bodies. Thus, the comparison will tell us although the two monitoring bodies are different in this meaning if their assessment also differs in any way and contributes to the already existing gender discrimination the women applicants face. It is important to mention that the generalizability of this study is to the extent to which the findings can be applied to other cases or bigger case selections that the two monitoring bodies assessed. Moreover, this study can only say anything about how these selected two monitoring bodies assess the cases discussed in the next section.

4.3.2. Case selections

The material used in this study is data that contain cases that are brought in front of the European Court of Human Rights and Committee Against Torture. The cases concern the principle of non-refoulement and women applicants claiming their human rights will be violated by private actors upon deportation. Regional or area studies, often known as

"focused comparison," are occasionally utilized in the few-cases comparison. It allows for more room for the description and analysis of each instance and frequently adopts a historical viewpoint (Andreassen 2017, 244). Moreover, Andreassen says that the number of cases plays a significant role in the analysis. The comparative research method suggests three research models, and they are, few case comparisons, many cases comparison, and one-case studies. For this master's thesis, the author will be doing a qualitative few case comparisons. There will be eight cases where four of which are from ECtHR and the other four from CAT.

The ECtHR cases selected were found in the previous literature that is discussed in chapter two. The reason why the author chose the same cases is that these are the only cases brought before the Court in relation to gender violence and the principle of non-refoulement. The CAT cases were mentioned in De Weck (2016) although she did not discuss the cases from a feminist perspective. It is the same for the CAT cases, these were the only cases brought before the CAT in relation to gender violence, the principle of non-refoulement and private actors. Therefore, the difference between this study and the previous research is that this study compares both monitoring bodies cases with feminist legal theory analysis. The cases found for this thesis became very few after narrowing down the aim of this thesis. However, it is important to mention the cases selected were cases that the Court and the Committee found admissible. Only cases in which the ECtHR and CAT have rendered decisions have been considered for the thesis. The CAT cases were located in OHCHR, whereas the ECtHR cases were located in HUDOC. The official databases for each supervising body are OHCHR and HUDOC.

4.4 Limitations

The aim of this thesis is if the assessment of the Court and Committee consider gender in cases concerning women applicants in relation to non-refoulement and private actors. Therefore, the selected cases become very limited as there were only eight cases in total that were relevant to this thesis. Moreover, this study will not go into every detail of how the Court and Committee assess cases. In fact, this study will look at the assessment of these cases and takes gender into consideration.

4.5 Ethical Considerations

For this study, the author took into consideration ethical principles. The Swedish Research Council (2002) asserts the significance and necessity of research for societal and human growth. Members of society have, however, voiced logical demands for protection from incorrect disclosure at the same time. Before conducting any scientific study, the responsible researcher must balance the expected value of new knowledge against any potential dangers, such as harm to research participants, informants, or third parties. The applicants in this study are mentioned with anonymity that the Court and Committee gave them. They are referred to with either initials and/or surnames as they are described in the cases to keep in mind their privacy. In addition, the majority of the material used are law texts that do not need to be taken into consideration

According to Ulrich (2017), it is important to be compliant with appropriate scientific conduct norms. This study tries to uphold anti-plagiarism standards, academic integrity, a general requirement for methodological rigor, accuracy in the recording of research data, caution regarding generalizing findings pertaining to specific cases, and making sure that empirical findings can be tested and verified or falsified, as the case may be, are all included in this (Ulrich 2017, 213).

5. Analysis of the material

This chapter presents the cases concerning women applicants claiming violation of Article 3 of respective conventions. Every case will be presented and analyzed with a focus on the few factors mentioned in the previous chapter. Moreover, there will be an analysis of the cases with the help of the selected theory as well as referring to the previous literature. This chapter will conclude with a summary.

5.1 ECtHR cases

5.1.1 A.A. and Others v. Sweden

This case is about a mother, her three daughters, and two sons fleeing from their abusive husband/father in Yemen. The applicants arrived in Sweden in 2006 and applied for asylum

but their application was rejected, and they were ordered to be deported back to Yemen. The applicants brought their case to ECHR claiming there will be a violation of Article 3 upon deportation. The applicants claimed they would be victims of honor-related crimes if they are deported to Yemen. The mother claimed that her husband has been physically abusing her since she got married to him when she was fourteen years old. Among the abuse she mentioned are, burning her skin and threatening her with a knife. In addition, the husband married off his oldest daughter at the age of fourteen and tried to do the same with the second daughter. The husband of the oldest daughter treated her like a servant. Further, she argued that the youngest daughter is underage and could be married off upon deportation. Moreover, when she tried to get a divorce for herself and her oldest daughter, the San'a court refused their cases. Therefore, she did not seek help from the police. The family received help from the mother's brother to flee from Yemen. The applicant claims that there is no prohibition of marital rape, domestic violence, and child marriage in Yemen.

Sweden argued that fleeing from the country and allegedly dishonoring her husband is not sufficient enough to grant them protection. Moreover, they mention that Yemen is a tribal and patriarchal society and therefore, the mother's tribe could protect them.

When assessing the case, the Court looked at the current situation in Yemen and said that it is a tense and violent situation in the country citing the Head of the Legal Department of the Migration Board and the U.K. Foreign & Commonwealth Office that are reliable as they are supported by the United Nation. However, the Court says the violence alone in Yemen would not amount to any violation of Article 3. Moreover, the Court looked at the connection this family has in their origin country. The Court did not suggest to the applicants an alternative flight option and thought since the brother of the mother has helped her before, he would still continue helping the family upon return.

"Returning as a family unit, the Court finds that the applicants will have support from each other. Moreover, noting the substantial support that the first applicant's brother has given the applicants both before and since they left Yemen, the Court considers that he would also be able to help them upon return."

Therefore, the Court concluded that together with the two adult sons and the brother of the mother the women applicants in this case will have a male network that protects them from

the husband. With the above-mentioned information, the Court concluded there will be no violation of Article 3.

One of the factors to look at when analyzing the assessment of the Court is if gender and women's rights are taken into consideration. The monitoring body did not question the mother and the older daughter's claim of domestic violence however, they did not consider this in the judgement. The Court requires the receiving state to take measures to prevent violations such as the ones the applicants in this case claim. The Court overlooks the obligations of the contracting states' obligation to not send back women that are facing gender based violence to their origin country. Moreover, as this case demonstrated in practice things look different and the Court relies on stereotypes that men defend women. If the Court assessed this case with an intersectionality lens, they would see that three of the six applicants suffered gender-based violence at the hand of the husband. Moreover, the minor daughter could face the same experience if she is returned to Yemen. The Court lacks an understanding of intersectionality when assessing this case.

Peroni (2018) says regarding this case that the Court disregards the larger sociocultural and institutional constraints that constrain how much access women have to state protection and migration. Spikerboer (2017, 227) says the verdict of the Court reproduces the social structure of forced marriage and female dependency on male relatives. This indicates that the decision is supporting patriarchal ideas that women belong to men. Furthermore, this proves Edwards' (2011) argument that women's rights, concerns, needs, and desires are being failed by the system. In addition, Gunnarson et al., (2018, 156) question if the criminal justice system is possible to deal with men's violence against women within the current system becomes relevant.

5.1.2 Izevbekhai and Others v. Ireland

This case concerns a mother and her two young daughters. The first applicant claims that she lived a comfortable life in Nigeria with a supportive husband, however, she lost her first child to a complication after female genital mutilation (FGM) that was forced by her in-law family. She says that both she and her husband were against FGM, however, the in-law family threatened to do the same to her young daughters even kidnapping the girls if the parents

refuse. The first applicant fled with her two daughters to Ireland and applied for asylum in 2005, however, their application was rejected based on a bill banning FGM in Nigeria. Therefore, after exercising all domestic remedies the applicants brought their case to ECHR, where they claimed a violation of Article 3 if they are returned to Nigeria.

Ireland argued that the applicants were from the state of Delta and FGM was prohibited by law and therefore, the applicants should rely on this law upon their return to Nigeria.

Alternative flight is suggested by the Court for the applicants and therefore, there will be no violation of Article 3 if the applicants are deported to Nigeria.

“[the Court considers that the first applicant and her husband could protect the second and third applicants from FGM if returned to Nigeria. The Court, therefore, finds that the applicants have failed to substantiate that the second and third applicants would face a real and concrete risk of treatment contrary to Article 3 of the Convention upon return to Nigeria.”

The Court agreed with Ireland and said Delta where the applicants were from FGM was prohibited by law. The Court ruled an internal relocation to Edo state where the first applicant’s husband originated from because it is a state where FGM was practiced rarely. Moreover, the Court mentioned that the mother was educated to a certain degree and was from a well-off background therefore, she can protect her daughters from FGM.

The *Izevbekhai and Others v Ireland* case is an interesting case as it demonstrates the Court’s lack of understanding of many things that are relevant for non-European countries. The Court’s assessment missed that even if a bill prohibiting FGM was passed, the practice was still relevant in some of the states and that included Delta. According to the Court, the mother did not seek help from the police, however, it is important for women to feel they can trust the police and authorities before they seek help. Since FGM was still an evident practice in Nigeria, it is understandable if she did not go to the police. The authorities may systematically ignore complaints from women, accept violence against women, or just lack women's trust in the legal system. This ruling was based on how well off the applicants were and not on whether the receiving State can protect the applicants, something that the Court claims they do when assessing these cases. The mother’s background did not conform to the “victim” role that Westerners imagined. Therefore, the Court overemphasized the woman's strength, independence, and ingenuity and this leads to negative stereotypes that justify how

easily she can be mistreated. The deserving female victim is thought to be helpless, reliant, and uneducated, rendering her vulnerable to abuse. This indicates how the Court undermines women's rights and reinforces gender norms. Such judicial stereotyping is problematic because it interferes with the administration of justice by influencing judges' perceptions of who constitutes a victim.

The Court's inconsistency and lack of transparency are demonstrated in this case. According to reports the Nigerian government had weak protection for women who relocated themselves to the country. It is important to stress that the Court did not include these reports that mention the Nigerian government's inability to protect relocating women (Peroni 2018, 355-358). Although the Court relied on reliable reports from World Health Organization (WHO) and UNHCR among others they left out reports that can be deemed important for refugees who are settling back in the country of origin. According to Dauvergne (2021, 733), FGM is seen as a serious human rights violation compared to other gendered-based discriminations from Western societies, and therefore, white saviors are activated to "save" these women from "backward" societies. But the mother was an educated woman and had a job prior to her fleeing to Ireland, therefore she did not conform to the "victim" role that Westerners imagined.

5.1.3 R.H. v. Sweden

This case concerns a Somali woman alleging she will face persecution if she is deported back to her origin country which is contrary to Article 3. The applicant claims that she was forced to marry an older man, however, the applicant was in a relationship with a boy in her school and that was revealed to the family after the forced marriage. Her male family members beat up both the applicant and her boyfriend when they decided to elope, in the meantime, she sustained a hip injury and was admitted to the hospital for a few months. Upon her discharge from the hospital, the applicant was expected to live with her husband, however, she fled together with her boyfriend. The applicant arrived in Sweden in 2007 but applied for asylum in 2011 and this is because she sought asylum in both the Netherlands and Italy under different names and birth dates. The applicant asserted that if sent back to Somalia, her uncles would make her reconcile with the guy she had been forced to wed unless she received a death sentence for leaving the marriage. The applicant also claimed that because she didn't

have any male support in Somalia, she was at risk of being sexually attacked. She would also be unable to rent an apartment or otherwise plan her life as a single lady, running the risk of being shunned by society. Also, she referred to the generally terrible humanitarian situation in Somalia, specifically asserting that she was unlikely to find the assistance still required for her wounded hips.

Sweden rejected the applicant's case because of the lack of inconsistency and credibility. Sweden did not believe that she did not have any male network in Somalia. Moreover, it is important to note that the reason Sweden rejected her asylum was based on the Dublin regulation, however, they decided to send her back to Somalia in the end

According to the Court, there will be no violation of Article 3 upon deportation. The Court noted in their ruling that the applicant despite her claims had contacts and some family members in Mogadishu. The credibility of the applicant was questioned the most and therefore, the Court agreed with the State and sent back the applicant to Mogadishu. In this case, the Court highlighted that the applicant would face gender ill-treatment in the destination country based on her being a single woman without the protection of a male network.

”[while not overlooking the difficult situation of women in Somalia, including Mogadishu, the Court cannot find, in this particular case, that the applicant would face a real risk of treatment contrary to Article 3 of the Convention if returned to that city.”

The Court referred to the widespread human rights violation against women in Mogadishu at the time, although they did not refer as if it was done by private actors. It is important to acknowledge the preparator of the applicant's human rights in order to conclude if there is a breach of Article 3. Another important issue this case raises is the resources the Court relies on when assessing the case. When looking at Country of Origin information the Court relied on a 2014 UNHCR report, an April 2015 report on a fact-finding mission by the Swedish Immigration Board, and a May 2015 report by the UN Secretary-General. Moreover, they stressed the great weight of the UK Upper Tribunal assessments in that case. However, the Court did not mention the weight of the resources that they relied on in this case as well as any contradicting information on the general security situation in Mogadishu.

Moreover, Vogelaar (2016, 309-311) says the Court cited reports submitted by the deporting country when reports by Amnesty International and Human Rights Watch state that a single woman like the applicant will have a hard time in Mogadishu. In addition, the Court's justification of the said sources is not included in the judge's conclusion. The Court stated that she had some family members in the receiving country and that would be sufficient protection. Although the perpetrator of her case were male family members, the Court ignored this fact. Yet again the Court relies on male family members with so much trust that the woman will be protected by them when in the first place the woman fled the country of origin because of male family members. The Court does not consider intersectionality as well as women's rights. The claims of the applicant of gender-based violation are not seen as relevant to the judgment of this case. Gunnarson's et al. (2018, 155) say matters that women raise in the legal process are not seen as relevant to the legal assessment of the event. Yet again the Court's ruling confirms the arguments of the feminists that women are excluded from the human rights system.

5.1.4 N. v. Sweden

The applicant of this case claimed she would be facing persecution at the hand of her family and society upon deportation to Afghanistan. N and her husband applied for asylum in Sweden in 2004, however, during the process of her application she got divorced from her Afghan husband. The applicant was a teacher for women in Afghanistan and that meant going against the Elites and fundamentalists in Kabul. Therefore, she was arrested with her husband a few times before they fled the country. The Swedish government ordered to send the applicant back to Afghanistan, however, the applicant alleged she would be facing serious human rights violations because she had a relationship with a Swedish man. Both she and her ex-husband's family disowned her, and she committed adultery and risked the death penalty in Afghanistan. As understood, the perpetrator in this case upon deportation could be both private actors and the state. It could be her family and the ex-husband's family that could violate her human rights as well as the government of Afghanistan.

Sweden has questioned the applicant's general credibility as well as her identity. They said her story was vague and therefore, rejected her asylum application.

The Court on the other hand saw that the deportation of the applicant would amount to a violation of Article 3. They cited reports by HRW, UNHCR, and the UK Home Office that confirmed the human rights situation in the country of origin. The reports mention that women's rights are violated in Afghanistan especially if they lack any social network, which was the case for this applicant.

“[the Court finds that there are substantial grounds for believing that if deported to Afghanistan, the applicant faces various cumulative risks of reprisals which fall under Article 3 of the Convention from her husband X, his family, her own family and from the Afghan society.”

The Court notes that since the applicant lived in Sweden for some years, she does not conform to the gender roles of Afghan society, tradition, and legal system anymore. According to the Court the applicant is still formally married to her husband against her will and upon deportation he might force her to resume their marriage. Furthermore, the Court mentions that women in Afghanistan do not seek help for fear of police abuse or corruption. Women with low social status or lack any social or family network cannot take their domestic violence cases to the authorities. Moreover, the Court says if the applicant returns to Afghanistan without any male network in addition, to her committing adultery she will suffer serious human rights violations.

In the assessment of this case, the Court has shown that intersectionality is crucial. The Court took into consideration that women in Afghanistan cannot trust the legal system. In addition, the Court took consideration into the current gender roles the applicant is used to, i.e., the Swedish one. The Court assessed this case with an intersectionality lens, that takes gender into every other factor. This is exemplified when the Court mentioned the general gender discrimination Afghan women face but moreover, the ones refouler women face especially when they are lacking any social or male network.

However, we cannot forget to discuss the importance both the Court and the report on Afghanistan give to the “male network”. The continued mention of “social and male networks” can be understood as they are a determining factor when women require international protection. A worrying normative concept of non-State actors of protection in expulsion cases is emerging, according to the Court's jurisprudence. This idea suggests that

male family members and other undefined social networks possess the skills required to offer women at risk of gender-based violence in nations where women are legally discriminated against, accessible and effective protection. Although the author of this thesis understands that the Afghanistan society is patriarchal and lets women's rights under the protection of men and this is the reason for the mention of the "male network". However, criticism of this is crucial as the Court is a very important human rights body that should shy away from any gender discrimination.

Even Querton (2022) criticizes the mention of "male" or "social network" and says gender-based violence cases concerning European citizen female applicants, the Court does not mention a "male" or "social network". Relying on gender stereotypes- that men protect women comes up only when the applicants are refugee/asylum seeker women. This later on, as discussed earlier creates the division between "we" and "them" (Wessels 2019, 349). As discussed by Edwards (2011) Intersectionality challenges common gendered presumptions about how women ought to act or react when they are harmed. This is what the Court showcased with this case and all the more, this raises the importance of intersectionality. The reason this is important is, as mentioned by Nykänen and Nykänen (2012, 109), even after the recognition of violence against women as a violation of human rights there are no universally applicable strategies to tackle this gender discrimination.

5.2 CAT cases

5.2.1 A.A.M. v. Sweden

This case concerns a Brundi applicant claiming she would face serious human rights violations if she was deported back to her country, which is contrary to Article 3. The applicant belonged to a Tutsi ethnicity and lived in the village of Mbuye, however, her parents were killed by the Hutu militia in 1993. Her only brother then joined the Tutsi militia and made himself a name in the group. The brother was killed in his house in the year 2006 and the applicant stood outside of the home and heard the ill-treatment her brother endured in his last moments. Further, she heard the Hutu soldiers ask the brother her whereabouts and at that moment she decided to flee. The applicant arrived in Sweden in 2006 and applied for asylum, however, the application was rejected, and she was ordered to go back to Burundi.

Sweden suspected the claims of the applicant as they saw her claims' inconsistency and she did not bring any credible evidence to support her claims.

”[the Committee finds that the complainant has not established that in case of her expulsion to the country of origin, she would face a foreseeable, real and personal risk of being tortured within the meaning of article 3 of the Convention. ”

The reason for this ruling is because of the inconsistency of the applicant as well as the lack of credibility in her claims. The Committee notes that the applicant did not bring the evidence to back up her claims and they suspected the validity of the documents she brought. Moreover, the applicant was given the time to bring the evidence of her claims but was unsuccessful with it.

This case demonstrates that in theory, the Committee believes the burden of proof lies on the State when the applicant cannot sustain proof of her claim however, in practice things are different. Although the Committee mentions the civil war that has been going on in the country for years and the weak human rights, they turn a blind eye to the difficulty of bringing documents for her claims. As mentioned earlier it is hard for women to trust in the legal system, especially in a corrupt one like the Brundi's. Although the Committee agreed on the deportation of the applicant, they did not mention anything about the relocation of the applicant. They thought she would not face any serious harm that would amount contrary to Article 3 when she is deported to Burundi.

It is important to note that the Committee repeatedly says the applicant will not be facing any torture in the meaning of Article 3, however, as Edwards (2011, 52-53) says the torture in this convention is drafted from a “male” perspective. As mentioned earlier, torture under this convention often refers to the torture committed on men and therefore women are excluded from and discriminated against in such an important human rights system. This confirms the feminist critics that say women continue to be excluded from the human rights system. Further to mention she argued that when drafting the UDHR they were fixated on a set of ideas about women that did not deliberate on a feminist agenda of formal equality. The claims of the applicant could have fallen under the purview of Article 3 if the Committee took gender into consideration. The applicant could not bring evidence because she is a woman

that could not trust the corrupted legal system in Burundi. This case demonstrated the shortcoming of the Committee.

5.2.2 F.B. v. Netherlands

The applicant of this case is a Guinean woman that alleges a breach of her rights mentioned in Article 3 if the Netherlands moves her back to Guinea. The applicant lived in Simbaya Cosa quarter, in Conakry, Guinea with her step-grandmother and the step-grandmother's brother as well as his wife. The step-grandmother forced her to undergo FGM without anesthesia and poor hygiene. Further, when the wife of the step-grandmother's brother did not give birth to a child, the applicant who was underage was sexually assaulted by the man and later was forced to get married to him. The applicant applied for asylum in 2003 in the Netherlands but her application was rejected three times before she brought it before the Committee. Moreover, the applicant did reconstructive genital surgery in 2013.

The Netherlands rejected her asylum application based on the fact that the applicant's claims were not credible. They also argued that she would not undergo FGM again if she is deported to Guinea.

However, the Committee looks at the current situation in Guinea in relation to FGM and they refer to credible reports such as from UNICEF and WHO that state the general widespread of FGM despite the law prohibition of this practice.

“The Committee is of the view that the State party has an obligation, in accordance with article 3 of the Convention, to refrain from forcibly returning the complainant to Guinea or to any other country where she runs a real risk of being expelled or returned to Guinea.”

The Committee acknowledged the Member State's efforts in debunking the applicant's claim of her and her family's life in Guinea. The reports show that girls over the age of nineteen are not often subjected to FGM and this was one of the main arguments of the member state. However, the Committee mentions that the reason for this is that girls undergo FGM under the age of fourteen when they are unmarried. Nevertheless, the applicant claimed that she did

the reconstructive genital surgery because she did not like her body because of the FGM, moreover, if she is returned to Guinea, she will undergo FGM again. In addition, her step-grandmother and husband will treat her ill because they will accuse her of prostitution in the Netherlands. Because of the Widespread FGM in Guinea, the Committee did not see it necessary to suggest an alternative flight. Accordingly, the Committee concluded that the permanent physical harm and psychological pain would amount to a breach of Article 3.

Intersectionality (Gunnarson, et al. 2018) takes gender into account during any evolution and that is what the Committee did when assessing this case. Furthermore, the Committee admits that the authorities in Guinea are not capable of protecting the victim, moreover, taken consideration into the applicant is a single woman with severe anxiety. The Committee considering the psychological harm the applicant faces and would continue to face if she is deported is a step forward for the women's rights before the Committee. This is important to mention because it highlights that psychological suffering could be one of the factors the Committee looks at when assessing these cases.

5.2.3 Njamba and Balikosa v. Sweden

The complainants of this case are Njamba and her daughter Balikosa, nationals of the Democratic Republic of the Congo (DRC). The first applicant and her family including the second applicant lived in Gemena but in 2004 the family moved to Goma where the husband started a small business. The first applicant later found out that her husband and his brother had the small business as a cover-up and instead were involved with the rebel groups in Goma. Many families wanted the brothers dead and suspected that the first applicant was involved as well and threatened her life. In the same year, the two applicants were attending Church when a fight broke out, they later found out that their whole family was killed when they came back to their home after a few days of hiding at a friend's house. Moreover, the first applicant claims she witnessed, executions, rapes, and other acts of torture. The applicants believed they survived because they were at the church that day and fled to a friend's home when they heard about the fight. Therefore, the applicants came to Sweden to seek asylum. The applicants applied for asylum for fear of persecution as well as the first applicant was HIV-positive. Their application was denied and ordered to go back to DRC.

Sweden argued that the applicants were originally from Gemena and could relocate to that part of the country which is not a conflict area.

According to the Committee, sexual violence is still occurring in the province where the applicants were from even in Gemena. Moreover, more reports expressing the increasing violence against women throughout the country came out since Sweden reviewed the situation in DRC. Therefore, the Committee notes that there will be no area that would be considered safe for the applicants in DRC. For this reason, the Committee finds a breach of Article 3 if the applicants are deported to DRC.

”[the Committee finds that, on a balance of all of the factors in this particular case and assessing the legal consequences aligned to these factors, substantial grounds exist for believing that the complainants are in danger of being subjected to torture if returned to the Democratic Republic of the Congo”

When assessing the case of *Njamba and Balikosa v. Sweden* the Committee has taken consideration into looking different aspects of this case. The Committee demonstrated that it has more access to reliable Country of Origin Information (COI) than the deporting state and this goes back to the fact that they receive and examine periodic reports from DRC. This played a big role in the outcome of this case. The Committee found there will be a breach of Article 3 based on the reports of the current human rights situation in DRC. Moreover, the Committee took gender into consideration when assessing the case. Intersectionality is vital when looking at a case concerning such as rape and widespread sexual violence in the receiving country. Although the claim of the first applicant’s husband being involved with a rebel group was disputed but a known fact is that sexual violence against women amounts to a violation of Article 3.

This as mentioned above confirms Edwards’ (2011) argument that the decision-makers should be aware of the applicant’s sex/race, sex/class, or sex/sexuality in order to support intersectionality. As mentioned by Cali et al (2020) the Committee deserve more of the vanguard label as they attempt to approach the non-refoulment principle in a progressive manner while assessing the cases. Again, the Committee demonstrated that they overlook if some of the applicant’s claim is false if the country of origin is widespread with violence.

5.2.4 A.S. v. Sweden

The applicant of this case is an Iranian woman claiming that her high-ranking air officer husband died in 1981. The applicant has never been politically active and she and her family were secular-minded, opposing the regime of mullahs. Her dead husband was viewed as a martyr and therefore, the applicants were supported by a foundation that supports martyr families with the name of the Bonyad-e Shahid. However, they forced her into a *sighe* or *mutah* marriage to one of the high-ranking leaders of this foundation. This form of marriage is temporary and according to the applicant, she was not supposed to live with him, instead, she would be at any time ready for her husband's sexual services whenever he requires. The applicant had an affair with a Christian man while married to the leader of the foundation and hence was sentenced to death by stoning for committing adultery. The applicant exercised all the domestic remedies before she applied her deportation case to the Committee. Although this case is different from the previous cases mentioned in this chapter because the violator of her human right upon deportation is the Iranian authority. It is important to note that the forced marriage of the applicant and her not following Shariah law increased the violence she went through at the hand of her husband. The applicant was questioned about her affair with the Christian man by the authority, where they tortured her but when she returned home her husband continued with his domestic violence.

Sweden rejected her asylum based on the fact that the Iranian authority was not interested in her when she departed from Iran, unlike her claims.

”Considering that the author's account of events is consistent with the Committee's knowledge about the present human rights situation in Iran, and that the author has given plausible explanations for her failure or inability to provide certain details which might have been of relevance to the case, [... in accordance with article 3 of the Convention, to refrain from forcibly returning the author to Iran or to any other country where she runs a risk of being expelled or returned to Iran.”

The Committee stresses that the applicant indeed submitted good evidence of her claims, moreover, cited a reliable report from Commission on Human Rights confirming that married women have lately been sentenced to death by stoning. Furthermore, the reports claim that women's human rights are still weak despite some improvements. Therefore, the Committee concludes that deporting the applicant to Iran would breach Article 3.

Although we can say the conclusion of the Committee stopped the deportation of the applicant, the human monitoring body failed to mention the suffering the applicant went through at the hand of her mutah husband. The intersectionality lens they have used in the previous two cases is absent from this case. According to the applicant, he threatened her with her kids if she did not marry him. Therefore, it is essential to highlight the importance of intersectionality.

Edwards (2011, 227) says that the CAT did not sufficiently consider gender into account in this case. The committee failed to mention that the applicant was used as a sex slave. Yes, stoning to death is a clear infringement of Article 3, however, being a sex slave to a high-ranking leader should amount to a violation of Article 3. *A.S. v. Sweden* is another case that showcases the progress of the Committee's assessment, however, it is important to note its shortcoming as well. As mentioned by Cali et al (2020) the Committee deserve more of the vanguard label as they attempt to approach the non-refoulment principle in a progressive manner while assessing the cases. However, even if they deserve this label they still have to progress when assessing women applicants' cases.

5.3 The assessment of the ECtHR

After discussing the four cases brought before the Court, it is safe to say that the Court oftentimes does not take gender into consideration. The Court looks at COI but is not transparent and consistent with the resources they rely on for their rulings. Moreover, the Court heavily suggests a relocation alternative, although, it is not always safe to deport applicants. The ECtHR cases showed that the receiving state can not guarantee the safety of the applicants, yet the rulings of the Court were deportation. Moreover, the Court shays away from mentioning the alleging gender-based violence in their judgments. The principle of non-refoulement prohibits applicants to send back to their country if they are facing any serious human rights violation. Both *R.H.* and *A.A. and others v. Sweden* demonstrate that upon deportation the applicants will be facing serious human rights violations.

In *A.A. and others*, the mother fled from an abusive husband, one of the daughters was married off to an older man, the second daughter fled from an arranged marriage and the younger daughter was facing the same destiny upon deportation. Both the mother and oldest

daughter claimed domestic violence however, the Court turned a blind eye to this matter. It is shameful that a human rights monitoring body like the Court finds it hard to assess cases concerning women applicants with an intersectionality lens. As the applicant argued, the Yemeni government could not help the female applicants, yet the Court decided that the male family members are sufficient enough to protect the female applicants. Spikerboer (2017) criticizes how the Court agrees with Yemen's patriarchal society that women in Yemenite families must have a male relative to be safeguarded from the aggression of other males.

In *R.H.* the Court admitted the dangerous situation in Mogadishu and how a single woman would face extreme difficulty in society, yet she was also deported back to Somalia. Just like in the previous case, the Court here relies on male family members to protect the rights of the woman. According to Spikerboer (2017), it appears that even in its most brutal form, patriarchy does not offer women any protection under Article 3 of the ECHR. The instances involving the "male protection network" raise a more significant problem that has remained in international human rights law: how to acknowledge a gendered reality without reintroducing gender norms and women's inferior status in the legal system (Peroni 2018, 364-365). Therefore, this case demonstrates that the Court moves a step backward when it comes to gender discrimination. Moreover, although the Court argues that they consider gender, the lack of an intersectionality lens, in this case, is shameful.

In *N. v Sweden* the Court assessed that she lacked a "social network" and therefore this would amount to a violation of Article 3 if she is transferred back to Afghanistan. The Court lacks the intersectionality lens and hence why it can not move on from gender outdated stereotypes. Decision makers such as the Court should be aware of the risk that new victim categories, such as those based on sex/race, sex/class, or sex/sexuality. In almost all of the ECtHR observed cases the Court looked at the applicants' "male" and "social network" and this proves Edwards' (2011, 175) point that under international law, men are the standard against which all individuals are judged. Another critique of her that is proved when looking at the Court's assessment is that the international human rights law was drafted as a "male" rights. Torture or any ill-treatment can be avoided under the protection of men. This means that women are under men and only men can provide them protection. This confirms Gunnarson et al. (2018) argument that the law and science of it are characterized by a positivist ideal of objectivity, which makes norms and values invisible. This critique arises when looking at gender stereotypes, the "other" woman, and the Court's assessment of these

cases. It suggests that the person who interprets and applies the law must examine their own values.

The Court's inconsistency and lack of transparency are yet again demonstrated in the case of *Izevbekhai and Others* concerning FGM. As Spikerboer (2017) mentioned, the mother did not conform to a non-European crossing border asylum seeker fleeing from persecution from the origin country. In addition, this goes back to the "we" and "them" mentioned by (Wessels 2019) and Gunnarson's et al. (2018) "otherfication". This cycle and stereotypes hinder the improvement of female applicants' human rights. Questions about the continuity of the Court's jurisprudence regarding violence against women are raised by the consideration of these stereotypes. Thus, the Court's decision to break from the fundamental rules governing the nature and scope of State obligations to eradicate gender-based violence and protect its victims in "expulsion" instances is not supported by its rationale. By adding to the sliding scale of protection, this common practice harms the likelihood that refugee women will receive comprehensive protection (Querton 2022, 465-466).

5.4 The assessment of the CAT

The Committee just like the Court looks at the claims of the applicants, the human rights situation in the receiving country, and if the applicant would be facing any serious human rights violation upon deportation. The observed cases show that the Committee considers several points and one of them is the burden of proof. Although this takes the burden away from the applicant in situations where they do not have access to evidence (Cali et al, 2020), the Committee sometimes turns a blind eye to this crucial tool. In the observed cases of *A.A.M.* the member state is not asked to verify the applicant's claims, on the contrary, they give the applicant time to provide evidence and base their rulings on the fact that she could not prove her claims. However, the Committee makes clear the reason for this is the applicant was inconsistent as well as her general credibility was constantly questioned. Gunnarson et al., (2018, 155-156) say that gender studies have shown that women's experiences and interpretations are silenced due to their lack of relevance to the legal process. This further contributes to the fact that refugee law is not able to tackle gender discrimination especially violence against women.

F.B. v. Netherlands a case concerning FGM the Committee assessed the case with an intersectionality lens. The Committee took consideration into the applicant's physical and psychological pain that she will suffer upon deportation. Both in *F.B.* and *Njamba and Bakosa* the Committee cites reliable resources to inform the current human rights situation in Guinea and DRC. Even in the discussion of relocation as it was suggested by the deporting state the Committee stressed that the widespread increasing violence against women would amount to an infringement of Article 3. This as mentioned above confirms Edwards' (2011) argument that the decision-makers should be aware of the applicant's sex/race, sex/class, or sex/sexuality in order to support intersectionality. Edwards (2011) argues that intersectionality produces a more accurate account by enabling a better-informed, individualized appraisal of the case's facts. This is confirmed by how the Committee assessed these two cases.

The *A.S.* case demonstrated that the Committee sometimes shays away from mentioning the domestic violence the applicant suffered in their final judgment. Nykänen and Nykänen (2012, 126-127) say that in theory sexual assault is acknowledged as a form of persecution however, in practice, these assault allegations fall outside the purview of refugee protection and into the realm of additional protection or even no protection at all. This could relate to the "public" and "private" spheres mentioned by Edwards (2011, 65). The "public" and "private" sphere is a major critique of the international law system as it ignores the domestic sphere that implies the domestic violence women experience.

5.5 Summary

The previous research and the feminist legal theory presented in chapter three have informed us that refugee women are excluded to a certain degree from the human rights system. Moreover, they are discriminated against and portrayed with stereotypes that push them further from seeking and trusting the legal justice system. This chapter has shown that when compared to the two monitoring bodies the Committee's judgment is more consistent, and transparent compared to the Court. The Committee does not mention any type of male protection or network. When assessing the cases discussed above, the claims of the applicants' life in the origin country could be incorrect, but the Committee looks at how the current human rights situation in the receiving country will impact a female refouler. The

intersectionality lens is something feminists argue for, especially in refugee law, where this is often overlooked. Therefore, the Committee having this lens when assessing these cases is perhaps a step forward for women's rights in refugee law in practice. Nevertheless, it is important to remember that the Committee unlike the Court is only a monitoring body with declaratory powers. Whereas the Court's judgment is a binding assessment of its member states.

The Court heavily suggests relocation even in instances when it is not safe for the applicants. Moreover, in general, the Court lacks the gender sensitivity feminists argue when it comes to women seeking protection in international law. The Committee compared to the Court sees women as human rights owners and does not trust their rights to be under the protection of men. Contrary to the Court, the resources the Committee relies on when evaluating the COI are far more reliable and transparent. As mentioned by Hamden (2016, 216-217) this is due to the Committee having access to periodic reports from State parties, as well as other reports written by United Nations bodies. Despite the good effort the Committee sometimes falls behind as it is demonstrated in the case of *A.S. v. Sweden* where they completely forgot to mention the domestic violence of the applicant which was contrary to Article 3. Therefore, more improvement is still needed as feminists argue.

6. Conclusion

In this chapter, there is a summary and conclusion of this study. Moreover, there will be an evaluation of the strength and weaknesses of this research. The chapter concludes with recommendations for further research that could argue and broaden the understanding of the studied area.

This research aimed to analyze how the European Court of Human Rights and Committee Against Torture assess cases concerning the principle of non-refoulement in relation to gender. The cases selected for this study concern women applicants alleging they will be facing serious violations of human rights at the hand of private actors in the country of origin. Moreover, there was a comparison between the Court's and the Committee's statements and justification in their assessment. The purpose of these two monitoring bodies was because there were barely any studies comparing the ECtHR and CAT on a micro-level. Therefore,

this thesis was a contribution to this field of research studying the assessment of cases with gender into consideration. With the help of the feminist legal theory and previous research, the analysis of these cases looked if there is any gender discrimination towards women refugees/asylum seekers in the legal system.

This study has shown that an important monitoring body like the Court has repeatedly shown its lack of understanding of refugee/asylum seeker women's concerns and needs. Further, the Court showed stereotypes and gender discrimination with their assessments. Although this was already argued by the previous research. What this study contributed was comparing the Court's assessment with the Committee's feminism analysis. Although as mentioned before the Committee is also lacking in considering gender but as far as the observed cases the Committee is more advanced with the intersectionality lens.

When looking at how these two monitoring bodies assess the observed cases, the Court unlike what the ECHR states, depends heavily on relocation, although sometimes it is very evident relocation is very unsafe for the applicants. Both the Committee and the Court agreed on cases concerning violation of human rights at the hand of receiving country. *N.* and *A.S.* were facing stoning as the death penalty upon deportation and in these cases, the two monitoring bodies, without looking at the ill-treatment the applicant will face at the hand of private actors, agreed that transferring them back to their country of origin would be an infringement of Article 3 of respective conventions.

Therefore, to answer the research question of this thesis the Committee's assessment is more aligned with the intersectionality perspective compared to the Court. Moreover, the difference between the two monitoring bodies is the Court relies on, the "male or social network" very often. This leads to an increase of "we" and "them", stereotypes and deserving "victims" because the Court does not mention "male network" to European women alleging domestic violence. This thesis concludes that refugee/asylum seeker women are discriminated against before the Court the most but also sometimes before the Committee as well. The refugee law still has a long way to come to help women alleging violence against them at the hand of private actors.

6.1 For further research

Based on this study there has been identified other approach that could require deeper research in this field. The first that the author suggests is a comparison study on both European and non-European women alleging domestic violence before the Court. This approach will shed light on how much refugee/asylum seeker women are excluded from the human rights system. The second suggestion the author has is a comparison study on the CAT but with another United Nations Treaty Body. This comparison makes the monitoring bodies on the same level as they both do not have binding assessments and have declaratory powers only.

Another suggestion for further research is to look at why the deportation countries insist women to send back to their country of origin when they are facing serious human rights violations. It is also important to keep in mind these deporting states have signed conventions that cover the principle of non-refoulement. The member state that the author suggests focusing on is Sweden. The majority of the observed cases in this study were claiming that Sweden would violate Article 3 of respective conventions if the applicants are deported.

References:

Conventions and legal instruments

Council of Europe, (1950). European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, ETS 5.

UN Committee Against Torture (CAT), (2017). General Comment No. 4 on the implementation of article 3 of the Convention in the context of article 22.

UN General Assembly, (1984). Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations, Treaty Series, vol. 1465.

UN General Assembly, (1951). Convention Relating to the Status of Refugees, United Nations, Treaty Series, vol. 189.

Cases

ECtHR:

A.A. and others v. Sweden Appl. No. 14499/09, 28 June 2012

Izevbekhai and others v. Ireland, Appl. No. 43408/08, 17 May 2011

N. v. Sweden, Appl. No. 23505/09, 20 July 2010.

R.H. v. Sweden, Appl. No. 4601/14, 10 September 2015.

CAT:

A.A.M. v. Sweden, No. 413/2010, 23 May 2012.

A.S. v. Sweden, No. 149/1999, 24 November 2000.

F.B. v. Netherlands, No. 613/2014, 20 November 2015.

Njamba and Balikosa v. Sweden, No. 322/2007, 14 May 2010.

Literatures

Andreassen, B. (2017). 'Comparative analyses of human rights performance', in Andreassen, B-A., Sanno, H-O., and McInerney-Lankford, S. (eds) *Research methods in human rights*. The World Bank, US.

Dauvergne, C. (2021). "Women in Refugee Jurisprudence," *The Oxford Handbook of International Refugee Law*, pp. 728-C40.P45. Available at: <https://doi.org/10.1093/law/9780198848639.003.0041>.

De, W. F. (2016). Non-refoulement under the European Convention on Human Rights and the UN Convention Against Torture: The assessment of individual complaints by the European Court of Human Rights under Article 3 ECHR and the United Nations Committee Against Torture.... BRILL.

Edwards, A. (2010). Violence against Women under International Human Rights Law. Cambridge: Cambridge University Press.

Farran, S. (2018). 'Comparative approaches to human rights' in McConnell, L. & Smith, R. (red.). *Research Methods in Human Rights*. Abingdon: Routledge.

Gunnarsson, Å. et al. (2018) *Genusrättsvetenskap. Andra upplagan*. Lund: Studentlitteratur.

Hamdan, E. (2016) "The Principle of Non-Refoulement under the ECHR and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", *BRILL, Boston*. Available from: ProQuest Ebook Central.

Mathew, P. (2021). "Non-refoulement," *The Oxford Handbook of International Refugee Law*, pp. 728-C40.P45. Available at: <https://doi.org/10.1093/law/9780198848639.003.0041>.

McAdam, J. (2007), *Complementary Protection in International Refugee Law*, Oxford Monographs in International Law.

Nykänen, E., & Nykänen, E. (2012). *Fragmented State Power and Forced Migration: A Study on Non-State Actors in Refugee Law*, BRILL, Boston. Available from: ProQuest Ebook Central.

Articles

Blöndal, E.K. and Arnardóttir, O.M. (2019). “Non-Refoulement in Strasbourg: Making Sense of the Assessment of Individual Circumstances,” *Oslo Law Review*, 5(3), pp. 147–174. Available at: <https://doi.org/10.18261/issn.2387-3299-2018-03-02>.

Çalı, B., Costello, C. and Cunningham, S. (2020). “Hard Protection through Soft Courts? Non-Refoulement before the United Nations Treaty Bodies,” *German Law Journal*. Cambridge University Press, 21(3), pp. 355–384. Available at: <https://doi.org/10.1017/glj.2020.28>

Gil-Bazo, M.-T. (2015). “Introduction: The Role of International Organizations and Human Rights Monitoring Bodies in Refugee Protection,” *Refugee Survey Quarterly*, 34(1), pp. 1–10. Available at: <https://doi.org/10.1093/rsq/hdu022>.

Peroni, L. (2018) “The Protection of Women Asylum Seekers under the European Convention on Human Rights: Unearthing the Gendered Roots of Harm,” *Human Rights Law Review*, 18(2), pp. 347–370. Available at: <https://doi.org/10.1093/hrlr/ngy005>.

Querton, C. (2022) “Non-State Actors of Protection and the Sliding Scale of Protection for Refugee Women,” *Refugee Survey Quarterly*, 41(3), pp. 444–471. Available at: <https://doi.org/10.1093/rsq/hdac020>.

Ulrich, G. (2018). ‘Research ethics for human research’ in McConnell, L. and Smith, R. *Research methods in human rights*. Abingdon: Routledge.

Vetenskapsrådet. (2002). Forskningsetiska principer inom humanistisk-samhällsvetenskaplig forskning. Available at: <http://www.codex.vr.se/texts/HSEFR.pdf>

Vogelaar, F. (2016). “Principles corroborated by practice: the use of country of origin information by the European Court of Human Rights in the assessment of real risk of violation

of the prohibition of torture, inhuman and degrading treatment” *European Journal of Migration and Law*, 18(3), 302-326.

Available at: https://brill.com/view/journals/emil/18/3/Article-p302_3.xml

Wessels, J. (2019) “The boundaries of universality - migrant women and domestic violence before the Strasbourg Court,” *Netherlands Quarterly of Human Rights*, 37(4), pp. 336–358.

Available at: <https://doi.org/10.1177/0924051919884757>.

Websites

United Nations High Commission for Refugee. (2022). Refugee Data Finder. Available at: <https://www.unhcr.org/refugee-statistics/>

United Nations High Commission for Refugee. (2018). The principle of non-refoulement under international human rights law. Available at: <https://migrationnetwork.un.org/resources/principle-non-refoulement-under-international-human-rights-law>

United Nations High Commission for Refugee. (2011). UNHCR Protection Training Manual for European Border and Entry Officials - 3. Who is a Refugee? Annex 2 - Key Messages: Who is a Refugee.

Available at: <https://www.unhcr.org/4d944d089.html>

World Health Organisation. (2021). “Violence against women.”

Available at: <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>