



The protection of vulnerable individuals in the context of EU policies on border checks, asylum and immigration

**Maija Mustaniemi-Laakso, Mikaela Heikkilä, Eleonora Del Gaudio,
Sotiris Konstantis, Maria Nagore Casas, Dolores Morondo,
Venkatachala G. Hegde, Graham Finlay**



31 May 2016



Frame

Fostering Human Rights among European Policies

Large-Scale FP7 Collaborative Project

GA No. 320000

1 May 2013-30 April 2017

The protection of vulnerable individuals in the context of EU policies on border checks, asylum and immigration

Work Package No. 11 – Deliverable No. 3

Due date	31 May 2016
Submission date	31 May 2016
Dissemination level	PU
Lead Beneficiary	Åbo Akademi University
Authors	Maija Mustaniemi-Laakso, Mikaela Heikkilä, Eleonora Del Gaudio, and Sotiris Konstantis (Åbo Akademi University) Maria Nagore Casas and Dolores Morondo (University of Deusto) Venkatachala G. Hegde (Indian Society of International Law) Graham Finlay (University College Dublin)

<http://www.fp7-frame.eu>

Acknowledgements

The research leading to these results has received funding from the European Commission's Seventh Framework Programme (FP7/2007-2013) under the Grant Agreement FRAME (project n° 320000).

The authors are grateful to the anonymous internal peer reviewers for the valuable and insightful comments on the draft version of the report. The authors also acknowledge the helpful editing support of Raija Hanski (Institute for Human Rights, Åbo Akademi University). The authors further wish to thank Stephen Phillips (Institute for Human Rights, Åbo Akademi University) for the English language editing of the manuscript. All errors obviously remain the authors' own.

V. Gender violence and gender-based persecution against women as grounds for asylum claims (Author: Dolores Morondo)

A. Gender and asylum

1. Introducing gender perspectives in asylum law and policy

According to Eurostat, asylum applicants in Europe are mostly young or middle-aged men,⁷⁵⁶ yet women and girls make up half of the world's refugee population.⁷⁵⁷ Presently in Europe there are increasing numbers of women and children reported among those crossing what has been described as the 'most dangerous frontier' in the world.⁷⁵⁸ In January 2016, women accounted for half of those entering Europe, an increase from just one third in 2015.⁷⁵⁹ From this perspective, it is problematic that historically international conventions and national asylum policies have tended to overlook the specific position of female asylum-seekers and the gendered nature of refugee situations. Asylum has largely been seen through the lens of the male, and asylum systems have developed to respond to male experiences.⁷⁶⁰

The centrepiece of international refugee protection is the 1951 Convention Relating to the Status of Refugees ('Refugee Convention') and its 1967 Protocol. In its Article 1 A(2), the Convention defines a refugee as 'a person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.' Since the 1980s there has been a growing recognition that, notwithstanding the broad terms of this definition, women were not being adequately protected by the Convention.⁷⁶¹

⁷⁵⁶ For the period 2008–2015 women accounted for less than one third of asylum applications. Men between 18 and 65 years made 3 out of 4 asylum claims. See EUROSTAT Asylum Statistics <<http://appsso.eurostat.ec.europa.eu/nui/show.do>>.

⁷⁵⁷ UNHCR, 'Women: Particular challenges and risks' <<http://www.unhcr.org/pages/49c3646c1d9.html>>.

⁷⁵⁸ The Mediterranean Sea is the most deadly border in the world: seventy-six per cent of the migrants who have died or gone missing this year have done so in the Mediterranean Sea. In 2015, the figure was 69.6% and in 2014 65.4%. International Organization for Migration (IOM), Missing Migrants Project, 'Latest Global Figures' <<http://missingmigrants.iom.int/latest-global-figures>>.

⁷⁵⁹ Women's Refugee Commission, *No Safety for Refugee Women on the European Route: Report from the Balkans* [2016] <<https://www.womensrefugeecommission.org/gbv/resources/1265-balkans-2016>>. Reports have also noted a rise in the numbers of women fleeing in particularly aggravated circumstances, such as single women travelling alone or with children, adolescent girls, pregnant and breastfeeding women, etc. See United Nations Refugee Agency, United Nations Population Fund and Women's Refugee Commission, *Initial Assessment Report: Protection Risks for Women and Girls in the European Refugee and Migrant Crisis* [2015], 3.

⁷⁶⁰ European Parliament, Committee on Women's Rights and Gender Equality, Draft Report on the situation of women refugees and asylum seekers in the EU (2015/0000(INI), 16 November 2015, Rapporteur Mary Honeyball.

⁷⁶¹ Karen Musalo and Stephen Knight, 'Asylum for Victims of Gender Violence: An Overview of the Law, and an Analysis of 45 Unpublished Decisions' (2003) *Immigration Briefings* 1. Besides reports by international organisations, there is a growing field of scholarly research regarding gender and asylum. See, for example, Melanie Randall, 'Particularized social groups and categorical imperatives in refugee law: State failures to recognize gender and the legal reception of gender persecution claims in Canada, the United Kingdom, and the United States' (2015) 23(4)

The European Parliament was the first international body to acknowledge the need for a gender-sensitive interpretation of the Refugee Convention in a resolution adopted on 13 April 1984,⁷⁶² stating that women in certain countries ‘who face harsh or inhuman treatment because they are considered to have transgressed the social mores of the society in which they live’ can be considered ‘as belonging to a “particular social group”’ within the meaning of the definition of a refugee in the Refugee Convention, and called upon the states to interpret the Convention in that sense.

The introduction of a gender perspective in the work of the UNHCR, following the proclamation of 1976-1985 as the UN Decade for Women, led to an enhanced focus on the problems facing refugee women. This gender perspective has evolved over time and it is possible to distinguish at least three phases.⁷⁶³ Until 1980, refugee protection was assumed to work in a gender neutral manner. Most programmes during this era did not differentiate between the needs of men and women. By 1980, the UNHCR recognised that to receive fair and equal treatment special measures must be adopted to accommodate the ‘special needs’ of women.⁷⁶⁴ The aim was not to single women out, but rather field officers were asked to mainstream women’s needs. Hence, the primary aim with identifying refugee women’s special needs was not the development of special projects for them, but rather ‘to ensure that projects for the general population address the special needs of women and children adequately and appropriately’.⁷⁶⁵ In the second phase, which took place in the early 1990s, the focus moved from addressing the needs of women to gender relations and the different socio-economic roles of men and women. A central issue became the implications of gender roles on the implementation of refugee protection projects.⁷⁶⁶ During this period the UNHCR started to recommend that countries also develop their own guidelines to address gender-related issues in asylum claims.⁷⁶⁷ By 1998, the UNHCR had developed a Strategy for Mainstreaming Gender Equality into the UNHCR’s Protection Programmes.⁷⁶⁸ This Strategy helped the UNHCR to move away from analysing the different experiences of men and women, instead undertaking

American University Journal of Gender, Social Policy & the Law 529, 529–571; Karen Musalo, ‘Personal Violence, Public Matter: Evolving Standards in Gender-Based Asylum Law’ (2014) Harvard International Review 45; Efrat Abel, Catherine Dauvergne, and Jenni Millbank (eds), *Gender in Refugee Law: From the Margins to the Centre* (Routledge 2014); Helen Bailot, Sharon Cowan and Vanessa Munro, ‘“Hearing the Right Gaps”: Enabling and Responding to Disclosures of Sexual Violence within the UK Asylum Process’, Edinburgh School of Law Research Paper Series no 36 [2013]; Siobhán Mullally, ‘Migration, Gender, and the Limits of Rights’ in Ruth Rubio-Marín (ed.), *Migration and Human Rights*, Collected Courses of the Academy of European Law (OUP 2013) 145; Alice Edwards, ‘Transitioning Gender: Feminist engagement with international refugee law and policy 1950–2010’ (2010) 29(2) Refugee Survey Quarterly 21; Lisa Frydman and Kim Thuy Seelinger, ‘Kasinga’s Protection Undermined? Recent developments in Female Genital Cutting Jurisprudence’ (2008) 18 Bender’s Immigration Bulletin 1073.

⁷⁶² European Parliament Resolution of 13 April 1984 on the application of the Geneva Convention relating to the status of refugees, [1984] OJ C127, 14/5/1984, 137.

⁷⁶³ UNHCR, ‘From 1975 to 2013: UNHCR’s Gender Equality Chronology’ [2013] <<http://www.refworld.org/docid/53a2a5f54.html>>.

⁷⁶⁴ UNHCR, ‘From 1975 to 2013: UNHCR’s Gender Equality Chronology’ [2013], 3.

⁷⁶⁵ UNHCR, ‘From 1975 to 2013: UNHCR’s Gender Equality Chronology’ [2013], 3.

⁷⁶⁶ This was largely the result of global developments in the field of women’s rights, which led to gender mainstreaming becoming what has been described as a ‘globally recognised strategy for achieving gender equality’. UNHCR, ‘From 1975 to 2013: UNHCR’s Gender Equality Chronology’ [2013], 4.

⁷⁶⁷ Canada was the first country to follow this guidance in 1993, and the United States issued its own gender recommendations in 1995.

⁷⁶⁸ UNHCR, ‘From 1975 to 2013: UNHCR’s Gender Equality Chronology’ [2013], 4.

specific programming aimed at redressing gender-based discrimination. In 2002, this approach led to the publication of two important sets of guidelines: one on gender-related persecution⁷⁶⁹ and another on membership of a particular social group.⁷⁷⁰ The introduction of a gender-sensitive approach to assessing the design and implementation of asylum procedures showed the many ways in which asylum systems failed to understand and adequately address women's experiences of persecution.

The UNHCR⁷⁷¹ and the Committee on the Elimination of Discrimination against Women⁷⁷² have given detailed recommendations on different aspects of the refugee process where gender makes a difference and where gender-sensitiveness could improve asylum procedures so that they are more responsive to women's needs and claims. These guidelines and recommendations, as well as numerous studies and reports,⁷⁷³ highlight different issues which could be gathered around three questions: a) gender bias in the assessments of women's claims to asylum; b) women's needs and conditions in transit situations and reception places; and c) gender-based persecution and the determination of refugee status.

Concerning gender bias in the assessment of women's claims, there is a tendency to consider women's and girls' claims only in relation to the claims of their husbands/fathers or other male family members.

⁷⁶⁹ UNHCR, Guidelines on International Protection No 1: Gender-related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01, 7 May 2002.

⁷⁷⁰ UNHCR, Guidelines on International Protection No 2: Membership of a particular social group within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/02, 7 May 2002.

⁷⁷¹ Besides the Guidelines on gender-related persecution, UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/IP/4/Eng/REV.1 [1979, reed. January 1992]; UNHCR, *Handbook for the Protection of Women and Girls* [2008]; UNHCR, *Improving asylum procedures: Comparative analysis and recommendations for law and practice: Key Gender Related Findings and Recommendations* [2010].

⁷⁷² Committee on the Elimination of Discrimination against Women, 'A Call for Gender Equality for Refugees and Stateless Persons', Statement on the Anniversaries of the 1951 Convention Relating to the Status of Refugees and the 1961 Convention on the Reduction of Statelessness, 19 October 2011; Committee on the Elimination of Discrimination against Women, General recommendation No 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014.

⁷⁷³ For example, Hana Cheikh Ali, Christel Querton and Elodie Soulard, 'Gender related asylum claims in Europe: A comparative analysis of law, policies and practice focusing on women in nine EU Member States', Study commissioned by the European Parliament [2012]; Gabor Gyulai, *Información sobre el país de origen en el procedimiento de asilo: La calidad como requisito legal en la UE* (Comité Helsinki de Hungría 2011); Amnesty International End FGM Campaign, ILGA-Europe and the European Women's Lobby, *En-Gendering the European Asylum Support Office*, February 2011; ILGA-Europe Policy paper on the recast of the EU Asylum Procedure and Reception Directives, July 2011; Asylum Aid, *Unsustainable: The quality of initial decision-making in women's asylum claims* [2011]; CEAR, CIR and FTDA, *Exchange for Change: Guide for an effective protection of refugee victims of gender-related persecution in Europe* [2010]; Human Rights Watch, *Fast-tracked unfairness: Detention and denial of women asylum seekers in the UK* [2010]; Y. Ertürk, *15 years of the United Nations Special Rapporteur on Violence against Women, Its causes and Consequences* (United Nations 2009); Heaven Crawley and Trine Lester, 'Comparative analysis of gender-related persecution in national asylum legislation and practice in Europe', UNHCR, [2004]; Radhika Coomaraswamy, *Integration of the human rights of women and the gender perspective, violence against women*, UN doc. E/CN.4/2000/68, 29 February 2000.

Women have difficulties in accessing individual asylum procedures, even where they have experienced the same form of persecution as their male relatives.⁷⁷⁴

A draft report of the Women's Committee of the European Parliament has recently repeated other concerns about the practical challenges faced by women applying for asylum.⁷⁷⁵ The report notes that women and men are differently equipped to meet the requirements of asylum procedures. Women, for example, are less likely to have evidence to corroborate a claim due to a variety of factors including their economic, social and political status in their country of origin, as well as the nature of the persecution they have experienced. For this reason, oral testimony tends to play a more significant role in women's asylum claims, making credibility assessments a key issue in their applications.⁷⁷⁶ Furthermore, women and girls may be reluctant or slow to disclose details of the persecution or the trauma they have suffered, especially if they face male interviewers or interpreters or when other family members are present.⁷⁷⁷ The situation of women is worsened by a general culture of disbelief where the credibility of victims is often questioned.⁷⁷⁸ Decision-makers are seldom trained to understand the complexity of the recollection of histories of harm and trauma, thus placing a high burden on refugee applicants who, because of the nature of the harm inflicted and its social stigma, might have very limited documentary evidence.⁷⁷⁹ It is also likely that women will be more affected than men by factors such as a lack of adequate information, language difficulties, or a lack of familiarity and confidence in engaging with public authorities.⁷⁸⁰

In relation to women's needs in reception centres and transit situations, recommendations include measures to develop gender-sensitive reception procedures and support services for female asylum-seekers, such as appropriate accommodation for pregnant and lactating women and families with children, sex segregated accommodation and toilet facilities, lockable rooms and adequate lighting, guard protection (including female guards), provision of information to women and girls on gender-based

⁷⁷⁴ Hana Cheikh Ali, Christel Querton and Elodie Soulard, 'Gender related asylum claims in Europe: A comparative analysis of law, policies and practice focusing on women in nine EU Member States', Study commissioned by the European Parliament [2012].

⁷⁷⁵ European Parliament, Committee on Women's Rights and Gender Equality, Draft Report on the situation of women refugees and asylum seekers in the EU (2015/0000(INI), 16 November 2015, Rapporteur Mary Honeyball.

⁷⁷⁶ Hana Cheikh Ali, Christel Querton and Elodie Soulard, 'Gender related asylum claims in Europe: A comparative analysis of law, policies and practice focusing on women in nine EU Member States', Study commissioned by the European Parliament [2012].

⁷⁷⁷ Hana Cheikh Ali, Christel Querton and Elodie Soulard, 'Gender related asylum claims in Europe: A comparative analysis of law, policies and practice focusing on women in nine EU Member States', Study commissioned by the European Parliament [2012].

⁷⁷⁸ Hana Cheikh Ali, Christel Querton and Elodie Soulard, 'Gender related asylum claims in Europe: A comparative analysis of law, policies and practice focusing on women in nine EU Member States', Study commissioned by the European Parliament [2012]. See also, Sharon Pickering, 'Gender Persecution: A response to the UNHCR Guidelines' in *Stemming the Tide or Keeping the Balance: The Role of the Judiciary* (International Association of Refugee Law Judges 2002).

⁷⁷⁹ Hana Cheikh Ali, Christel Querton and Elodie Soulard, 'Gender related asylum claims in Europe: A comparative analysis of law, policies and practice focusing on women in nine EU Member States', Study commissioned by the European Parliament [2012].

⁷⁸⁰ UNHCR, *Handbook for the Protection of Women and Girls* [2008]; UNHCR, *Improving asylum procedures: Comparative analysis and recommendations for law and practice: Key Gender Related Findings and Recommendations* [2010].

violence and available assistance services, and services such as crisis counselling and medical care for survivors of sexual violence.⁷⁸¹ Many of these recommendations are a response to the growing awareness of and concern with the vulnerability of women and girls to sexual and gender-based violence in situations of displacement and humanitarian intervention, including in refugee camps and along transit routes. The Inter-Agency Standing Committee (IASC) has produced guidelines regarding gender violence in humanitarian settings and a handbook, both of which are viewed as landmark steps for this serious problem.⁷⁸²

The remainder of this study is primarily dedicated to the third set of issues, namely, gender-based persecution and gender-based violence against women as grounds for claiming asylum and the challenges that women claiming asylum on those grounds might experience in the procedure for the determination of their refugee status. For reasons of space, the case study will not address all forms of gender-based asylum claims,⁷⁸³ and will focus only on gender-based violence against women and girls.

2. Sexual and gender-based violence and gender persecution

Women and girls might experience both persecution because of gender and persecution which takes a gendered form. As expressed by Baroness Hale in the UK House of Lords judgment in *Fornah*: ‘The world has woken up to the fact that women as a sex may be persecuted in ways which are different from the ways in which men are persecuted and that they may be persecuted because of the inferior status accorded to their gender in their home society.’⁷⁸⁴ Hence, women may be persecuted because they are women, or they may be persecuted on other grounds (their religion or political opinion or minority membership) in a way which is different from the way in which their male co-religionists or relatives are persecuted, for example, through the use of sexual violence against them or through conjugal slavery.

The term ‘persecution’ plays a fundamental role in the definition of a refugee in the 1951 Convention. According to the Convention, a refugee is someone who flees due to a ‘well-founded fear of persecution’.

⁷⁸¹ UNHCR, Guidelines on International Protection No 1: Gender-related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01, 7 May 2002.

⁷⁸² The Inter-Agency Standing Committee (IASC) is the most important mechanism for inter-agency coordination of humanitarian assistance involving both UN and non-UN humanitarian partners. It was established in June 1992 in response to United Nations General Assembly Resolution 46/182 on the strengthening of humanitarian assistance. Inter-Agency Standing Committee, *Guidelines for Gender-based Violence Interventions in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies* [2005]; Inter-Agency Standing Committee (IASC), *Gender Handbook in Humanitarian Action* [2006].

⁷⁸³ There is growing research and literature on the topic of gender orientation and gender identity in asylum contexts. For example, see Mary Kapron and Nicole LaViolette, ‘Refugee Claims Based on Sexual Orientation and Gender Identity: An Annotated Bibliography’ Ottawa Faculty of Law Working Paper No 2014-15 [2014].

⁷⁸⁴ *Secretary of State for the Home Department (Respondent) v K (FC) (Appellant) and Fornah (Appellant) v Secretary of State for the Home Department (Respondent)*, United Kingdom House of Lords, October 2006, para 86.

Nevertheless, the Convention does not provide a definition of persecution. It has been argued that this absence was intentional and aimed to render the refugee definition flexible:

The term “persecution” has nowhere been defined and this was probably deliberate. It seems as if the drafters have wanted to introduce a flexible concept which might be applied to circumstances as they might arise; in other words, that they capitulated before the inventiveness of humanity to think up new ways of persecuting fellow men.⁷⁸⁵

Others, however, see the high indeterminacy of the concept as a problematic source of political and judiciary discretion, and even of arbitrariness.⁷⁸⁶ An unjustified impression is created that ‘there is a clear definition of a refugee and an efficient procedure which enables us to identify a real refugee’.⁷⁸⁷

The recognition that sexual and gender-based violence can fall under the definition of persecution in refugee law is part of a wider development resulting from the struggle of feminist and women’s groups to obtain recognition of women’s rights in international law and, in particular, the recognition of violence against women as a form of human rights violation.⁷⁸⁸

The UNHCR Guidelines on gender-related persecution begin by acknowledging that the term ‘gender-related persecution’ does not have a legal meaning *per se*. It is used to ‘encompass the range of different claims in which gender is a relevant consideration in the determination of refugee status’.⁷⁸⁹

Among the relevant scholarship, as well as in policy documents, there are a variety of expressions to refer to the phenomenon of gender-related persecution, as well as various classifications. The first distinction, which has already been mentioned, is that persecution might be based on gender or it might take a gendered form. Hence, firstly there are forms of harm that are inflicted because of gender. These cases include not only forms of harm inflicted on women based on repressive social and legal norms and discriminatory legislation, but also those inflicted on other gendered groups, such as homosexuals and transsexuals, on the basis of their sexual and gender identities.⁷⁹⁰ The forms of harm inflicted because of gender need not themselves be gendered. Women may, for example, be barred from accessing labour or livelihood, and homosexuals may be sentenced to death due to their sexual identity. In other cases the

⁷⁸⁵ Atle Grahl-Madsen, *The Status of Refugees in International Law*, vol I (A. W. Sijthoff 1966), 193.

⁷⁸⁶ Jane Freedman, *Gendering the International Asylum and Refugee Debate* (Palgrave Macmillan 2015).

⁷⁸⁷ Valluy has in fact spoken of a ‘judicial fiction of asylum’. Jérôme Valluy, ‘La fiction juridique de l’asile’ (2004) *Plein Droit* No 63.

⁷⁸⁸ Siobhán Mullally, ‘Migration, Gender, and the Limits of Rights’ in Ruth Rubio-Marín (ed.), *Migration and Human Rights*, Collected Courses of the Academy of European Law (OUP 2013) 145; Alice Edwards, ‘Transitioning Gender: Feminist engagement with international refugee law and policy 1950–2010’ (2010) 29(2) *Refugee Survey Quarterly* 21.

⁷⁸⁹ UNHCR, Guidelines on International Protection No 1: Gender-related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01, 7 May 2002, 2.

⁷⁹⁰ In a comprehensive understanding of gender men in general, who unlike women or homosexuals are not normally gendered, can be constructed as such, *in specific circumstances*, to demean and humiliate them: for example, soldiers or prisoners who are raped or subjected to sexual forms of humiliation, as happened in the case of the detainees in Abu Ghraib prison during the Second Iraq War. See Sandesh Sivakumaran, ‘Sexual violence against men in armed conflict’ (2007) 18(2) *European Journal of International Law* 253.

inflicted harm is, however, gendered. For example, women and girls may be victimised through rape and other forms of sexual violence, or through forced marriages or female genital mutilation. Such gendered harm might be inflicted both because of gender and in cases of persecution for other reasons, that is, girls might be targeted for conjugal slavery by guerrilla groups or armies in conflicts, or political dissidents might be raped as a form of, or as a part of, torture. Some gendered forms of harm are specific to women, such as female genital mutilation (FGM) and forced abortion/pregnancies, whereas others might be inflicted on both men and women (rape, forced marriages, and trafficking for sexual exploitation).

According to the UNHCR Guidelines, gender-related claims typically encompass acts of sexual violence, family/domestic violence, coerced family planning, female genital mutilation, punishment for transgression of social mores, and trafficking. The Guidelines also include discrimination against women or lesbian, gay, transgender, bisexual and intersex persons (LGTBI) as a form of potential persecution, although they state that “mere” discrimination’ might not be sufficient to amount to persecution. A pattern of discrimination which, on cumulative grounds, leads to consequences of a substantially prejudicial nature, or a pattern of discrimination in state protection of certain individuals from certain types of harm, might give the right to international protection.⁷⁹¹

3. Specific challenges regarding gender-based persecution in asylum claims

As noted above, because gender-based refugee claims differ from traditional asylum claims they have historically faced significant challenges. In this regard, Musalo and Knight have argued that the barriers to the recognition of gender as a basis for persecution have been related to three separate factors.⁷⁹² Firstly, gender is not one of the grounds of persecution expressly listed in the refugee definition provided in the 1951 Refugee Convention. Even when gender violence is severe enough to be considered as amounting to persecution, there is still another requirement in the determination of refugee status: the actual or feared persecution must be ‘for reasons of race, religion, nationality, membership of a particular social group or political opinion’, that is, there are a number of established grounds that qualify the persecution as giving access to refugee protection. Gender is not included among those listed grounds. Therefore, even when adjudicators find that there are persecutory acts they may deny protection for reason of the lack of nexus to one of the grounds. Due to this some authors have favoured the inclusion of gender as an additional ground of persecution in Article 1(A) 2.⁷⁹³ This would emphasise that gender persecution and gender violence are as serious as other forms of persecution and promote the visibility of the

⁷⁹¹ UNHCR, Guidelines on International Protection No 1: Gender-related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01, 7 May 2002, 4.

⁷⁹² Karen Musalo and Stephen Knight, ‘Asylum for Victims of Gender Violence: An Overview of the Law, and an Analysis of 45 Unpublished Decisions’ (2003) Immigration Briefings 1.

⁷⁹³ Jane Freedman, *Gendering the International Asylum and Refugee Debate* (Palgrave Macmillan 2007); Heaven Crawley, *Refugees and Gender: Law and Process* (Jordans 2001); Natalie Oswin, ‘Rights Spaces: An Exploration of Feminist Approaches to Refugee Law’ (2001) 3(3) *International Feminist Journal of Politics* 347; Doreen Indra, ‘Gender: A Key Dimension of the Refugee Experience’ (1987) 6(3) *Refugee* 3.

phenomenon, which is currently underreported.⁷⁹⁴ The UNHCR has, however, maintained that the definition in the 1951 Refugee Convention covers gender persecution if ‘properly interpreted’ (that is, gender-sensitively), and that there is therefore no need to add a new ground.⁷⁹⁵ Research, however, indicates that this standpoint is problematic when taking into account the rejection rate of applications for asylum made by women victims of gender-related persecution.⁷⁹⁶ While both the European Parliament and the UNHCR have supported the interpretation of Article 1(A)2 to include both women who are victims of persecution because of their gender and women who face persecution for violating social norms, this is not a generally accepted position among national legislators and judges.⁷⁹⁷

A second challenge in the recognition of gender-related protection claims relates to the types of harm inflicted. Some of these, such as female genital mutilation and oppressive social norms, are often regarded as cultural norms and obligations rather than as forms of persecution. The traditional understanding of a divide between what is public and what is private plays a fundamental role, as do the gendered role distributions that place men in the public-political sphere and women in the private-domestic sphere.⁷⁹⁸

Thirdly, in many cases involving gender-related harms the agent persecuting is not the state or government but a non-state actor such as the applicant’s husband, father, or the community of which the applicant is a member.⁷⁹⁹ Harm perpetrated by non-state actors amounts to persecution when the state is unable or unwilling to prevent such harm or protect the claimant because of discriminatory

⁷⁹⁴ In Europe, only Belgium has statistical data on gender-related asylum claims. The lack of statistics is considered an important barrier for assessing the phenomenon and designing mechanisms to tackle it. In fact, the first recommendation made to the European Commission by the Position Paper of the UNHCR is to monitor the implementation of the European Union Asylum *acquis* to ‘address the gap in data collection and knowledge on gender-based violence in EU asylum reception systems’. UNHCR, Position Paper on Violence against women and girls in the European Union and persons of concern to UNHCR, PC.DEL/824/14, 9 July 2014, 5. See also Hana Cheikh Ali, Christel Querton and Elodie Soulard, ‘Gender related asylum claims in Europe: A comparative analysis of law, policies and practice focusing on women in nine EU Member States’, Study commissioned by the European Parliament [2012].

⁷⁹⁵ UNHCR, Guidelines on International Protection No 1: Gender-related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01, 7 May 2002, 3. Contrarily, although it also commends a gender perspective when applying all five grounds, General Recommendation no 32 of the Committee on the Elimination of Discrimination against Women encourages states to ‘further introduce other grounds of persecution, namely sex and/or gender, into national legislation and policies relating to refugees and asylum seekers’. Committee on the Elimination of Discrimination against Women, General Recommendation No 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014.

⁷⁹⁶ Jane Freedman, *Gendering the International Asylum and Refugee Debate* (Palgrave Macmillan 2015).

⁷⁹⁷ Jane Freedman, *Gendering the international Asylum and Refugee Debate* (Palgrave Macmillan 2015); Hana Cheikh Ali, Christel Querton and Elodie Soulard, ‘Gender related asylum claims in Europe: A comparative analysis of law, policies and practice focusing on women in nine EU Member States’, Study commissioned by the European Parliament [2012].

⁷⁹⁸ The public/private divide has for a long time been the object of feminist movements’ contestation in many other spheres precisely because it renders the power men exercise over women a private, family, or personal matter rather than a political one.

⁷⁹⁹ Jane Freedman, *Gendering the international Asylum and Refugee Debate* (Palgrave Macmillan 2015), 83.

governmental policies or practices.⁸⁰⁰ Although many countries recognise those fleeing persecution by non-state actors where the government cannot or will not control these actors as refugees, this recognition has been slow to come.⁸⁰¹ Furthermore, the fact that the persecutor may be a family or community member leads adjudicators to characterise the persecution as ‘personal’ in nature, rather than political.

Part of the existing scholarship sees these challenges as resulting from a traditional elaboration of the definition of persecution in terms of the violation of individual rights. This limitation causes asylum systems to ‘offer only limited redress in cases where there is pervasive and structural denial of rights, such as those cases where rights are denied because of pervasive and structural gender inequalities.’⁸⁰²

A final issue in relation to gender-related persecution refers to the notion of ‘safe countries’. This criticism has been raised by the European Parliament in relation to the proposed Regulation to establish an EU common list of safe countries. The application of this notion of ‘safe countries’ of origin raises important questions about the situation of women applying for asylum in the EU:

If adopted, the Commission must ensure these changes take full account of the situation of women, LGBTI persons and other vulnerable groups, providing for specific derogations where necessary. No country can be deemed truly “safe” for women and girls when gender-based violence is a global and endemic problem.⁸⁰³

The Parliament calls on the Commission to acknowledge this problem and to apply gender-differentiation to any new rules. A similar precaution should apply to another argument by receiving states, which sometimes advance that women fleeing from gender-related persecution (that is, FGM or forced marriage) have the option of internal flight. According to this argument a person is not at risk of persecution by non-state actors if he or she is relocated to a safe place within the state of origin.⁸⁰⁴

B. The normative framework

The Refugee Convention and its 1967 Protocol are generally considered the centrepiece of refugee law systems. However, since the focus of this report is the EU’s AFSJ we must give some consideration to the specificity of the EU’s normative framework. The EU is not *per se* a party to either the Refugee Convention

⁸⁰⁰ UNHCR, Guidelines on International Protection No 1: Gender-related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01, 7 May 2002, 5.

⁸⁰¹ Hana Cheikh Ali, Christel Querton and Elodie Soulard, ‘Gender related asylum claims in Europe: A comparative analysis of law, policies and practice focusing on women in nine EU Member States’, Study commissioned by the European Parliament [2012].

⁸⁰² Jane Freedman, *Gendering the International Asylum and Refugee Debate* (Palgrave Macmillan 2015).

⁸⁰³ European Parliament, Committee on Women’s Rights and Gender Equality, Report on the situation of women refugees and asylum seekers in the EU (2015/2325(INI)), 10 February 2016, Rapporteur Mary Honeyball.

⁸⁰⁴ Committee on the Elimination of Discrimination against Women, General Recommendation No 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014, para 28.

or to the other treaties which can complement the gender perspective of asylum law, such as CEDAW; nor is the EU a party to the European regional system, the ECHR, or to the 2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). Nevertheless, two aspects should be born in mind. Firstly, although the EU is not a party to most human rights treaties its Member States are, and therefore these states have international legal obligations arising both from general public international law and from the European regional system. Secondly, the EU has legal personality and is, therefore, the subject of rights and obligations arising from international law.⁸⁰⁵ The CJEU has established that this is particularly the case for certain norms stemming from customary international law and from international treaties which are binding on the Member States but to which the EU is not a party.⁸⁰⁶ Moreover, the TFEU requires the Union to frame a common policy on asylum, subsidiary protection and temporary protection.⁸⁰⁷ The European Common Asylum Policy must be in accordance with the Refugee Convention and ensure compliance with the principle of *non-refoulement*.⁸⁰⁸

1. General public international law

As has already been seen, the international legal framework governing asylum contains no specific provisions for gender-related asylum claims, be they concerning gender-persecution or gendered forms of persecution. In this regard, it has often been held that the definition of a refugee in international law is gender neutral⁸⁰⁹ and that, even if it does not explicitly refer to gender differences, gendered forms of persecution or gender-discrimination, the Refugee Convention must be interpreted in accordance with the general prohibition of discrimination between women and men. In this sense, one can argue that, for example, Article 14(1) of the Universal Declaration of Human Rights, which states that ‘everyone has the right to seek and to enjoy in other countries asylum from persecution’, must be read together with the general anti-discrimination clause in Article 2 which includes sex as a prohibited ground of discrimination.⁸¹⁰

It has also been argued that, even if the Refugee Convention and its Protocol do not include sex or gender among the prohibited grounds of persecution, this should not be seen as decisive. European States have

⁸⁰⁵ Article 47 TEU establishes the legal personality of the Union. Consolidated Version of the Treaty on the European Union [2010] OJ C83/01.

⁸⁰⁶ See, for example, Case C-286/90 *Anklagemyndigheden v Peter Michael Poulsen and Diva Navigation Corp* [1992] ECR I-6019, para 9; Case C-162/96 A. *Racke GmbH & Co. v Hauptzollamt Mainz* [1998] ECR I-03655, para 46.

⁸⁰⁷ Article 67(2) TFEU.

⁸⁰⁸ Article 78 TFEU.

⁸⁰⁹ UNHCR, Guidelines on International Protection No 1: Gender-related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01, 7 May 2002.

⁸¹⁰ Article 2 UDHR: ‘Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.’

also ratified other treaties, such as the ICCPR and CEDAW, which should guide these states in their interpretation of the Refugee Convention.⁸¹¹

Nevertheless, as was noted in the first section, an increasing awareness of the male bias of asylum law and procedures has gained ground. Thus, as early as the 1980s the UNHCR Executive Committee (ExCom) began to produce a series of documents on gender-based claims in order to promote a 'gender-sensitive' interpretation of the Refugee Convention. The ExCom documents are not legally binding, and their aim is limited to providing guidance in the interpretation of the Convention and recommendations regarding asylum procedures. The ExCom recommendations range over a wide number of gender-related issues.⁸¹² One of the earliest, in 1985, introduced the possibility that states 'in the exercise of their sovereignty, [...] adopt the interpretation that women asylum-seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a "particular social group" within the meaning of Article 1 A(2) of the 1951 United Nations Refugee Convention.'⁸¹³ The Executive Committee later called upon the High Commissioner to support the States Parties in developing and implementing criteria and guidelines on responses to persecution specifically aimed at women⁸¹⁴ and in recognising as refugees women whose claims to refugee status are based upon a well-founded fear of persecution for reasons enumerated in the Refugee Convention, 'including persecution through sexual violence or other gender-related persecution.'⁸¹⁵

Besides the ExCom conclusions and recommendations, the UNHCR has produced a number of policy documents and guidelines, as well as a handbook on refugee women. As can be observed in the ExCom documents, these policies and guidelines address various issues regarding refugee women, and since the 2000s sexual violence has stood out as a main concern. In relation to sexual violence, the guidelines address both asylum claims based on gender persecution and, more generally, sexual violence and exploitation that may take place, for example, in refugee camps, situations of displacement, on refugee routes, and during armed conflicts.

The UNHCR's Guidelines on International Protection, Gender-Related Persecution of May 2002 are intended to provide guidance to staff, legal practitioners, decision-makers and the judiciary carrying out refugee status determination procedures. The document has been said to have a 'discomfort with gender'⁸¹⁶ that would explain the introduction of the bizarre disclaimer in point 4: 'Adopting a gender-sensitive interpretation of the 1951 Convention does not mean that all women are automatically entitled

⁸¹¹ *Secretary of State for the Home Department (Respondent) v K (FC) (Appellant) and Fornah (Appellant) v Secretary of State for the Home Department (Respondent)*, United Kingdom House of Lords, October 2006, para 86.

⁸¹² These documents reflect the growing concern for the protection of refugee women and girls from sexual violence and trafficking.

⁸¹³ UNHCR, Executive Committee Conclusions no 39 (XXXVI), Refugee Women and International Protection [1985].

⁸¹⁴ UNHCR, Executive Committee Conclusions no 77 (XLVI) [1995].

⁸¹⁵ UNHCR, Executive Committee Conclusions no 77 (XLVI) [1995]; UNHCR, Executive Committee Conclusions no 79 (XLVII) [1996].

⁸¹⁶ Sharon Pickering, 'Gender Persecution: A response to the UNHCR Guidelines' in *Stemming the Tide or Keeping the Balance: The Role of the Judiciary* (International Association of Refugee Law Judges 2002), 348.

to refugee status.⁸¹⁷ The text examines both the qualification criteria, that is, the well-founded fear of persecution, the causal link, and the convention grounds, as well as procedural issues.⁸¹⁸ Under persecution the Guidelines identify laws that are persecutory in and of themselves, but also practices which might be prohibited by law but tolerated in practice, or that the State cannot stop effectively. According to the guidelines, trafficking for the purposes of forced prostitution or sexual exploitation, disproportionately severe punishments and methods of implementation of justifiable laws or policies, and patterns of discrimination that lead to consequences of substantially prejudicial nature, might amount to persecution.⁸¹⁹

Also, the UNHCR's Guidelines on International Protection due to membership of a particular social group,⁸²⁰ based on religion claims,⁸²¹ and on the application of the refugee definition to victims of trafficking and persons at risk of being trafficked⁸²² reflect gender concerns in both substance and in procedures.

Besides consideration within the UNHCR, gender-related issues in asylum have been addressed in connection with CEDAW. In 2011, the Committee on the Elimination of Discrimination against Women called on States Parties 'to recognise gender related forms of persecution and to interpret the "membership of a particular social group" ground of the 1951 Convention to apply to women'.⁸²³ In 2014, the Committee issued its General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, in which it further elaborates on the gender perspective in the interpretation of the Convention's grounds for determining refugee status. The Committee noted that:

⁸¹⁷ UNHCR, Guidelines on International Protection No 1: Gender-related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01, 7 May 2002, 2.

⁸¹⁸ Although the procedural issues of gender-related asylum claims are not the main focus of this case study, it must be noted that the Guidelines do not tackle the most damaging question for women's asylum claims in cases of sexual and gender-related violence: the credibility assessment. See Sharon Pickering, 'Gender Persecution: A response to the UNHCR Guidelines' in *Stemming the Tide or Keeping the Balance: The Role of the Judiciary* (International Association of Refugee Law Judges 2002), 355 ff.

⁸¹⁹ UNHCR, Guidelines on International Protection No 1: Gender-related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01, 7 May 2002, 3–4.

⁸²⁰ UNHCR, Guidelines on International Protection No 2: Membership of a particular social group within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/02, 7 May 2002.

⁸²¹ UNHCR, Guidelines on International Protection No 6: Religion-based refugee claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, HCR/GIP/04/06, 28 April 2004, particularly paras 24, 28 and 30.

⁸²² UNHCR, Guidelines on International Protection No 7: The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked, HCR/GIP/06/07, 7 April 2006.

⁸²³ Committee on the Elimination of Discrimination against Women, 'A Call for Gender Equality for Refugees and Stateless Persons', Statement on the Anniversaries of the 1951 Convention Relating to the Status of Refugees and the 1961 Convention on the Reduction of Statelessness, 19 October 2011.

women's claims to asylum are regularly classified under the "social group" ground in the definition of a refugee, which may reinforce the stereotyped notions of women and dependent victims. [...] Gender stereotyping affects the right of women to a fair and just asylum process and the asylum authorities must take precautions not to create standards that are based on preconceived notions of gender-based violence and persecution.⁸²⁴

2. The Council of Europe and the Istanbul Convention

Within the Council of Europe (CoE) many important regional human rights instruments have been adopted, of which the ECHR is the most central. Since the early 1990s, the Steering Committee for Equality between Women and Men (CDEG) of the CoE has undertaken a series of initiatives to promote the protection of women against violence. Also, some instruments that directly address refugee women have been adopted. Most notably, in 1998, the CoE called upon all Member States to eliminate gender discrimination among refugees and adapt the treatment of women refugees to their specific situation and requirements.⁸²⁵ The most important instrument in this regard is the Istanbul Convention. Thirteen EU Member States have ratified the Convention, and a further 12 Member States have signed it but have not yet ratified it.⁸²⁶ The European Commission expects more signatures and ratifications over the coming months, and in March 2016 it proposed that the EU accede to the Istanbul Convention.⁸²⁷

Articles 60 and 61 of the Convention are dedicated to asylum. The Convention requires States Parties to interpret the Refugee Convention in a gender-sensitive way and to provide gender-sensitive reception conditions, support services and asylum procedures. More specifically, Article 60(1) of the Istanbul Convention calls upon the States Parties to 'take the necessary legislative and other measures to ensure that gender-based violence against women may be recognized as a form of persecution within the meaning of article 1, A (2), of the 1951 Convention relating to the Status of Refugee and as a form of serious harm giving rise to complementary/subsidiary protection.' The explanatory report to the Convention criticises the 'gender blindness' of asylum law, which has prevented asylum systems from grasping 'why and how' women experience persecution.⁸²⁸ The CoE considers that Article 60(1)

⁸²⁴ Committee on the Elimination of Discrimination against Women, General Recommendation No 32 of on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, CEDAW/C/GC/32, 14 November 2014.

⁸²⁵ Council of Europe Parliamentary Assembly, Recommendation 1374 on the Situation of Refugee Women in Europe, 20 May 1998, para 5.

⁸²⁶ Member States that have ratified are Austria, Belgium, Denmark, Finland, France, Italy, Malta, Netherlands, Poland, Portugal, Slovenia, Spain, and Sweden. Member States that have signed but not yet ratified are Bulgaria, Czech Republic, Croatia, Cyprus, Estonia, Germany, Greece, Hungary, Ireland, Lithuania, Luxembourg, Romania, Slovakia, and United Kingdom. Latvia has not signed the Convention.

⁸²⁷ European Commission, Proposal for a Council Decision on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence, [2016] COM(2016) 109 final, and Proposal for a Council decision on the signing, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence, COM(2016) 111 final, 4 March 2016.

⁸²⁸ Council of Europe, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence [2011].

consecrates what is already a practice, but that it has the added value of including the obligation of States Parties to recognise that gender-specific violence may amount to persecution and that gender-based violence may constitute serious harm giving the right to international protection, not necessarily under the Refugee Convention but under other international and regional standards such as the ECHR and the EU instruments.⁸²⁹

Article 60(2) requires the States Parties to ensure a gender-sensitive interpretation of each of the Convention grounds for refugee status and to ensure that when there is persecution the applicants shall be granted refugee status. The explanatory report clarifies that '[e]nsuring a gender-sensitive interpretation implies recognising and understanding how gender can have an impact on the reasons behind the type of persecution or harm suffered.'⁸³⁰ The CoE has been concerned that gender-based violence is often seen to fall within the ground of 'membership of a particular social group', and other grounds are taken less into account in relation to gender-related claims. Persecution on grounds of race or nationality, in the examples given in the explanatory report, may present specific forms when directed against women, for example in sexual violence and control of reproduction in cases of racial and ethnic cleansing. Also, persecution on the grounds of religion and on the grounds of political opinion, as already mentioned, might be applicable if interpreted in a gender-sensitive manner to the cases where women suffer serious harm for not conforming to religious norms or for opposing traditional gender roles or harmful cultural practices.

Article 60(3) of the Istanbul Convention contains several additional obligations. It calls upon the States Parties to take all the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers. In the explanatory report, examples of gender-sensitive reception procedures include the early identification of victims of violence, support services for violence survivors such as crisis counselling and medical care, separate accommodation and toilet facilities, lockable rooms and adequate lighting.⁸³¹ Furthermore, this provision demands that States Parties develop and implement gender guidelines as an essential reference point for relevant actors to understand how to carry out their duties in a gender-sensitive manner. Equally important procedures governing refugee status determination should be revised to improve gender bias. For example, the opportunity for women to have a personal interview separately and without the presence of family members, the opportunity for women to raise independent needs for protection leading to a separate application, the elaboration of gender guidelines on the adjudication of asylum claims, gender-sensitive interviews with trained interviewers, and the possibility of having interviewers and interpreters of the same sex as the applicant.

Nevertheless, it must be noted that the case law of the ECtHR is ambivalent towards gender perspectives on the interpretation of persecution, and does not seem particularly prone to support obligations such as

⁸²⁹ Council of Europe, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence [2011].

⁸³⁰ Council of Europe, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence [2011].

⁸³¹ Council of Europe, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence [2011].

those stemming from Article 60(1) of the Istanbul Convention. Such obligations expand the protection that might be afforded to victims of gender-based violence, adding to the possibilities under the Refugee Convention those which establish the obligation to ensure that gender-based violence may be recognised as a form of serious harm giving rise to international protection under regional standards such as the ECHR. In fact, whereas its case law consistently defines forms of gender persecution such as FGM, trafficking or forced marriage as serious violations of human rights, many women whose claims on those grounds had not been recognised by Member States and were to be expelled back to their countries have been met with inadmissibility decisions in Strasbourg based on the possibilities of ‘internal flight’, that is, to find protection in another part of their country of origin.⁸³²

3. The EU

The EU asylum normative framework and policy is based on Articles 67(2) and 78 of the TFEU and on Article 18 of the EU Fundamental Rights Charter. As mentioned earlier, the TFEU establishes that adopted measures must be in accordance with the Refugee Convention.⁸³³ In a similar manner to the general public international law framework, the EU’s recognition of the right to asylum does not specifically mention gender as a possible persecutory ground.⁸³⁴ Certainly, as was argued concerning general international law instruments, European provisions are also to be read in conjunction with other articles in the treaties or in the EU Fundamental Rights Charter establishing prohibitions of discrimination, such as Article 23 of the EU Fundamental Rights Charter which addresses discrimination between women and men.

The stated objective in developing the CEAS was to harmonise asylum procedures in the Member States by establishing a common understanding of who qualifies as a beneficiary of international protection and the content of the protection granted. It is beyond the aim of this case study to assess whether this harmonisation has been obtained in general. In relation to the more limited case of gender persecution against women, existing instruments of the CEAS are considered weak in terms of recognising both gender persecution and gendered forms of persecution⁸³⁵ and have not managed to curb remarkable differences in Member States’ authorities’ interpretation and assessment of gender-related asylum claims. The recast Asylum Directives have nonetheless improved gender-related issues as compared to the original set of Directives. References to gender can be found in the Qualifications Directive,⁸³⁶ in the Reception

⁸³² For example, the Court has declared inadmissible cases regarding female genital mutilation, such as *Collins and Akaziebie v Sweden* (ECtHR 8 March 2007); *Izevbekhai et al. v Ireland* (ECtHR 17 May 2011); *Omeredo v Austria* (ECtHR 20 September 2011) or cases regarding trafficking or the risk of re-trafficking such as *V.F. v France*, (ECtHR 29 November 2011); *Idemugia v France* (ECtHR 27 March 2012) and *F.A. v the United Kingdom* (ECtHR 10 September 2013).

⁸³³ Article 78 TFEU.

⁸³⁴ Article 78(1) TFEU and article 18 of the EU Charter of Fundamental Rights.

⁸³⁵ Hana Cheikh Ali, Christel Querton and Elodie Soulard, ‘Gender related asylum claims in Europe: A comparative analysis of law, policies and practice focusing on women in nine EU Member States’, Study commissioned by the European Parliament [2012], 18.

⁸³⁶ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform

Conditions Directive,⁸³⁷ and in the Procedures Directive.⁸³⁸ Also, the 2011 Directive on preventing and combating trafficking in human beings⁸³⁹ must be noted, because according to the UNHCR women and girls account for 80% of the victims of human trafficking.

In general, the asylum-related directives show a concern both for the specific needs of survivors of sexual and gender-related violence and for the heightened risk of women and girl refugees to be subjected to sexual and gender-based violence in transit situations or reception centres.⁸⁴⁰ These two issues are strongly signalled by references to 'vulnerability'. For example, Chapter IV of the Reception Conditions Directive is entitled 'Provisions for vulnerable persons', and as a general principle makes it obligatory for Member States to 'take into account the specific situation of vulnerable persons'⁸⁴¹ when transposing the Directive and to make an assessment of the special reception needs of vulnerable applicants.⁸⁴² Article 21 of the Directive contains a non-exhaustive list of vulnerable persons: minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders, and persons who have been subjected to torture, rape, or other serious forms of psychological, physical or sexual violence, such as victims of FGM. Article 18 requires the state to take into account gender- and age-specific needs and the situation of vulnerable persons in deciding accommodation arrangements in reception centres. Also, the Asylum Procedures Directive contains provisions recognising the special procedural guarantees that might be needed for, among others, survivors of rape and other forms of psychological, physical or sexual violence.⁸⁴³ One such guarantee is established in Article 11(3) which allows for separate decisions to be issued when a single decision covering one applicant and all dependants would disclose particular circumstances of, for example, gender-based persecution that could jeopardise the interests of the applicant. Finally, the Qualification Directive, in relation to the content of international protection, directs the Member States to take into account, as a general rule, 'the specific situation of vulnerable persons such as [...] victims of trafficking [...] and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.'⁸⁴⁴

In relation to the specific question of this case study, that is, the determination of refugee status, the Recast Qualification Directive addresses some of the perceived shortcomings of its predecessor, but the

status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) [2011] OJ L337/9 (Qualification Directive).

⁸³⁷ Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) [2013] OJ L180/96 (Reception Conditions Directive).

⁸³⁸ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) [2013] OJ L180/60 (Procedures Directive).

⁸³⁹ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

⁸⁴⁰ Reception Conditions Directive, Article 18(4): Member States shall take appropriate measures to prevent assault and gender-based violence, including sexual assault and harassment, within the premises and accommodation centres.

⁸⁴¹ Reception Conditions Directive, Article 21.

⁸⁴² Reception Conditions Directive, Article 22(1).

⁸⁴³ Asylum Procedures Directive, Recital 29.

⁸⁴⁴ Qualification Directive, Article 20.

recast process lost the opportunity to introduce some suggestions made by international organisations⁸⁴⁵ which would have provided a consistent gender-perspective to EU asylum law and made national authorities' decisions on gender-related asylum claims more coherent across the Union. For example, the Recast Directive has failed to add a specific reference to equality between women and men (Article 23 of the EU Fundamental Rights Charter) among the articles of the Charter introduced in Recital 16 which the Directive should promote and should be implemented accordingly.⁸⁴⁶ It has also disregarded the suggestion to introduce a specific recital on women, along the lines of Recital 18 in relation to the 'best interest of the child', which would 'permit a more comprehensive consideration of the situation of women claiming asylum and better fulfil the obligations with regard to gender equality and the human rights of women (under EU and international law)'.

EU asylum law already recognises that acts of sexual violence, discriminatory measures or measures that are implemented in a discriminatory manner, prosecution or punishment which is disproportionate or discriminatory, denial of judicial redress resulting in disproportionate or discriminatory punishment, and acts of a gender-specific or child-specific nature qualify as acts of persecution.⁸⁴⁷ The Recast Directive has introduced amendments in relation to the reasons for persecution, the causal link between acts of persecution and reasons for persecution, and the notion of protection. In relation to the reasons for persecution, the Directive has introduced an explicit reference to gender in Article 10(1)(d) concerning the interpretation of 'particular social group': 'gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group'. In the Recital it was explained that gender-related issues might arise from legal traditions or customs, and genital mutilation, forced sterilisation or forced abortions were presented as examples.⁸⁴⁸ International organisations had suggested, in accordance with the UNHCR Guidelines and the recommendation by the Committee on the Elimination of Discrimination against Women, that the gender perspective should reach the other Convention grounds. In particular, a suggestion was made to complete the instruction on the interpretation of 'political opinion' in Article 10(1)(e) with the sentence 'The concept of political opinion should also be interpreted to encompass transgression of gendered social norms or laws'.⁸⁴⁹

The Directive has also clarified and improved the idea of the causal link between persecution and the reasons for persecution. Both in Recital 29 and in Article 9(3) it has been established that the connection

⁸⁴⁵ European Women's Lobby (EWL), Asylum Aid and ILGA Europe, Proposal for amendments on the Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country national or stateless persons as beneficiaries of the international protection and the content of the protection granted (recast), 15 September 2010 <http://www.asylumaid.org.uk/wp-content/uploads/2013/02/EWL_Asylum_Aid_ILGA_Europe_amendments_qualification_directive_15092010_EN_final.pdf>.

⁸⁴⁶ Recital 16 has introduced the specific reference to Articles 1, 7, 11, 14, 15, 16, 18, 21, 24, 34 and 35 of the Charter.

⁸⁴⁷ Qualification Directive, Article 9(2).

⁸⁴⁸ Qualification Directive, Recital 30.

⁸⁴⁹ European Women's Lobby (EWL), Asylum Aid and ILGA Europe, Proposal for amendments on the Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country national or stateless persons as beneficiaries of the international protection and the content of the protection granted (recast), 15 September 2010.

must be between the reasons and either the act of persecution *or the absence of protection against such acts*. This might help victims of domestic violence claiming asylum, for example, because it is easier to demonstrate that the lack of protection is based on discriminatory laws or attitudes within the law-enforcing system than to establish the causal nexus in the husband's actions.⁸⁵⁰

Regarding this notion of protection, the Directive has introduced two changes. First, it has controversially maintained from the previous version that international organisations and other non-state actors can be actors of protection, but it has added the requirements that 'they are willing and able to offer protection in accordance to paragraph 2',⁸⁵¹ and that '[p]rotection against persecution or serious harm must be effective and of a non-temporary nature'.⁸⁵² The Commission has been called on to eliminate non-state actors from protection actors, arguing that they are not accountable under human rights mechanisms and that the protection they offer might be limited in duration and scope (or even expose women to risks of exploitation).⁸⁵³ Doubt has arisen on the impact of the new requirements for protection to be effective when the old notion of protection has been made to follow as an explanation of what is effective and non-temporary protection, thus leaving the elements that made the earlier definition of protection unclear and not particularly demanding in the text: protection will 'generally' be deemed effective and non-temporary if 'reasonable steps' are taken by actors of protection to prevent the persecution or the suffering of serious harm, for example, if there is a legal system for prosecuting those acts and the applicant has access to it.⁸⁵⁴ Fears have also been expressed that national authorities use restrictive interpretations, in particular regarding whether or not the victim of the persecution could expect any protection from their state, thus dismissing the well-founded fear of persecution.⁸⁵⁵

Secondly, the Directive has also amended the notion of 'internal protection'. Since this notion has had a disparate impact on women making gender-related persecution asylum claims,⁸⁵⁶ its improvement was considered necessary to make EU law compliant with non-discrimination obligations. Member States may determine that an applicant is not in need of international protection if there is the possibility of protection in a part of the country of origin. The 2004 Directive established that this possibility only existed

⁸⁵⁰ European Women's Lobby (EWL), Asylum Aid and ILGA Europe, Proposal for amendments on the Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country national or stateless persons as beneficiaries of the international protection and the content of the protection granted (recast), 15 September 2010.

⁸⁵¹ Qualification Directive, Article 7(1).

⁸⁵² Qualification Directive, Article 7(2).

⁸⁵³ European Women's Lobby, Asylum Aid and ILGA Europe, Proposal for amendments on the Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country national or stateless persons as beneficiaries of the international protection and the content of the protection granted (recast), 15 September 2010.

⁸⁵⁴ Qualification Directive, Article 7(2).

⁸⁵⁵ Hana Cheikh Ali, Christel Querton and Elodie Soulard, 'Gender related asylum claims in Europe: A comparative analysis of law, policies and practice focusing on women in nine EU Member States', Study commissioned by the European Parliament [2012].

⁸⁵⁶ See above note 833. Also European Women's Lobby, Asylum Aid and ILGA Europe, Proposal for amendments on the Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country national or stateless persons as beneficiaries of the international protection and the content of the protection granted (recast), 15 September 2010.

if ‘in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country’.⁸⁵⁷ The Recast Directive has introduced some requirements to this possibility: that the applicant can safely and legally travel to and gain admittance to that part of the country, that she can reasonably be expected to settle, and not just stay, there, and that in deciding whether there is no risk of persecution or harm in that part of the country the Member States obtain precise and up-dated information from relevant sources, such as the UNHCR and the EASO.⁸⁵⁸

An important issue regarding gender-related persecution is addressed in the directive establishing minimum standards on the rights, support and protection of victims of crime.⁸⁵⁹ Article 25(1) of the Directive requires the training of all officials likely to come into contact with victims of gender-based violence, including asylum staff in reception centres as well as decision-makers and interviewers. Besides training, staff making decisions on asylum claims may avail themselves of experts on a number of issues, including gender issues.⁸⁶⁰ The UNHCR has advised the European Asylum Support Office (EASO) on its proposed training module on gender and sexual orientation and on gender mainstreaming in existing modules. In particular, it has emphasised the importance of enhancing the gender-sensitive nature of country of origin information.⁸⁶¹

C. Assessments regarding coherence and vulnerability

Assessments regarding coherence and vulnerability constitute the focus of this report and a main objective of the FRAME project. In the particular case of asylum claims based on gender persecution and gender violence, the results are worrying as regards several aspects. There have been several significant advances regarding the understanding of violence against women as a serious form of human rights violation, and there is a growing acknowledgement of victims of gender violence as being deserving of state and international protection. Growing attention in international law and human rights law towards the plight of sexual and gender-based violence has also produced effects in relation to asylum and refugee protection. There are an increasing number of moments of the asylum-seeking process, both in relation to conditions and procedures, where Member States are required by international and EU norms to take gender into account. However, there is a range of limitations and pending issues.

⁸⁵⁷ 2004 Qualification Directive, Article 8(1).

⁸⁵⁸ Qualification Directive, Article 8.

⁸⁵⁹ Directive 2012/95/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (Directive on the rights of victims of crime), 25 October 2012.

⁸⁶⁰ Asylum Procedures Directive, Article 10(3).

⁸⁶¹ UNHCR, Position Paper on Violence against women and girls in the European Union and persons of concern to UNHCR, PC.DEL/824/14, 9 July 2014, 6.

1. Coherence issues

Since 1999, the EU has been working to create the CEAS and harmonise EU asylum legislation. However, as highlighted in a recent draft report published by the European Parliament,⁸⁶² there is not such harmonisation in gender-related asylum claims: law, policy and practice in Member States continue to vary significantly, and there is a noticeable gap in the protection given to women seeking asylum in the EU.

A study commissioned by the European Parliament in 2012 found that there are vast and worrying disparities in the way different EU States handle gender-related asylum claims, as a result of which, 'women are not guaranteed anything close to consistent, gender-sensitive treatment when they seek protection in Europe.'⁸⁶³ The study points out several sources for the lack of consistency. Firstly, there are no EU-wide guidelines, despite the importance of such guidelines if harmonised gender-sensitive asylum systems and procedures are to be achieved across Europe. The UNHCR 2002 Guidelines are not followed, not even by the Qualification Directive, as has been seen. Many EU Member States have adopted their own gender guidelines, but research has concluded that their effectiveness has been partial and uneven, since they are not always binding.⁸⁶⁴ Several EU Member States have not yet signed and ratified the Istanbul Convention, which explicitly requires States Parties to interpret the Refugee Convention grounds in a gender-sensitive way and to provide gender-sensitive reception conditions, support services and asylum procedures. The Recast Directive has lost an opportunity to give strong guidelines to the Member States as to what kinds of harm constitute gender-related persecution, putting an end to existing differences among national asylum authorities' practices.⁸⁶⁵ Secondly, although EU Member States have a legal and binding obligation to collect and publish gender-disaggregated data in relation to asylum statistics, only Belgium, Sweden and the UK comply with this obligation.⁸⁶⁶ Without accurate and reliable statistic data on gender-persecution and gender-based violence asylum claims it is very difficult to assess the phenomenon and the response that is being made by European asylum systems, and it is similarly difficult to identify shortcomings regarding the latter or to make recommendations for improvement.

⁸⁶² European Parliament, Committee on Women's Rights and Gender Equality, Draft Report on the situation of women refugees and asylum seekers in the EU (2015/0000(INI), 16 November 2015, Rapporteur Mary Honeyball.

⁸⁶³ Hana Cheikh Ali, Christel Querton and Elodie Soulard, 'Gender related asylum claims in Europe: A comparative analysis of law, policies and practice focusing on women in nine EU Member States', Study commissioned by the European Parliament [2012].

⁸⁶⁴ Hana Cheikh Ali, Christel Querton and Elodie Soulard, 'Gender related asylum claims in Europe: A comparative analysis of law, policies and practice focusing on women in nine EU Member States', Study commissioned by the European Parliament [2012].

⁸⁶⁵ Hana Cheikh Ali, Christel Querton and Elodie Soulard, 'Gender related asylum claims in Europe: A comparative analysis of law, policies and practice focusing on women in nine EU Member States', Study commissioned by the European Parliament [2012].

⁸⁶⁶ Hana Cheikh Ali, Christel Querton and Elodie Soulard, 'Gender related asylum claims in Europe: A comparative analysis of law, policies and practice focusing on women in nine EU Member States', Study commissioned by the European Parliament [2012].

As a result, progress is considered to remain piecemeal and rather arbitrary, depending to a great extent on national asylum authorities and the discretionary power they enjoy.⁸⁶⁷ Differences in the protection afforded to asylum applicants making gender-persecution claims are also attributed to the views and capacity to influence of NGOs and associations supporting asylum-seekers.⁸⁶⁸ This is considered insufficient to overcome the gender bias that is still present in asylum law and process which has been discussed above. Incoherence among national asylum authorities' decisions regarding gender persecution and gender-based violence claims does not only pose a problem to the objective of the CEAS and to the effective functioning of the Dublin system (that is, if there are disparities regarding the approach to gender-related asylum claims, asylum seeking victims of gender persecution will try to lodge their claims where they might be met with less gender biases and prejudice) – more importantly for the present discussion, it renders victims of gender persecution vulnerable in many ways. Incoherent decisions mean that some states, or all of them in relation to different gender-related issues, do not hold a gender perspective on asylum claims; such a perspective can ensure that women's applications are treated in a fair manner, free from discrimination. As has been discussed at length in the Introduction (Chapter I), vulnerable persons become so when they lose, fail to acquire or are deprived of assets (social, institutional, etc.) on which their resilience to risks and harm is built. For victims of gender persecution, asylum and refugee status is one of those assets: it serves exactly the purpose of protecting them from continuing danger and exposure to risk. When asylum systems fail to understand and protect gender persecution victims because they fail to adopt a gender perspective which they are called upon to use they render these women and girls vulnerable.

2. Vulnerability

Supporting the idea raised in the Introduction that the notion of vulnerability under the EU legal system is not yet matured, one of the most worrying findings in the assessment of the EU asylum system in relation to gender persecution cases is that international and EU normative frameworks do not seem to notice the differentiated perspectives on vulnerability. As has been seen, vulnerability language is systematically associated with the identification of special needs and the provision of specific protection measures. The 'group-based' characterisation of vulnerability seems mitigated because all the references in the Directives refer to vulnerable *persons*; however, this is due to the intention to emphasise the individual character of asylum claims assessments. In fact, the UNHCR 2002 Guidelines felt it incumbent upon them to clarify that the introduction of 'gender' among the characteristics to be taken into account

⁸⁶⁷ Hana Cheikh Ali, Christel Querton and Elodie Soulard, 'Gender related asylum claims in Europe: A comparative analysis of law, policies and practice focusing on women in nine EU Member States', Study commissioned by the European Parliament [2012].

⁸⁶⁸ Jane Freedman, *Gendering the international Asylum and Refugee Debate* (Palgrave Macmillan 2015), 77.

did not mean that all women were entitled to claim asylum.⁸⁶⁹ It would appear that beyond this specificity of asylum-related language the approach to vulnerable persons in the EU asylum *acquis* fits with group-based approaches to vulnerability very well. Persons from vulnerable groups have special needs and need special protections which set them apart from ‘normal’ procedures and conditions. In the case of women victims of sexual or gender-related violence this approach is identified as ‘gender-sensitive’. Analysing the introduction of gender-sensitive approaches, Pickering comments that:

[s]ensitivity suggests a need for compassion, for kindness [...]. While sensitivity is to be commended, perhaps even encouraged, women are not being turned away at borders, or having their cases rejected by primary decision-makers because decision-makers are simply insensitive. They are turned away because, in particular, initial decision-makers have been inaccurate and discriminatory in their decisions and have located themselves, their government and the woman applicant at a far distance from human rights.⁸⁷⁰

Restricting vulnerability to ‘special needs’ assessments shifts the focus away from the ways in which decision-making processes (including racialised stereotypes about what constitutes ‘true’ gender persecution⁸⁷¹) are gender-biased or discriminatory. It is not being argued here that those assessments and specifications in the procedures are useless or wrong. In fact, as was explained in the Introduction, one of the persisting advantages of the notion of vulnerability is that of directing attention to where it is most needed. Yet these vulnerability assessments should be placed within a wider structural approach to vulnerability that allows for consideration of the ways in which asylum systems contribute to the vulnerabilisation of those women by denying them the resource of international protection.

Current language on gender-related issues and vulnerability of women victims of gender-based violence ‘should alert us to what seems to be [an] ongoing discomfort with gender’.⁸⁷² The reluctance of the European institutions to take on board suggestions regarding the inclusion of gender equality or a more comprehensive gender-perspective in the interpretation of the established grounds aims at containing gender to specific moments, thus individualising and minimising its relevance. This tendency to understand gender violence as ‘exceptional’, an individual occurrence rather than the result of one of the most powerful systems of social hierarchies, has long been studied in other areas of gender violence.⁸⁷³ The main impact is precisely the vulnerabilisation of victims because the problem of gender-based

⁸⁶⁹ UNHCR, Guidelines on International Protection No 1: Gender-related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, HCR/GIP/02/01, 7 May 2002.

⁸⁷⁰ Sharon Pickering, ‘Gender Persecution: A response to the UNHCR Guidelines’ in *Stemming the Tide or Keeping the Balance: The Role of the Judiciary* (International Association of Refugee Law Judges 2002).

⁸⁷¹ Sharon Pickering, ‘Gender Persecution: A response to the UNHCR Guidelines’ in *Stemming the Tide or Keeping the Balance: The Role of the Judiciary* (International Association of Refugee Law Judges 2002).

⁸⁷² Sharon Pickering, ‘Gender Persecution: A response to the UNHCR Guidelines’ in *Stemming the Tide or Keeping the Balance: The Role of the Judiciary* (International Association of Refugee Law Judges 2002).

⁸⁷³ ‘Exceptionalism’ in international law responses to gender violence. See, Alice Edwards, ‘Violence against Women as Sex Discrimination: Judging the Jurisprudence of the United Nations Human Rights Treaty Bodies’ (2008) 18 *Texas Journal of Women, Gender, and the Law* 101.

violence is contained through denying its existence as a structural problem.⁸⁷⁴ The concept of vulnerability as developed in the Introduction leads, on the contrary, to a shift in attention to the institutional and social context and to those institutions and structures that should be responsive to different degrees of vulnerability.

As regards issues where vulnerability language is pervasive, the problem of a superficial analysis of what it is that renders refugee women and girls vulnerable remains. The problem on which international organisations and institutions are more ready to speak in terms of vulnerability is that of sexual and gender-based violence against refugee women and girls in transit situations or reception places. The draft report of the European Parliament observed that '[t]he increasing numbers of women who do flee are vulnerable at all stages of their journeys; in countries of origin, transit and destination. As well as being a key driver behind women's decisions to flee, gender-based violence is a common feature throughout journeys to and within the EU.'⁸⁷⁵ Also, the UNHCR has highlighted that '[f]orced displacement and exile bring about changes in gender roles that may lead to new and/or renewed domestic violence in refugee families, and those women and girls whose legal status depends on that of their spouses or fathers/guardians find themselves in a situation of greater vulnerability when facing violence in the family.'⁸⁷⁶ Assessments of vulnerability in these terms require state asylum systems to introduce mechanisms which are important both for victims and for preventing (further) victimisation, such as early detection training, victim support services, or special accommodation needs. However, interviews with victims reveal that many women will endure anything in order to continue their journey, to escape and find a safe place for themselves and their children, and to avoid secondary victimisation (becoming socially marginalised or further persecuted because they have been raped or have engaged in exchange sex with smugglers, for example).⁸⁷⁷ In all of these cases victims might 'contribute' to their own vulnerability because protection systems are putting the burden of protection on the shoulders of victims and not on the system. The conditions in which refugee women and girls must gain access to international protection (through dangerous channels, illegal procedures, criminal networks, and arbitrary and incoherent asylum determination systems) diminish their ability to seek protection from sexual and gender-based violence. Asylum systems offer some 'special protection' mechanisms for individual vulnerable women victims of sexual violence but, at the same time, the European asylum policy contributes greatly to the creation of the conditions for their arrival and within Europe which make them less resilient and less endowed with real access to 'normal' protection mechanisms.

⁸⁷⁴ The denial of the problem has many sides to it, from disparities and absences in the list of types of harm that might entail gender persecution to credibility problems in women's claims assessments or ignoring personal risks in favour of official 'safe country' lists.

⁸⁷⁵ European Parliament, Committee on Women's Rights and Gender Equality Draft Report on the situation of women refugees and asylum seekers in the EU (2015/0000(INI)), 16 November 2015, Rapporteur Mary Honeyball.

⁸⁷⁶ UNHCR, Position Paper on Violence against women and girls in the European Union and persons of concern to UNHCR, PC.DEL/824/14, 9 July 2014.

⁸⁷⁷ Women's Refugee Commission, *No Safety for Refugee Women on the European Route: Report from the Balkans* [2016] <<https://www.womensrefugeecommission.org/gbv/resources/1265-balkans-2016>>.