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Master Thesis

An intersectional approach to access to justice for women under the Common European Asylum System

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Abstract

The European Union's Common European Asylum System lays down a wide-ranging set of rules applying to migrants and asylum seekers, aimed at protecting the border and the citizens within the Union. This entails a moving away from recognising vulnerable third country nationals in need of protection, amongst others, women asylum seekers. This paper argues that background structures as regards gender, class and violence against women are only to a limited extent taken into account in the EU Member State Sweden's asylum procedures. Based on a case-study on women asylum seekers addressing gender, class and violence against women in the countries Afghanistan, Somalia and the Syrian Arab Republic it is argued that women's experiences upon applying for asylum are different from men's experiences and that these different experiences which create vulnerability of asylum seeking women are not taken into account in Swedish asylum procedures. Despite progressive national legislation including persecution on gender-based grounds, when applying an intersectional approach it becomes evident that factors that interact and create discrimination are in fact not recognised in the procedures. Hence, to base a claim on a form of violence against women becomes a theoretical and not a realistic possibility. It has become clear that there is a need for an understanding of how background structures of asylum seeking women interact with asylum policy. The final part of the paper provides suggestions for further studies.

Key words: access to justice, asylum, class, the Common European Asylum System, gender, gender-based persecution, gender-specific persecution, intersectionality, refugee, public – private dichotomy, procedural justice, violence against women, vulnerability, women.

List of abbreviations

CEAS	Common European Asylum System
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CJEU	Court of Justice of the European Union
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
GII	Gender Inequality Index
HDI	Human Development Index
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
WHO	World Health Organization

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Chapter 1. Introduction

Gender-based persecution has been increasingly recognised in asylum policy and practice. This is promising since several studies[1] have shown that women globally suffer and are subject to some form of gender-based violence directed against women. However, there is a significantly limited understanding of how violence impacts on how women are heard in the asylum process. This is remarkable as, which will be seen in this paper, women seeking asylum in the EU Member State Sweden originate from countries where violence against women is pervasive and often condoned by the State. Hence, while women may have a substantive right to asylum on grounds of gender-based persecution, they may nevertheless not be able to access this right unless asylum procedures recognise violence against women.

Scholars have argued along the lines that the asylum process has discriminated women as this process does not take account of for example gender or age related grounds for asylum[2], relating also to violence against women. In this context, it has been argued that a gender-based perspective means that the 1951 Geneva Convention must be broadly interpreted, meaning that also private harm i.e. for example violence within the family, must fall under State responsibility[3]. Hence, national legislation should, as a consequence, recognise that women may not fit the role of the 'model asylum seeker', i.e. an asylum seeker where the State directly can be distinguished as the persecutor and where the harm suffered takes place outside of the private sphere.

By way of neglecting that the State may indirectly be the perpetrator, a situation of difference of treatment appears where women may experience difficulties in establishing a link between the type of harm feared and a Convention ground. This can become particularly problematic from a human rights perspective as in essence it limits the possibilities of women to enjoy the right to seek asylum. According to the UN *In-dept report on all forms of violence against women*, the attention paid to victims of violence against women must increase, and the report states that this global injustice must be redressed.

This paper focuses on asylum seeking women and the fact that if a woman is, or has been, a victim of violence against women, this may increase her vulnerability in the asylum process and consequently limit her possibilities of enjoying procedural justice. Hence violence against women must be seen

[1] See e.g. WHO Multi-country Study on Women's Health and Domestic Violence against Women Initial Results on Prevalence, Health Outcomes and Women's Responses, 2005, available at <http://whqlibdoc.who.int/publications/2005/9241593512_eng.pdf>, or UN GA In-dept study on all forms of violence against women (6 July 2006) A/61/122/Add/1.
[2] See e.g. J Bhabha, 2004 and H Crawley, 2001.
[3] R Bacon and K Booth, The Intersection of Law and Gender: Private Harm and Public Responsibility. *UNSW Law Journal* Vol. 23 (2000).

together with other factors, such as gender, colour, race, ethnicity et cetera, which in this context make up background structures adhering to asylum seeking women.

For this purpose, and intersectional approach will be used throughout this research as a tool to explore the crossing points of discrimination or different treatment; hence, it highlights the intersections where discrimination based on different factors meets and addresses the fact that discrimination may be based on more than one factor[4]. Intersectionality moreover facilitates describing marginalisation where multiple discrimination appears[5]. Marginalisation is here understood as relating to women in the asylum process and multiple discrimination relates to vulnerabilities of asylum seeking women.

The Gender and Racial Discrimination Report of the Expert Group Meeting of the United Nations division Women Watch captures the underlying interest that has triggered this research:

> "structural intersectionality results from the overlapping effects of background structures that interact with a policy or some other decision that creates burdens that disproportionately affect marginalized women"[6].

Sweden is particularly interesting in this regard as being one of the EU Member States with the lowest gender inequality[7] and it is interesting to find out whether this high gender equality has been reflected also in asylum policy. The question of interest is how background structures as regards gender, class and violence against women affect procedural justice as regards asylum seeking women, and by departing from a European Union law perspective. While there may be discrimination as regards access to justice between the sexes or between different social statuses of asylum seekers, this research focuses on the intersections that create vulnerability and which disproportionately affect women asylum seekers' possibilities to secure access to procedural justice.

The aim of this paper is to understand how procedural justice in regards of asylum seeking women can be understood from an intersectional approach. The central research question is: *to what extent does EU and Swedish asylum policy recognise violence against women as a ground for granting asylum? And to what extent is that implemented at procedural level if measured against aspects of procedural justice?*

To answer the central research question, a case study on women's situation as regards gender, class and violence against women will be carried out where the countries Afghanistan, Somalia and the Syrian Afghan Republic will be considered. Furthermore, provisions on gender-based persecution and

[4] Kimberly Crenshaw, Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Color, *Stanford Law Review*, Vol. 43 (1990-1991), p. 1244.
[5] Ibid.
[6] Gender and Racial Discrimination Report of the Expert Group Meeting, 2000, p. 11.
[7] See UNDP Gender Inequality Index at: <http://hdr.undp.org/en/data/map/>.

access to justice in EU and Swedish policy will be studied to explore whether women seeking asylum can effectively base their claim on gender-based persecution.

1.2 Central concepts and theories

Throughout the paper, an intersectional approach to procedural justice in asylum law will be used, besides other sociological concepts such as gender and violence against women. Below, these concepts are defined as they will be used for the purposes of this paper.

Asylum seeker: A person who has left his or her country of origin and has lodged an application for asylum but has not yet received a final decision on his or her application[8]. It is important to note that asylum seeking women do not form a homogenous category[9], gender is one aspect that interplays with other aspects. Hence, asylum seeking women is a group that must be treated with caution.

Access to justice and procedural justice: Justice may be understood as procedural, substantive or distributive. Procedural justice is important as focusing on procedures has the possibility to explain the 'hidden' obstacles to access to justice. While substantive law may provide equal access to all, the procedure employed may reveal otherwise. This research focuses on the procedural rather than the substantive aspects of access to justice and the particular interest lies in the means of access in Sweden. Procedural justice is here understood to permeate the whole asylum application and may regard detention measures, appeals procedure, housing or right to advice[10], legal aid, including representation before the court and legal advice, information about proceedings and timeframes and mechanisms to strengthen rights of vulnerable persons[11].

Gender: Gender refers to the social constructs of men's and women's identities, roles and obligations. The definition adopted by the UNHCR 2003 Guidelines states that: "Gender refers to the relationship between women and men on socially or culturally constructed and defined identities, status, role and responsibilities that are assigned to one sex or another, while sex is a biological determination. Gender is not static or innate but acquires socially and culturally constructed meaning over time"[12], hence it is as such in constant change and changes with time and throughout history. Depending on the culture and geography, gender is different. To be a woman or a man consequently has different connotations in different times, but also in different cultures; for example, a woman in Sweden has different roles and obligations than a woman in for example Somalia. Gender is the common denominator which

[8] M Zamacona Aguierre, Riktlinjer för utredning och bedömning av kvinnors skyddsbehov – Ett fungerande verktyg? Swedish Red Cross (2008) p. 11.
[9] See M Zamacona Aguirre (2008) p. 10.
[10] Women's asylum news, 2011, No. 3.
[11] 2012 Report European Judicial Systems: Efficiency and Quality of Justice. European Commission for the Efficiency of Justice (CEPEJ), pp. 62-96, available at <http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport_en.pdf> and
[12] UNHCR, Guidelines on International Protection, No. 1: Gender-related Persecution (7 May 2002) HCR/GIP/02/01, para. 3.

aims at capturing the different meanings and obligations of being a woman in different cultures and different settings, in fact it is an important factor to address as it intersects with, amongst others, class.

Connell captures gender relations as comprising four main structures; power relations, production relations, emotional relations and symbolic relations. Power relations refer to the operation of power through institutions in the form of oppression of one group by the other, and Connell makes the claim that this is especially important through 'the ways we talk, write and conceptualize'. Production relations relate to tasks carried out mainly by either men or women and the division of 'home' and 'work'. Emotional relations regard, amongst other, prejudices against women or homosexuals and Connell notes that especially sexuality is an important arena for emotional attachment. Last, symbolic relations concern the interpretation of the world around us, which takes its form in for example speech and writing[13]. Connell's structures will be used to explore gendered relations in the case-study.

Gender-based and gender specific-persecution: This refers to grounds on which asylum can be claimed and it is the main ground looked at in this paper. Gender-based persecution can regard women who are transgressing social mores by not adhering to for example dress codes or by not following prescribed behavioural codes, hence, also men can be victims of gender-based persecution. Gender specific persecution on the other hand refers to such violence such as female genital mutilation and domestic violence, hence it is specific to women[14].

Violence against women: Refers to 'Violence directed at a woman because she is a woman or violence that affects women disproportionately'[15]. Violence against women can take many forms and for the purposes of this research I will focus those on forms of violence against women as they may appear in the experiences of asylum seeking women. The violence can include, amongst other forms and manifestations; violence within the family, rape, female genital mutilation, honour-based violence, reproductive rights and sexual orientation. Understood in the context of gender-based persecution, forms of violence against women can comprise such gender-based or gender-specific persecution on which women can potentially base their asylum claim.

Intersectional approach: Multiple layers of discrimination affecting asylum seeking women's access to judicial protection will be analysed by using an intersectional approach. Intersectionality, used mainly in the social sciences, facilitates describing marginalisation where multiple discrimination

[13] R W Connell, Gender (2002, Polity Press) pp. 55-67.
[14] M, Bexelius, Asylrätt, Kön och Politik (2008, Books-on-Demand) p. 17
[15] UN General Assembly, Convention on Eliminating All Discrimination Against Women A/RES/48/104, General Recommendation No. 19, 11th session 1992.

appears[16]. It has been argued by Verloo that EU policy rarely takes into account intersectionality as approach when dealing with multiple discrimination[17]. It will be seen *infra* that women may face obstacles inherently different from those experienced by men in their asylum applications, which can be considered multiple discrimination. Gender thus intersects with certain factors that create the disadvantage experienced by women asylum seekers, and an intersectional approach will be used to discover and explain how this affects women's access to justice in the asylum procedure.

The Gender and racial discrimination Report of the Expert Group Meeting of the United Nations division Women Watch emphasises that women as a group are to some extent and in some way subject to gender discrimination. For instance, women may face discrimination on grounds such as caste, colour, ethnicity, religion or national origin, explained as 'differences that make a difference in the way women experience discrimination'. For example, while it becomes necessary to understand the factors relating to a woman's status as asylum seeker, also her location as a woman of a certain national origin potentially adhering to a particular religion, must be addressed.

While there may be a difference in access to justice between the sexes, this research focuses on the above mentioned intersections concerning women asylum seeker's access to justice in particular. Intersectionality is in this research used as a tool to explore the crossing points of discrimination or different treatment. In other words, it first of all addresses the fact that discrimination may be based on more than one factor (category)[18], and secondly highlights the intersections where discrimination or difference based on different factors meet. Furthermore, it considers that 'gender, age, race, ethnicity, class, and sexuality are mutually constituted and cannot be merely added together'[19].

Intersectionality has been described as having great importance for public policy[20], this must in my opinion also hold true for the development of the CEAS. While gender discrimination may be targeted in sex discrimination law, Fredman has explained that the target group may be narrow and fail to include discrimination facing the least privileged. Intersectionality in this research is therefore used to find and explain the intersections that impact on asylum seeking women's access to justice.

[16] K W Crenshaw, Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Color, *Stanford Law Review*, Vol. 43 (1990-1991) p. 1262.
[17] M Verloo, Multiple Inequalities, Intersectionality and the European Union, *European Journal of Women's Studies* Vol. 13 No. 211 (2006), p. 211.
[18] K W Crenshaw (1990-1991) p. 1244.
[19] E M Simien, Doing Intersectionality Research: From Conceptual Issues to Practical Examples, *Politics and Gender*, Vol. 3, No. 2, (2007) p. 265.
[20] Ibid, p.251.

1.3 Structure

Chapter 2 provides an overview of asylum policy in relation to gender-based violence. It further explores access to justice and procedural justice and asylum policy in the EU with the aim of locating procedures that enable the asylum seeker to voice a claim to asylum, and on the right to appeal a negative decision on the asylum application.

Chapter 3 addresses intersections of gender and class and forms of violence against women through a short case-study, with the aim of in later chapters discuss how these backgrounds structures are recognised in the Swedish asylum procedure.

Chapter 4 discusses Swedish asylum policy and how such policy has been implanted in case-law. Forms of gender-based persecution are considered and how such can be understood under Swedish asylum policy.

Chapter 5 concludes the paper and ties the findings together.

Chapter 2. Asylum and Justice

This chapter provides background information necessary for the coming chapters by first exploring the notion of the public – private dichotomy which also places this paper in its context in the asylum debate. Second, the CEAS is explored to the extent necessary for this paper, i.e. the provisions on gender-based persecution and provisions on access to justice. Last, the notion of access to justice and procedural justice will be considered.

2.1 The public-private dichotomy in asylum policy

The public – private dichotomy in asylum law lays as the roots for how asylum law is interpreted and applied. As the debate surrounding the public versus the private has focused on why women in particular have been neglected in asylum law, the focus in this section will be on gender, and it traces gender as a ground for asylum back to the 1951 Refugee Convention. The question of why there still is a reluctance to recognise gender specific persecution, *in general*, will be dealt with while focus will later shift to EU policy and access to justice in asylum procedures.

Recognition of gender-based persecution in asylum policy is needed if women are to be granted protection as prescribed by the 1951 Refugee Convention. It has time and again been argued that a gender perspective is lacking in asylum legislation and that a gender perspective is lacking on the part of counsels, authorities and the judiciary[21]. The interpretation of persecution is often different when it regards women's as opposed to men's claims as will be seen in coming chapters.

As regards the judiciary's different approaches to gender-based persecution, a question addressed by Bacon and Booth who discuss the case *Islam v Secretary for the Home Department; R v Immigration Appeal Tribunal and Another; (Ex parte Shah)*[22]. In their article the authors address particularly the notion of the public versus the private sphere, which has provided for much controversy in cases concerning women victims of persecution. The public – private dichotomy has proven to pose difficulties as regards grounds for persecution and who the persecutor is, in the interpretation of the 1951 Refugee Convention. This notion is inherently problematic as it points to a gendered understanding of who possesses grounds for an asylum claim.

2.1.1 The international debate on gender-based persecution

The argument that men claiming asylum are accorded a primary and active role as asylum seekers, while women on the contrary are considered to have a secondary and dependent role in asylum claims,

[21] See e.g. M Bexelius (2008), H Crawley (2001) or T Spijkerboer (2000).
[22] R Bacon and K Booth (2000) p. 137.

has been made by several scholars[23]. Bacon and Booth discuss the historical background to the Refugee Convention and why gender has become a stumbling block in its connection to refugee status. They argue that "the fact that the term 'refugee' may have been conceptually limited was immaterial, as the definition applied to all groups of refugees which were then conceivable"[24]. The authors' further note that since the adoption of the Refugee Convention, new groups of refugees have taken form which are all coming from different circumstances, contrasting to at the time of the establishment of the Refugee Convention which dealt with persons becoming refugees after the events of the Second World War[25].

Bacon and Booth moreover discuss that the notion of the public versus the private is a consistent strain in Western liberal thinking, explaining that what is seen as the public, in which men operate, is perceived as a matter of international legal responsibility, while the private, where women operate, is seen as a matter of the individual State[26]. Consequently, the man being a victim of persecution is a matter for international concern, hence the Refugee Convention grounds for asylum apply, while the woman being a victim of persecution is not considered as being persecution on Convention grounds. In contrast, she is seen as being the victim of a private dispute that is to be settled preferably within the family and where the State might not have in force a system that can protect the woman.

It can be inferred from the above that gender was not on the agenda for the drafters of the Refugee Convention, as neither persecution based on sex nor gender were included[27]. What has occurred, however, is that the dividing line between the private and the public is effectively precluding violence against women as a ground for persecution. The public-private dichotomy renders persecution of women to be seen as something taking place in the private by private individuals regardless of whether the State can or is willing to protect women.

In Ex parte; Shah, 'persecution' was defined as being composite of two elements: the risk of serious harm and the failure of the state to protect[28]. Consequently, forms of violence against women may constitute serious harm, and when the State fails to protect the woman from such harm, a ground for persecution may arise. This points to that a development of refugee law that incorporates also gender-based persecution has taken place on the international level. Edwards provides an overview of the development of a gender approach in form of the United Nations High Commissioner for Refugees

[23] A Bloch et al. Refugee Women in Europe, Some Aspects of the Legal and Policy Dimensions, vol. 38, no. 32 (2000), p. 170.
[24] R Bacon and K Booth (2000) p. 138.
[25] Ibid, pp. 138-139.
[26] Ibid, pp. 140-142.
[27] A Edwards, Transitioning Gender: Feminist Engagement with International Refugee Law and Policy 1950-2010. *Refugee Survey Quarterly*, vol. 29, no. 2 (2010) p. 22.
[28] Ibid, p. 154.

(UNHCR) Guidelines on Gender-Related Persecution from 2002 onwards, where the perceptions of gender and vulnerability are seen to be changing within the UNHCR framework.

The latest update in this field came in 2008 with the Handbook for the Protection of Women and Girls, replacing the Guidelines on the Protection of Refugee Women[29]. Noted by Edwards is that this latest publication is an attempt to move away from viewing women as a vulnerable group to instead identify risk factors[30]. The 'age, gender and diversity mainstreaming strategy (ADGM)' developed by the UNHCR is incorporated into the contents of the *Handbook on the Protection of Women and Girls*. The language used to describe the ADGM strategy is inclusive and emphasises risk factors and empowerment of women[31], this approach shall permeate the work of the UNHCR and is thus important for the future development of guidelines on refugee protection.

2.2 The European asylum system

The European asylum system is made up of on the one hand EU legislation laying down minimum standards that the Member States must adhere to, and on the other hand national asylum policy which may provide for better protection than that laid down in EU Directives. It is to the CEAS that the attention now turns and to whether a gender perspective as adopted in form of the UNHCR Gender Guidelines is found also there.

2.2.1 The 1951 Geneva Convention

The 1951 Geneva Convention relating to the Status of Refugees is the starting point to discuss asylum law. EU and Swedish asylum policy build upon the Convention and therefore the relevant provisions of the Convention will be considered. The Geneva Convention in Article 1 (2) defines the term 'refugee':

> "2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, 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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.
>
> In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national"[32].

[29] A Edwards (2010) p. 32.
[30] A Edwards (2010) p. 34. See also UNHCR *Handbook on the Protection of Women and Girls* (2008) p. 65.
[31] UNHCR Handbook on the Protection of Women and Girls, UNHCR (2008) pp. 34-38.
[32] UNHCR 1951 Convention Relating to the Status of Refugees.

The preamble of the Convention makes specific reference to the Universal Declaration of Human Rights and recognises that human beings shall enjoy fundamental rights and freedoms without discrimination. Article 3 of the Geneva Convention provides that the Contracting States shall apply provisions of the Convention to refugees, without discrimination as to race, religion or country of origin.

The United Nations High Commissioner for Refugees plays an important interpretative role as regards the Convention itself and refugees in general. The UNHCR has produced a number of guidelines on the interpretation of the Convention in relation to gender and has moreover adopted strategies for the interpretation of the Convention[33] as was seen earlier.

Guidelines on International Protection in regards to gender-related persecution (the Gender Guidelines) were adopted by the UNHCR in 2002, and in 2012 the Guidelines on International Protection No. 9 was adopted recognising that sexual orientation and/or gender identity may lay at the grounds for an asylum claim. The Gender Guidelines state that:

> "It is an established principle that the refugee definition as a whole should be interpreted with an awareness of possible gender dimensions in order to determine accurately claims to refugee status"[34].

> "Even though gender is not specifically referenced in the refugee definition, it is widely accepted that it can influence, or dictate, the type of persecution or harm suffered and the reasons for this treatment. The refugee definition, properly interpreted, therefore covers gender-related claims"[35].

The Gender Guidelines further lay down that 'gender' must be taken into account when establishing Convention grounds for persecution and that this burden does not necessarily fall on the applicant[36]. Bexelius writes that the Gender Guidelines shall guide the Swedish interpretation of the Geneva Convention and how it is implemented in Swedish legislation[37].

2.2.2 The Common European Asylum System

The Common European Asylum System (CEAS) is a system encompassing five directives laying down secondary asylum legislation which are binding on the Member States. For the purposes of this

[33] See UNCHR at <http://www.unhcr.org/pages/49c3646c1d9.html> for relevant documents and updates.
[34] UNHCR Guidelines on International Protection: Gender-related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, para2.
[35] Ibid, para. 6.
[36] Ibid, para. 23.
[37] M Bexelius (2008) p. 73.

paper the so-called Qualifications and Procedures Directives are relevant[38]. The Qualifications Directive[39] in Article 2 defines the concept of a refugee:

> (c) 'refugee' means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply;
>
> (d) 'refugee status' means the recognition by a Member State of a third country national or a stateless person as a refugee;

In Article 10 of the Qualifications Directive, the grounds for persecution are set out, where Article 10(1)(a) and (d) are relevant for the purposes of this research, as these are provisions concerning gender, although gender related aspects as a grounds for asylum are only recognised to a limited extent:

> "Member States shall take the following elements into account when assessing the reasons for persecution:
> (a) the concept of race shall in particular include considerations of colour, descent, or membership of a particular ethnic group;
> (d) a group shall be considered to form a particular social group where in particular:
> - members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
> - that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;
> - depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation. Sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the Member States: Gender related aspects might be considered, without by themselves alone creating a presumption for the applicability of this Article".

Turning to the procedures under EU asylum policy, the Procedures Directive[40] is here the leading directive laying down minimum procedural standards. The Procedures Directive sets out a number of legal safeguards for asylum seekers. Article 6(2) of the Procedures Directive lays down that the Member States must ensure that each adult that has legal capacity has the right to make an application for asylum on his or her own behalf. This provision thus effectively provides a guarantee that, men and women alike, shall be able to make their own claim.

[38] For an overview of the CEAS see P Boeles et. al. European Migration Law (2009, Intersentia).
[39] Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.
[40] Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

Article 10 of the Procedures Directive lays down general guarantees for the asylum applicant regarding the right to be informed in a language the applicant may understand, there is moreover no guarantee that the woman applicant should be informed of the possibility to choose a female interpreter or advisor, which is important for reasons that will become clear in coming chapters. Article 10(1) (b) concerns the right to receive services of an interpreter, also here there are no specific provisions that women may choose a female interpreter. The following, Article 10(1) (c-e) concerns that the applicant should not be denied communication with the UNHCR, that the applicant should be informed within reasonable time of the decision on his or her application and that such information should be given in a language the applicant may understand.

Continuing to the provisions in the Procedures Directive concerning the personal interview, it can be seen that Article 12(1) lays down that before a decision is taken by the determining authority, the applicant shall be given the opportunity to a personal interview. Article 13(1) lays down that:

> "A personal interview shall normally take place without the presence of family members unless the determining authority considers it necessary for an appropriate examination to have other family members present".

This provision leaves it open to the determining authorities to decide under which circumstances they consider it necessary to hear the applicant in the presence of other family members.

Article 15(1) of the Procedures Directive lays down that:

> "Member States shall allow applicants for asylum the opportunity, at their own cost, to consult in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their asylum applications"

Article 15(1) thus concerns the right to consult an advisor or counsel, which can be of crucial importance presenting the asylum claim. Article 15(1) presupposes a situation where the asylum seeker, both men and women, have sufficient means to consult an advisor or counsel. It is stressed that legal aid might become increasingly difficult to come by when centers providing free legal aid have to close as a result of the declining economic climate[41].

Article 15(2) lays down that:

[41] Women's Asylum News, no. 103 (2011) p. 3. This finding concerns the United Kingdom asylum system, although a parallel can be drawn to the Swedish system where the Swedish Refugee Advice Centre has had limited capacity during the first months of 2013.

"In the event of a negative decision by a determining authority, Member States shall ensure that free legal assistance and/or representation be granted on request, subject to the provisions of paragraph 3".

Article 15(3):

"Member States may provide in their national legislation that free legal assistance and/or representation is granted:

(a) only for procedures before a court or tribunal in accordance with Chapter V and not for any onward appeals or reviews provided for under national law, including a rehearing of an appeal following an onward appeal or review; and/or

(b) only to those who lack sufficient resources; and/or

(c) only to legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants for asylum; and/or

(d) only if the appeal or review is likely to succeed.

Member States shall ensure that legal assistance and/or representation granted under point (d) is not arbitrarily restricted.

Thus, in the event of a negative decision, free legal assistance shall be granted on request. Legal assistance may be subject to the conditions laid down in Article 15(3). This provision presupposes that a claim has been lodged by the asylum applicant.

2.2.3 Gender perspectives in EU asylum policy

Asylum policy in the EU has over the last couple of years developed in a way as to cover almost all fields of asylum law with the establishment of the CEAS by 2012. The focus in this system has been on developing minimum procedural standards and that a right to asylum shall be granted when the required conditions are fulfilled[42]. Freedman has noted that women seeking asylum do so for different reasons than men and that women asylum seekers face different obstacles in the asylum process that concern responsibility for children and economic constraints[43]. She has further argued that EU asylum practices do not recognise gender-related forms of persecution as a ground for granting asylum. Moreover, Freedman has argued that human rights law and conventions have been defined according to male norms[44].

Male norms have proven to function as a barrier to the recognition of women's claims to asylum. Having regard to the 1951 Geneva Convention[45] one will find that persecution must be attributed to State actors for the asylum claim to be recognised as such. This is problematic as regards implementation in national law in consideration of women's claim to asylum, the persecutor may not be a State actor as such, but can be her husband, father, brother or other relative. Harm subjected to in

[42] P Boeles, et. al, European Migration Law (2009, Intersentia) p. 315.
[43] J Freedman, Women Seeking Asylum. The Politics of Gender in the Asylum Determination Process. *International Feminist Journal of Politics*, vol. 10, no. 2 (2008).
[44] Ibid, p. 159.
[45] Convention and Protocol Relating to the Status of Refugees. Available at <http://www.unhcr.org/pages/49da0e466.html>.

forms of for example domestic violence or FGM may be condoned by the State. This contrasts the grounds for persecution claimed by men as they base their asylum application on actions taking place in the public and by actors that may *per se* consist of State actors, the police, military et cetera.

The grounds for persecution of women and men indeed take different forms. Grounds recognised in the Geneva Convention regard the holding of political opinions et cetera which correspond to public acts, traditionally attributed the public sphere where men are seen to operate, while women have been considered to act and carry out their activities in the private sphere. The activities carried out by women that may amount to persecution, Crawley explains, are not inherently less political than the activities carried out by men[46].

What appears as the problem is the interpretation or implementation of the 1951 Geneva Convention in national law, where women's activities are attributed to the private sphere and in the asylum application are not considered as for example political activities. While steps have been taken to include a gender perspective in EU asylum law; for example, as laid down in the Qualifications Directive which recognises gender related aspects and acts of sexual violence as a grounds of persecution[47], it is relevant to ask whether the provisions are framed in such a way that it is possible to address intersections of discrimination in access to justice for women asylum seekers and women enjoying refugee status.

2.3 A 'voice' for women in the asylum claim

As regards the right to access to justice in migration and asylum law, Brouwer argues that effective remedies are dependent on factors such as nationality, legal status and which human rights that are at stake. EU citizens and citizens of countries which the EU has association agreements with are privileged over third country nationals and especially asylum seekers in EU migration policy[48]. Asylum seekers under the CEAS enjoy the right to legal representation only in the event of appeal of a decision in the asylum application and member States are free to limit the guarantees to a bare minimum as was seen earlier in this chapter.

Procedural justice and access to justice are concepts that have different connotations and have different meanings. The interest here is not solely to find whether asylum seeking women have access to court, but the interest lies more in finding whether women have a 'voice' in the asylum procedure

[46] As argued by T Spijkerboer in 1994, see H Crawley (2001) p. 84.
[47] Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, Article 9(2)(a) and 10(1)(d).
[48] E Brouwer, Effective Remedies for Third Country Nationals in EU Law: Justice Accessible to All? *European Journal of Migration and Law*, No. 7 (2005) pp. 224-233.

and in this regard can voice a claim on asylum based on gender-based persecution. Hence the two notions, access to justice and procedural justice, are used.

Below these notions of justice will be explored to entangle the substantive right, next the concept of procedural justice will be considered with the understanding that procedural justice permeates the asylum procedure in its entirety. Moreover, the procedures in place are understood to give meaning to the right of access to justice.

2.3.1 Access to justice

Access to justice has been laid down in several international treaties, here the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union (the Charter) will be discussed, as they are both binding on Sweden and important cases emanating from the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) interpret the right of access to justice, although here focus will be on the ECtHR judgments.

Article 6(1) ECHR lays down the right to be heard:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

Similarly, Article 47 of the Charter lays down the right of access to court and the right to a fair hearing:

> "Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.
> Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.
> Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice".

The concept of access to justice has been addressed by the ECtHR in, amongst other judgments, Airey v. Ireland, Golder v. The United Kingdom, and Granger v. the United Kingdom. Access to justice has a legal meaning and interpretation in which States are left with the choice of how to ensure such access. In Golder v the United Kingdom, the ECtHR held that the right of access to Court is not absolute[49] and in Airey v. Ireland[50] held that while Article 6 of the European Convention of Human Rights "guarantees to litigants an effective right of access to the courts for the determination of their 'civil rights and obligations', it leaves the State a free choice of the means to be used towards this

[49] Golder v. the United Kingdom App no. 4451/70, 21 (ECtHR February 1975) para. 38.
[50] Airey v. Ireland App no. 6289/73 (ECtHR 9 October 1979) para. 26.

end"[51]. The ECtHR further stated that the Court's function was not to dictate the measures to be taken in the national setting to ensure effective right of access to the courts.

In the later judgment in Granger v. the United Kingdom, the ECtHR held that free legal assistance would be in the interest of justice in order for the applicant to ensue proceedings[52]. Johnson argues that the ECtHR interprets Article 6(1) ECHR to mean not access to a counsel as such, but rather as a right to equal justice[53]. The crux with Article 6 ECHR is of course that it does not apply to asylum as there are no civil or criminal charges to determine. Rather it is Article 13 ECHR that is applicable to asylum. However, as the ECtHR in G.R. v the Netherlands held in a recent case, the principles of access to court as developed under Article 6 must also be relevant also under Article 13 ECHR[54].

It appears thus, that while indeed rights may not be deprived of their effectiveness, there are essentially no guarantees of legal representation, although Article 47 of the Charter does indeed provide a substantive right of legal aid and makes no difference on the type of claim that is brought.

2.3.2 Procedural justice

How can the above be understood in terms of the asylum process? By focusing on the processes instead of the outcome, justice comes to be understood as taking place during the entire asylum process. How can it be guaranteed that procedures are actually giving the applicant voice and participation in the procedures? The section above concerning access to justice revealed that limited obligations in providing legal aid exist in terms of State responsibility. The interpretation by the ECtHR has focused on the privilege of each State to determine measures used, provided that the right of access to justice is not deprived of effectiveness.

In this regard, Brouwer argues that provisions regarding effective remedies in EU asylum law are not very detailed and that 'procedural guarantees are left to the national legislator'[55], what indeed has been seen in the ECtHR cases. Considering then procedural justice, which has been interpreted as "the perceived fairness of the means that are used to make decisions"[56], there are no actual guarantees that these procedures are fair and give people a voice.

As regards the interpretation of procedural justice, this will borrow from organisational studies where it has been argued that there are differences as to what people find important concerning justice.

[51] Ibid.
[52] Granger v. the United Kingdom App no. 11932/86 (ECtHR 28 March 1990) para. 47.
[53] E Johnsson, Equality Before the Law and the Social Contract: When will the United States Finally Guarantee its People the Equality Before the Law the Social Contract Demands? *Fordham Urban Law Journal*, vol. 37 (2010) pp. 11-12.
[54] G.R. v the Netherlands App no. 22251/07 (ECtHR 10 January 2012) paras. 49-50.
[55] E Brouwer (2005) pp. 226 - 233.
[56] P Sweeney and D McFarlin, Process and outcome: gender differences in the assessment of justice, *Journal of Organizational Behaviour*, vol. 18 (1997) p. 83.

Studies have shown that women are more process-oriented while men on the other hand are more outcome-oriented. Important features identified regarding procedural justice have been argued to be; "procedures for appeals, the availability of change mechanisms, and procedures for defining the decision process are important contributors to procedural justice" and the "opportunity to provide input and participation in decision-making" are important features of procedural justice[57].

It has moreover been found that "people view procedures as fair if these procedures allow them to present their case, in which the decision-maker is unbiased and neutral and relies on accurate information when deriving an outcome"[58]. Furthermore, studies have shown that the most important factor in viewing legal procedures as fair is that the procedures give the people a voice[59]. The coming chapters therefore focus on the circumstances of women asylum seekers and whether there exist procedures that allow them to enforce substantive rights in terms of applying for asylum and appeal negative decisions. Before continuing to discuss background structures and asylum procedures, however, a look at potential hurdles in access to justice may prove useful.

2.3.3 Barriers to justice

Hurdles in securing access to justice may regard both access to the procedures themselves and an actual knowledge of the procedures. Cholewinsky has noted that States are under an obligation to provide assistance to persons fearing for their lives[60]. This has however not meant that everyone in need for protection will be granted such. Fredman has argued in similar manner that judicial protection is not a matter of course for all people[61]. This means that despite the obligation to provide assistance to persons fearing for their lives, Fredman explains that many black and migrant women dare not to speak out against domestic violence; due to language difficulties, lack of knowledge of sources of protection and threats of deportation[62].

When, for example violence within the family, rape, et cetera lies as ground for a potential claim, it may be difficult for women to report. This problem is voiced in Bexelius' study on Swedish asylum law and gender where women asylum seekers have been interviewed and concerns were raised that women may find it difficult to have a male interpreter while talking about rape and sexual violence[63]. Asylum seeking women may neither be able to tell about the violence if they are heard together with their husband or children. It is not sufficient that a provision on for example the right to a female

[57] P Sweeney and D McFarlin (1997) pp. 84-85.
[58] L Klaming and I Giesen, Access to Justice: the Quality of the Procedure, TISCO Working Paper Series on Civil Law and Conflict Resolution Systems, University of Utrecht, no. 002/2008 (2008) p. 7.
[59] Ibid, p. 5.
[60] R Cholewinsky, The Need for Effective Individual Legal Protection in Immigration Matters, *European Journal of Migration and Law*, no. 7 (2005) p. 237.
[61] S Fredman, Double Trouble: Multiple Discrimination and EU law, *European Anti-discrimination Law Review*, no. 5 (2005) pp.13-18
[62] Ibid, p15.
[63] M Bexelius (2008) p. 233-234.

interpreter exists; without the woman knowing this and without procedures that include her in the asylum process, might lead to that her potential claim goes unheard.

Murphy has stressed that a lack of knowledge on the part of the asylum seeker, as regards procedural guarantees, is seen as an obstacles to access to justice[64]. This can regard information on for example gender related concerns. As will be seen later, information on gender specific matters is not made available by the Swedish Migration Board[65]. The woman asylum seeker thus has limited possibilities in acquiring knowledge of gender specific matters in the asylum process and she has to trust information provided by officials of the Migration Board.

2.4 Chapter Conclusion

This chapter has dealt with gender as a grounds for persecution as well as access to justice and procedural justice under EU asylum policy. As regards 'gender', it has been seen that as a grounds for persecution it is still limitedly incorporated under the CEAS. The public-private dichotomy explains this situation, and a common knowledge about this problem must arguably exist. Therefore it is regrettable that in terms of legislation on the EU level not much has been done to ensure equal asylum terms for men and women.

As regards the substantive right of access to justice, it has been seen that the right of access is not absolute, however, neither should access to justice be deprived of its effectiveness. This appears as a paradox, and where it leaves women asylum seekers is unclear. On the one hand it seems to be suggested that procedures indeed must be in place that allow for access to justice which can be derived from the focus on effectiveness. On the other hand, access to justice is not absolute hence States may provide for such procedures or they may not.

Since the legal situation as regards access to justice is at best unclear, features of procedural justice have shown that although the substantive right of access is clear or unclear, procedures can reveal otherwise. In the case at hand, the right of access to justice in asylum law is limited and States are to a great extent free to choose their own means, this can mean that the procedures a State employs can be such that the right of access to justice is effective or ineffective. What can be concluded from this chapter, is that the situation is unclear regarding the status of gender-based persecution under EU law and furthermore, the situation is unclear regarding access to- and procedural justice. In the next chapter, background structures as concerns women asylum seekers will be explored and together with the findings in the current chapter will provide the background reading for Chapter 4.

[64] J Murphy, Access to Legal Remedies: The Crisis in Family Law, *BYU Journal of Public Law*, vol. 8 (1993) p.127.
[65] Thematic Report: the duty to inform applicants about asylum procedures: the asylum-seeker perspective, European Union Agency for Fundamental Rights (2010).

Chapter 3. Women Seeking Asylum – Background Structures

Women are in many aspects in a disadvantaged position in relation to the national asylum application system because of certain factors that make them vulnerable in the asylum process. Women in society in general can be disadvantaged or discriminated against on the basis of belonging to certain social categories, for example because of being of a certain race, belonging to a certain class, or simply because of their gender[66].

As was seen in the second chapter, the public-private dichotomy in asylum policy may hinder women to seek asylum based on violence taking place in the private sphere. The analysis in this chapter is thus carried out with the aim of locating intersections of inequality. For this purpose Yuval-Davis notes that there are many different social divisions/categories that are possible to take into account. She argues that there are certain categories that will affect most social locations, categories she identifies as gender, age, class and ethnicity[67]. This paper focuses on gender and class because of the presumption that these two categories are the two that can be assigned to most asylum seeking women, although this should not be understood as that other categories are neglected, they are solely not dealt with here.

This paper focuses on the categories gender and class which will form the basis for the discussion and the aim is to find how these intersecting factors interact with violence against women relating to women coming from the three countries from which the majority of asylum seekers in Sweden originated in 2012[68]. These countries are; the Syrian Republic, Somalia and Afghanistan. After a discussion regarding gender, class and violence against women, a short case-study will be carried out to exemplify how these interacting factors can be understood.

3.1 Intersections of social categories

It can be argued that the location of women asylum seekers at the intersection of gender and nationality, class and race, makes procedural justice different than for asylum seeking men, but also different in relation to other groups of women asylum seekers. For that purpose vulnerability of asylum seeking women will be addressed. It has been illustratively argued that:

> "Rather than consider immigration as a variable or static category within race, we consider immigration as part of the multiple grounds of identity shaping the domestic violence experience. It is part of the interactive dynamic processes that,

[66] J Nash, Re-thinking intersectionality, *Feminist Review,* no. 89 (2008).
[67] N Yuval-Davis, Intersectionality and Feminist Politics, *European Journal of Women's Studies* Vol. 13 No. 3 (2006) pp. 202-203.
[68] The countries which have been chosen for the purposes have been done so solely on the basis that in the previous year, the majority of asylum seekers in Sweden originated from Somalia, Afghanistan and the Syrian Arab Republic. For statistics on asylum application see [www.eurostat.eu] and the Swedish statistical bureau <www.scb.se>. Syrian asylum seekers in 2012 amounted to 7.814 of which 4.714 were women, Somali asylum seekers amounted to 5.644 of which 1.869 were women, Afghan asylum seekers amounted to 4.755 of which 1.189 were women, see Annual Report Migrationsverket 2012, p. 125.

along with race, gender, sexual orientation, and class, inform women's experiences of and responses to domestic violence"[69].

Equally, asylum seekers may be placed in this matrix of multiple grounds of identity shaping experiences, although in this paper I instead argue that being a victim of violence against women influences the experience of being an asylum seeker.

Another example is that gender can intersect with race. A non-white woman subject to violence against women in her country of origin can experience different hurdles when trying to secure access to justice than a white woman. The form of the violence affecting them may differ as well as the sanctions for being a victim of, for example rape, which influences how women experience interaction with authorities.

3.1.1 Gender and class

It can be recalled that gender refers to social constructs, and to be able to draw conclusions as to how gender intersects with class, an attempt must first be made to try to understand how gender is constructed and what it means to be a woman in the societies where the main groups of asylum seekers stem from. Gender cannot be seen in isolation, hence to comprehend gender in a given context, it is neither sufficient to focus only on women, nor to focus solely on men[70].

'Undoing' gender is not an easy task, and different scholars have focused on different factors. Theories try to capture women's subordinate role in society and their location in relation to men[71]. Women have consequently been perceived as belonging to the domestic sphere while men have been perceived as belonging to the public sphere. Here Connell's theorizing on gender as explained in the Introduction will be used with the purpose of locating the creation of gender in the case-study countries.

The concept of class can take different dimensions. Often, 'class' is linked to economic means and capitalism, where chances in life are linked to rewards received for work carried out[72]. This paper will borrow definitions on social class, which inevitably will be focused on economic means since the importance of having recourse to economic means cannot not be underestimated. However, economic means are one but many elements that constitute class, for this reason notions of social capital will be used[73]. Social capital is important in the context of this paper, as it will be seen that even though

[69] E Erez, et.al. Intersections of Immigration and Domestic Violence: Voices of Battered Women, *Feminist Criminology*, Vol. 4 No. 1 (2009) p. 33.
[70] J Scott, Gender: a Useful Category of Historical Analysis, *The American Historical Review*, Vol. 91, No. 5 (1986).
[71] See e.g. S Engle Merry, Gender Violence: a Cultural Perspective, (2009) p. 9, or J Butler, Undoing Gender (2009).
[72] P Jones, Introducing Social Theory, (2003, Polity Press) pp. 24-25.
[73] For limitation reasons it must be noted that not all complexities surrounding class can be explained and taken into account. The notion of class here solely serves to provide guidance to what class entails and the purpose is not to engage at length in this debate, but to focus on a few examples to give meaning to the concept.

women in Somalia, Afghanistan and the Syrian Arab Republic often do not have recourse to economic means, they may nevertheless possess a rich social capital. Social capital has been seen as "an aggregate of actual or potential resources linked to possession of a stable network of relationships"[74].

In short, social capital theory emphasises the importance of networks although definitions of social capital exist in abundance, and as Ostrom argues "almost all reflect two basic assumptions: social capital is a resource that is available to members of a social network, and social structure is often the type of capital that all members of a group can access to promote their interests"[75]. For the purposes of this paper, social capital will be used to complement the economic dimension of class, as social capital emphasises social relations instead of focusing solely on economic relations which is important as focussing solely on economic means can overlook other factors that function in an empowering manner.

3.2 Violence against women

It has been acknowledged that violence against women persists due to culture, social context and laws that uphold the exercise of such violence and that the forms of violence against women equally vary over time, culture and historic context[76]. As has been said above, it is the purpose of this chapter to explore the interaction between gender, class and violence against women, hence this section will elaborate on the particular problem of violence against women. For the purpose of this paper the United Nations Declaration on the Elimination of all Forms of Violence Against Women definition on violence will provide the theoretical understanding of the term which will be used throughout this paper:

> "For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."[77]
>
> Violence against women shall be understood to encompass, but not be limited to, the following:
> (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
> (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere trafficking in women and forced prostitution;
> (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs[78].

[74] E Ostrom, What is Social Capital, in Bartkus and Davis, Social Capital: Reaching Out, Reaching In (2009, Edward Elgar Publishing) pp. 17- 20.
[75] Ibid, p. 17.
[76] UN General Assembly, In-dept Study on all Forms of Violence Against Women (6 July 2006) A/61/122/Add/1, paras. 69-77.
[77] United Nations Declaration on the Elimination of Violence Against Women, A/RES/48/104, Article 1.

The *In-dept Study on all forms of violence against women* recognises that violence takes place in relation to patriarchal, cultural and economic settings[79]. Moreover, legislation has been identified as an important factor upholding violence[80]. First, as regards patriarchal settings, violence against women is a form of exercising control over women and it contributes to women's subordination in society which in turn maintains male dominance. This can be understood as the structure of the patriarchal society. Violence against women is likewise defined as a mechanism that maintains gender roles, for example where women who transgress social mores are prone to be subject to violence.

Second, considering that culture is a factor that shapes and maintains gender roles and power relations and 'affects most manifestations of violence everywhere'[81], culture comes to be understood as shaping violence. Hence violence can come in different manifestations in different cultures[82]. Third, economic inequality is another factor that plays a part in violence against women. Women's economic dependence makes them vulnerable to violence as they cannot themselves take decisions and as they have little means of access and control over economic resources[83]. Last, as regards laws, the State may not hold perpetrators of violence accountable which sends a message to society that violence against women is tolerated, consequently normalising the pattern of violent behaviour[84].

Importantly, violence can take a dimension as being structural, in the meaning that it impacts on the everyday lives of people while simultaneously being invisible and normalised. This notion is important as it highlights that violence experienced by women often is such that it does not take place in the public but exists within the private sphere.

As regards perpetrators of violence and consequences, it is recognised in the *In-dept study on all forms of violence against women* that while most cases of violence against women are conducted by men against a female victim, it must be acknowledged that there are cases where also women are involved in the violence or perpetrate such violence. For instance, in the perpetration of traditional harmful practices or in the case of armed conflict[85]. Consequences of violence against women are both of health and social impact; women's physical and psychological health suffers as a consequence of the violence which leads to a poorer mental health and social functioning.

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[78] Ibid. Article 2.
[79] UN General Assembly, In-dept Study on all Forms of Violence against Women (6 July 2006) A/61/122/Add/1, paras. 65-68.
[80] S Engle Merry (2009) p. 51.
[81] Ibid, para. 79.
[82] Ibid. Para. 83.
[83] Ibid, paras. 86- 91.
[84] UN General Assembly, In-dept Study on all Forms of Violence against Women (6 July 2006) A/61/122/Add/1, paras. 69-77.
[85] Ibid, para. 108.

Another consequence is that victims of violence against women are likely to suffer from depression, stress and anxiety, and it is noted that violence against women prevents women from taking part in society and that they are less likely to be employed or are employed in low status sectors[86]. Below, different manifestations of violence against women are set out which indicate in more detail the impact violence has on women.

3.2.1 Violence against women and vulnerability

As regards domestic violence amongst immigrant populations it has been suggested that; "cultural factors related to language, beliefs, traditional help-seeking behaviour and degrees of acculturation all influence how victims experience and respond to abuse"[87]. This sentence captures the starting point for a discussion on asylum seeking women and how the fact that being a victim of violence places the asylum seeking woman in an additional vulnerable position. Factors that may have an impact in the asylum process will be considered in relation to experience of, and response to, abuse, relating to that asylum seeking women may encounter difficulties in telling about the violence they have experienced. For example because the violence may have been perpetrated by a husband who has enjoyed impunity by the State becasue violence against women in the country of origin is condoned by this State[88].

In its publication on men's violence against women, Amnesty recognises that although Swedish legislation on violence against women might be the most progressive in the world, there is still a long way to go to ensure that women are free from violence. The Amnesty Report further stresses that men's violence against women in close relationships indicates that asylum seeking women are vulnerable as they may have been victims of violence in their home country and that they fear further violence should they be returned to their country of origin. It is pointed out that women, whose asylum claim has been rejected and for this reason have gone underground, are in a particularly vulnerable situation especially if they are victims of violence from men to whom they have a close relationship[89].

The Report of the UN Secretary-General in the In-dept study on all forms of violence against women[90] emphasises that:

> "A particularly problematic challenge is the elimination of discriminatory sociocultural attitudes and economic inequalities that reinforce women's subordinate place in society. Male violence against women is generated by sociocultural attitudes and cultures of violence in all parts of the world, and especially by norms about the control of

[86] Ibid, paras. 156-166.
[87] C Hoyle, Feminism, Victimology and Domestic Violence; in Walklate, S, Handbook of Victims and Victimology (2007, William Publishing). It must be noted that there is a problem acquiring data that is divided between different groups of immigrants, hence conclusions drawn on studies including all immigrant groups, foreign born and refugees alike, should be handled with care as the results may not in all cases adequately reflect the actual situation of asylum seekers.
[88] Amnesty Report, Mäns vald mot kvinnor i nära relationer (2004) p. 30. Available at: <http://www.amnesty.se/vad-gor-vi/kvinnors-rattigheter/vald-mot-kvinnor/rapporter/>.
[89] Amnesty Report (2004) p. 30.
[90] UN General Assembly, In-dept Study on all Forms of Violence against Women (6 July 2006) A/61/122/Add/1, p. 23.

female reproduction and sexuality (see sect. III). Furthermore, violence against women intersects with other factors, such as race and class, and with other forms of violence, including ethnic conflict".

This paragraph captures the origin of violence and its intersecting practice. This human rights concern is one that permeates all areas of society; it is pervasive irrespective of race, class or culture and roots its causes in patriarchy, that is, the systematic male domination over women[91]. It is pointed out by the UN Secretary-General that when a State fails to hold perpetrators of violence accountable, violence against women is coming to be seen as acceptable and inevitable[92]. Societies that already see high inequality levels, are according to the World Health Organisation (WHO), likely to see more interpersonal violence[93].

Asylum seeking women may not be aware that violence against women is a crime punishable by law, a notion that interacts with both class and gender. In a study carried out by Sokoloff and Pearce on immigrant women in the United States and their perceptions of domestic violence, it was found that the majority of the women interviewed were aware that domestic violence is illegal, although fewer respondents knew that such violence is subject to criminal proceedings. In the same study women were asked to whom they would turn if they would be subjected to violence, of which the majority said that they would turn to their family, closely followed by domestic violence agencies, and friends[94].

These findings point to potential negative consequences as asylum seeking women might not be aware of women's rights and the general situation of women in the country where they seek asylum, in this case, Sweden. Asylum seeking women might not know that there exists a legal framework for the protection of women from violence, women may further possess distrust towards State authorities in general, and importantly they might not speak the language of the State where they seek asylum[95].

The first finding, concerning whether women have knowledge of that domestic violence is punishable, should not be confused with that asylum seeking women also know that the violence they have been subjected to may constitute a grounds for an asylum claim. From the second finding, regarding to whom women would turn should they be subject to violence, it can be deduced that if the woman lacks a social network in the country where she is seeking asylum it is likely that she will not tell about the violence. Hence, adding to her vulnerability as an asylum seeker victim of violence against women.

[91] Ibid. para. 69.
[92] Ibid, para. 76.
[93] Ibid, para. 89.
[94] N Sokoloff and S Pearce, Intersections, Immigration, and Partner Violence: A View From a New gateway – Baltimore, Maryland, Women and Criminal Justice, Vol. 21 (2011) pp. 257-260.
[95] UN General Assembly, Report of the Special Rapporteur on Violence against Women, its Causes and Consequences. Mission to Sweden (6 February 2006) A/HRC/4/34/Add.3, paras. 32-35.

A woman who has been subjected to violence and who finds herself in a society different from that she knows may be isolated and perceived as 'other'[96] which has been argued by Raj and Silverman. They further stress that gender roles are not simply serving as a justification for violence in immigrant communities, but moreover, women's vulnerability is increased as they are isolated and consequently subservient to male partners and self-sacrificing towards family and the community[97].

In this regards it is also notable that many batterers do not know that, for example violence within the family, is a criminal offence and others do not want to recognise it as such. Women on the other hand, accept the violence as their fate and accept violence as normal[98]. Thus, despite that there may be protection regarding violence against women, this is likely to be rendered ineffective as it can be expected that gender roles as lived in the country of origin continue to play an important role also in the country where asylum is sought.

Bauer et al. additionally note that language barriers worked as hindrances for help seeking women. Language barriers to seek help may be experienced differently between the asylum seekers from the main three countries of origin. For Afghan women, where a large majority of the female population is illiterate, language barriers may prove a greater obstacle than for Syrian women, where literacy rates are much higher as will be seen below, which again is related to the discussion on discrimination based on intersecting categories.

Factors that work as discouraging immigrant women victims of violence to seek help have been identified as fear of retaliation by the perpetrator, a reluctance to involve law enforcement, costs and long waiting times[99]. Furthermore, in rode to tell about the violence to medical providers, women regarded trust, compassion and understanding as important.

Due to the above mentioned factors, women may be reluctant to share their experiences of violence. As a consequence, women who might rightly have a claim to asylum because of having been a victim of violence are due to that violence deprived of a voice with which to make this claim. Below an analysis of the prevalence of the different forms of violence will be carried out. Next to prevalence, reporting practices and State responses will be looked at.

The UN Secretary General in the *In-dept study on all forms of violence against women* has defined four levels in which violence takes place; violence within the family, within the community, as

[96] A Ray and J Silverman, Violence against Immigrant Women: The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence, *Violence Against Women* Vol. 8 (2002) p. 369.
[97] Ibid, p. 370.
[98] Ibid.
[99] H M Baur et.al. Barriers to Health Care for Abused Latina and Asian Immigrant Women, *Journal of Health Care for the Poor and Underserved*, no. 11 (2000) p. 34.

condoned by the State and in the case of armed conflict. The forms of violence overlap over the four categories but also within them, and the approach towards different forms is different[100]. As will become clear later is that policy makers more easily recognise Female Genital Mutilation (FGM) as being a concern for the State, and less so in the case of rape or violence within the family.

For the purpose of this paper, definitions on violence as laid down by Crawley will be used. Crawley identifies rape, sexual violence and abuse, female genital mutilation, marriage related harm, violence within the family, forced sterilisation and forced abortion as gender-specific violence[101]. As regards the forms of violence, the violence most prevalent will be considered in the case-study, this does not mean however, that no other forms exist.

3.3 Case-study – gender, class and violence against women

The case-study will begin by addressing the intersections of gender and class and subsequently addressing how violence against women interacts with these[102]. Furthermore, the means to address violence in the country of origin will be considered as this will impact on the internal flight alternative[103], which will be addressed in the next chapter.

3.3.1 Somalia

Reliable information on education and economic activity are scarce due to the country's many years as a war zone with the consequence of a breakdown of the educational and legal system. There are no existing data as regards the Human Development Index (HDI), consequently, it is difficult to draw any accurate conclusions as regards women's enjoyment of economic means or education possibilities, which are important aspects to explore, both in gender and class relations. What can be noted though is that before the outbreak of the conflict a large majority of women were responsible for taking care for the family and for the family farm, importantly; women were also engaged in selling garden produce which was of great importance to the household economy[104].

Petty trading is an activity that has become even more important due to the war. Is has been argued that this petty trading has allowed women to establish networks with other clans and that it has led to cooperation between illiterate and literate women. The fear of rape however, has meant that women

[100] H Crawley, Refugees and Gender (2008, Jordan Publishing) p. 42.
[101] Ibid, p. 42.
[102] It must be noted that this a limited case-study based on already existing country reports which may, in certain areas, not be up-to-date. It serves solely to point to women's background situation is different from that of men. It must also be kept in mind that women, men and asylum seekers are homogenous groups, hence the findings in the case-study may not adhere to all asylum seeking women originating from these particular countries. However, the scope of this paper is too limited to go into detail into each country and factor.
[103] The internal flight alternative in asylum law refers to the possibility of seeking protection within the country of origin.
[104] B Byrne et. al. Gender, Conflict and Development Volume II: Case studies: Cambodia; Rwanda; Kosovo; Algeria; Somalia; Guatemala and Eritrea (1996) p. 99.

cannot be as mobile as they would like to, which impacts on possibilities of trading[105]. What can be seen here is that although women enjoy social and economic capital in form of networks and possibilities to make a living by selling garden produce, they are hindered in taking advantage of such capital. Rape as a form of men exercising power over women thus hinders women in developing their social and economic capital.

Women were not participating in formal or informal political spheres before the conflict, although the Somali Constitution granted equal rights for women and men. Because of the breakdown of the government, other types of networks have been established. Such networks are largely of traditional clan nature within which women have created sub-social networks. [106]This points to that women do enjoy social capital although there are limits on how much influence women have on their lives.

In this regards for example, before the conflict only men could establish households and women rarely enjoyed legal status[107]. Thus, gender relations were such that women effectively became the property of the husband's family upon marriage, which points to power structures in Somali society where women were/are subordinate to men. As official indicators, for example the HDI, are not available as regards Somalia, I am hesitant to draw conclusions concerning gender and class as such would be based on assumptions.

It is recognised that the most common form of violence against women and girls in Somalia is violence within the family where the perpetrator of the violence may not only be the woman's husband but extends to their husband's family members. There is a denial that domestic violence is a concern for the police as violence is seen as a family matter occurring in the home and as such to be taken care of in the home[108]. Patriarchal structures thus maintain control over women and preserve women's subordination in society.

As regards legislative, but also cultural, practices, it is noted by UN *Special Rapporteur on violence against women* that, should a woman want to file and process a rape case in Somalia, she then needs to pay the police and court officials. The clan's interest will take precedence over formal institutions and accountability mechanisms, and violations are settled according to customary practices. Social and family pressure and perceived economic benefits were identified as reasons as to why conciliation instead of formal institutions is used. Moreover, while the Penal Code criminalises rape, it is perceived

[105] Ibid, pp. 90- 102.
[106] Ibid.
[107] Ibid, p. 90.
[108] UN General Assembly, Special Rapporteur on Violence against Women, its Causes and Consequences. Mission to Somalia (14 May 2012) A/HRC/20/16/Add.3, paras. 17-18.

as a crime against morals, which is seen as a crime worse than that the woman is victim of[109].. For example, victims of rape may be forced to marry the perpetrator as this is a form of remedy in the traditional system.

Statistics reveal that around 98 per cent of women in Somalia have been subject of FGM, and primarily very young girls undergo the procedure with infibulations as a practice to ensure chastity until marriage. Indeed this constitutes an economic activity as it ensures that the girl can later be married[110]. The practice of FGM arguably is not only one of culture, but can as well fall under patriarchy indicators as a form of controlling women through their virginity. Due to the conflict in the country, many Somali women have been victims of rape, forced marriage and sexual violence when passing areas controlled by insurgent militias. Sexual violence has also been reported to take place in refugee camps. In areas experiencing less violence and where the violence is reported to the police this does not result in the perpetrators being convicted[111].

Rape has been a weapon in rivalries between different ethnic factions, and women who lack protection of a clan are at particular risk, as again, rape often occurs with impunity due to the government's breakdown[112]. It has been estimated by the UNHCR that 300 rapes took place in refugee camps in 1993. The implications for a rape victim are severe, the woman may be ostracised by her husband and families as it is thought that she has brought dishonour upon the family[113]. Although it is difficult to argue that this violence adheres to a cultural practice or persists due to economic or legislative practices, it is nevertheless an important fact to have in mind.

As regards State responses to violence against women, it appears that at the level of the government, practices of early marriage are opposed while at the level of tribal leaders it is seen as a dispute settlement for a girl to marry a perpetrator of rape[114]. Somali women whom have been subjected to FGM find that due to language barriers and an unwillingness to talk to their closest family about their pains and problems associated with the FGM are holding them back from seeking help, as well as previous bad experiences with health workers[115].

[109] Ibid, paras. 20-21.
[110] Ibid, paras. 28-29.
[111] Ibid, paras. 25-27.
[112] B Byrne (1996) p. 95.
[113] Ibid, pp. 95- 102.
[114] UN General Assembly, Special Rapporteur on Violence against Women, its Causes and Consequences. Mission to Somalia (14 May 2012) A/HRC/20/16/Add.3, para. 22.
[115] Women's Asylum News, No. 94 (2010) p. 14.

3.3.2 Afghanistan

Gender and class in Afghanistan must be understood against the background of the many years of war and the Taliban regime. A regime which included 'cleansing' of women from the streets[116], the policy was to ban women's employment, ban women from school attendance, to impose a dress-code (i.e. the burka) and to impose strict control of women's freedom of movement.

Findings of the UN Special Rapporteur on Violence Against Women sees that the number of literate women may be as low as five per cent, and a meagre ten per cent for the general population[117], and the economic situation in general in Afghanistan can be drawn from the HDI which in Afghanistan is amongst the lowest in the world, as well as the Gender Inequality Index (GII) which is amongst the highest[118]. More than half of the population is estimated to live in poverty, although regional differences are seen.

Women in Afghanistan are more likely than men to be engaged in informal activities, relating to unpaid household work and small scale work which offer fewer possibilities to enjoyment of rights and benefits[119]. Women's earnings are estimated to be one third of men's earnings and women also to a great extent work on the family farm, taking care for the household but also performing activities such as weaving and embroidery, work which is estimated to be unremunerated[120].

As regards symbols of power, the burka can, as an example in this particular context, be seen as such a symbolic expression of men's power over women as was explained in the introduction. Further, the control of women can be seen as a control of production means as women are hindered in carrying out economic engagement. Women thus, have been oppressed by the regime where both unequal and oppressive gender relations can be seen.

Women can take part in politics and hold seats in the parliament, although they do so to a limited extent[121]. Women may serve as judges, although it has been argued that the judicial system is based on a patriarchal system under which women have difficulties to enjoy their rights. Women furthermore do not enjoy the same legal status as men under family law, which relates to property ownership,

[116] UN Economic and Social Council, Report of the Special Rapporteur on Violence against Women, its Causes and Consequences. Mission to Afghanistan (9-10 July 2005) E/CN.4/2006/61/Add.5.
[117] Ibid, p. 7.
[118] See official website for the Human Development Index at: <http://hdr.undp.org/en/data/map/>.
[119] See UNDP tracking the Millennium Development Goals <http://www.undp.org.af/undp/index.php?option=com_content&view=article&id=87&Itemid=30>.
[120] G Azimi et. al. Women and Men in Afghanistan: Baseline Statistics on Gender, Ministry of Women's Affairs and United Nations Development Fund for Women (2008) pp. 29-32.
[121] Report by Freedom House, Freedom in the World 2008 - Afghanistan, 2 July 2008, available at: <http://www.refworld.org/docid/487ca1eac.html [accessed 5 May 2013>.

marriage, divorce et cetera[122]. The discrimination of women under the law is evidence of unequal power relations between men and women.

Violence against the woman within the family is accepted as a norm and is pervasive throughout the country[123]. Römkens writes that the Afghan society is essentially tribal and patriarchal in nature and she notes further that domestic violence and rape are common problems in the country. The problem with rape, Römkens notes, is that few women dare tell as they risk being accused of committing adultery, which is seen as a very serious moral crime under Islamic law[124]. Afghan society arguably is a highly patriarchal one where women are suppressed in many forms.

The social costs of leaving an abusive husband may discourage Afghan women from leaving the home and the traditional custom does not allow for divorce on part of the woman, which means that she may risk retaliation from the husband's family[125]. This is an example of where traditional custom fails to protect women from violence, and as such it can be an example of either cultural or legislative practice. Importantly, it creates a situation of women's subordination where women are not ensured to live free from violence.

The Special Rapporteur notes that child- and forced marriage are the cause of much violence that occurs in the household and the report shows that between 60-80 per cent of all marriages in the country are forced marriages, with an estimated number of 57 per cent of women being married at the age of 16. Girls have been reported married as early as the age of 6 which makes the girl vulnerable to sexual violence perpetrated by older family members of the groom[126]. Here a cultural practice of early or forced marriage puts girls and women at risk of violence.

Actual State responses to violence against women are as good as non-existent as argued by the Special Rapporteur and a particular problem appears to be the multiple sources and interpretations of the law. Legislation adhering to equal rights of men and women does exist, although violence against women is tolerated in Afghan society and perpetrators are rarely punished due to the enforcement and justice systems being biased against women. Despite being party to both the Convention on the Elimination on All Forms of Discrimination Against Women (CEDAW) and the Universal Declaration of Human Rights and despite a provision in the new Afghan Constitution establishing the duty of the State to

[122] Ibid.
[123] UN Economic and Social Council, Special Rapporteur on violence against women, its causes and consequences. Mission to Afghanistan (15 February 2006) E/CN.4/2006/61/Add.5.
[124] R Römkens, R, In the Shadow of no Law. Navigating Cultural Legitimacy and Legal Protection of Women Against Protection in Afghanistan, in Westendorp, I and Wolleswindel, R, Violence in the Domestic Sphere, (2005, Intersentia) p. 77.
[125] Ibid, p. 78.
[126] UN Economic and Social Council, Special Rapporteur on violence against women, its causes and consequences. Mission to Afghanistan (15 February 2006) E/CN.4/2006/61/Add.5, para. 23-25.

protect women against violence, the normative frameworks are gender-biased which works against any advancement of eliminating violence against women[127].

3.3.3 The Syrian Arab Republic

Education in Syria is mandatory and free up to the primary level, after which both boys and girls drop out of school in the need to earn money. It is recognised that female enrolment in education accounts for approximately 46 per cent of university students in Syria, although there seems to be a gender gap as regards employment after education. For instance it is claimed that at the age of 29, nearly 73 per cent of women are not engaged in economic activity, while the number of educated women engaged in an economic activity is higher[128], this points to that women may experience greater difficulties in acquiring economic capital but also that gender roles dictate the possibilities of women after education.

In terms of employment, "only 22 per cent of women participated in the formal labour force, compared with 82 per cent of men. In addition, women earned on average one-fifth of the salary of men"[129]. The HDI for Syria is slightly below average, while as regards gender inequality this is high according to the GII[130]. Women are perceived as the means to uphold the family honour and they carry the main responsibilities for the household. The domestic sphere is seen to belong to women and marriage is seen as the primary possibility for women to gain economic security, therefore divorce is often not an option as the woman would then loose her means of economic security, moreover, divorced women are stigmatised which further decreases incentives to divorce[131].

As regards education and employment, ambivalent findings are seen. On the one hand women do have access to education while on the other hand, their place is seen to be the domestic sphere. Thus the production and power relations point to women's subordination as conceptualisations of gender place women in a discriminatory position in relation to men. Through education women may acquire important social capital, while at the same time being limited in access to economic capital.

Women in Syria are not enjoying the same legal status as men and women are treated differently under the law, a feature of the patriarchal society. Punishments in case of adultery are for example harsher for women than for men[132]. However, women in Syria do enjoy important political rights such as voting rights, and women hold political posts, while at the same time few of the goals regarding

[127] Ibid, paras. 33-44.
[128] United Kingdom: Home Office, *Country Of Origin Information Report - Syria*, 15 August 2012, available at: <http://www.refworld.org/docid/50374cf72.html>, paras. 23.28 – 23.31.
[129] Freedom House, Women's Rights in the Middle East and North Africa 2010 - Syria, 3 March 2010, available at: <http://www.refworld.org/docid/4b99011dc.html>, para. 23.32.
[130] See UNDP Gender Inequality Index at <http://hdr.undp.org/en/statistics/gii/>.
[131] Freedom House, *Women's Rights in the Middle East and North Africa 2010 – Syria*.
[132] United Kingdom: Home Office, *Country Of Origin Information Report - Syria*, Para. 23.11

emancipation and non-discrimination are actually realised[133]. Furthermore, women may be prohibited by their husband from travelling abroad. Again an ambivalent picture arises as regards women's situation; women are on the one hand empowered by the enjoyment of political rights, while at the same time being discriminated under the law.

Regarding forms of violence against women in Syria, it can be seen that rape and honour killings are prominent. The prevalence of domestic violence in Syrian society, and the permissive attitude toward so-called honour killings in some areas, means that women also face threats to their physical security. The government has begun to acknowledge the need to amend the laws and alter deeply rooted societal attitudes towards these issues, and in 2009 it took steps to stiffen the penalties for honour killings, but it has been said women have yet to feel change in their day-to-day lives[134]. The *In-dept Study on All Forms of Violence Against Women*, mentions that traditional harmful practices, such as crimes in the name of honour, are used to justify violence against women[135].

Crimes committed in the name of honour, violence within the family and rape, appear to be the most prevalent forms of violence. It is estimated that approximately 200 women are killed every year in honour related crimes. The Syrian Penal Code has in 2011 been amended to allow for the punishment of honour related crimes, thus the effect of the amended Code remains to be seen[136]. In the case of honour killings the fact that the crime was honour related mitigates the sentence[137] which is laid down in legislation. The provision in the Penal Code exonerating the perpetrator has reportedly been used also in relation to the punishment of marriage outside the religion that the family adheres to. The possibility to enjoy protection under national law is not a realistic option.

That there exist little possibilities punishing violence against women in the national law can be seen further as regards violence within the family. There exist no laws that prohibit domestic violence and women may have little possibilities of redress as the police are not taking the claims seriously and the lack of shelters makes it difficult to escape the violence[138]. The Syrian Penal Code makes rape a punishable crime, however, a sentence can be mitigated by the perpetrator marrying his victim, spousal rape is not a punishable crime, hence not subject to sanctions by the State[139].

[133] Ibid. 23.18 – 23.23.
[134] Freedom House, Women's Rights in the Middle East and North Africa 2010 - Syria, 3 March 2010, available at: <http://www.refworld.org/docid/4b99011dc.html [accessed 4 May 2013>.
[135] UN General Assembly, In-dept Study on All Forms of Violence Against Women (6 July 2006) A/61/122/Add.1, para. 78.
[136] Country of Information Syria, UK Border Agency, 2012, paras. 23-68-23.73.
[137] Women's Rights in the Middle East and North Africa 2010 – Syria. Available from UN Refworld at: <http://www.refworld.org/topic,50ffbce4c9,50ffbce4de,4b99011dc,0,,,SYR.html>.
[138] Freedom House, *Women's Rights in the Middle East and North Africa 2010 - Syria*, 3 March 2010.
[139] Ibid.

Thus, as regards State responses, the conclusion must be drawn that domestic violence, rape and crimes in the name of honour do not receive any particular attention considering the absence of legislation criminalizing spousal rape and domestic violence. The very fact that a punishment is mitigated if the crime has been committed in the name of honour points to the deeply rooted patriarchal structures in Syrian society.

3.4 Chapter Conclusion

In this chapter intersections of gender and class, as well as forms of violence against women have been explored. The purpose of this chapter has been to unlock the intersections of social categories that create vulnerability for women in the top three countries and to relate these findings to violence against women. Here the citation from the introduction can be reiterated as a reminder of relevance of the findings in this chapter:

> "structural intersectionality results from the overlapping effects of background structures that interact with a policy or some other decision that creates burdens that disproportionately affect marginalized women"[140].

The main findings can be summarized as follows. In all three countries, women are subordinate to men which takes the form of assigning roles to women that limit their freedom. Women often do not work outside the home hence have little opportunities earning an income. When women are active they are so in the informal sector taking care for the household or through small scale work that does not render an income. It has been seen that women in all three countries experience difficulties enjoying access to education, to have their own economic capital and to fully take advantage of their social capital, although it must be noted that women in the Syrian Arab Republic enjoy greater access to education than as is seen in the two other countries. Here the intertwined notions of gender and class can be seen.

It could further be seen that violence against women is pervasive in all three countries and that it is often normalised and accepted. As women have little or no economic means, they are dependent on a husband to provide economic security which means that a woman may have to succumb to violence as she often has no other alternative. Further, it has been found that violence against women is often not seen as a matter for the State to address. The State in all three countries openly discriminates women in the legislation and in punishments for adultery, or rape.

Thus, the background structure against which women asylum seekers must be understood is one of subordination and lack of State protection. Women are vulnerable, not only because of gender

[140] UN Division for the Advancement of Women, Gender and Racial Discrimination Report of the Expert Group Meeting (2000) p. 11.

structures but also because their social and economic capital is being limited. Violence is normalised and women have little means to enjoy protection from violence.
This is also where the interaction between gender, class and violence against women can be seen. It is not one factor only that creates vulnerability, but the interaction between these, and potentially other, factors. Now, men's situation in the countries of origin has not been dealt with here, however, what can be drawn from the findings are that men enjoy more opportunities both as regards access to education and possibility to earn an income.

These findings points to that the backgrounds from which women and men originate are different, although they originate from the same countries. The terms in which women enter an asylum procedure is thus not similar to that of a man. While both men and women can experience oppression and violence, women's experiences are different because of the already oppressed position she finds herself in as a woman. Moreover, the situation is not only dependent on gender, but also on class and whether she has the economic and social capital necessary to make changes to her life.

As was argued above, violence against women is pervasive in the three countries, and there is often no State sanctions carried out for such violence. This is important in connection to whether women can seek asylum based on persecution taking place because of gendered reasons. As was seen in the previous chapter, the CEAS does not recognise gender *as such* as a ground for persecution, neither does the UNHCR Gender-Guidelines. In the coming chapter Swedish asylum policy is considered.

Chapter 4. Asylum Trends in Sweden

At this point, the European asylum system, possibilities of access to- and procedural justice in asylum procedures as well as potential background circumstances of asylum seeking women, have been explored. Here the particular case of Sweden will be discussed. First, the Swedish asylum policy as regards gender will be considered, thereafter a grounds for asylum in Swedish case-law is explored and the chapter ends with considering gender perspectives in the asylum policy.

4.1 Swedish asylum policy

The Directives under the CEAS are binding on Sweden, although it should be noted that as the Directives set minimum standards, Swedish asylum policy may provide for better protection in the national legislation. Swedish asylum policy is made up of the Aliens Act[141], implementing provisions in the Qualifications Directive, and the Aliens Ordinance[142], implementing provisions in the Procedures and Reception Directives. Bexelius notes that Swedish asylum policy must be read together with the UNHCR guidelines on gender related persecution and Sweden has adopted guidelines on gender-based persecution[143].

The most important actor in Swedish asylum policy is the Migration Board who is the authority responsible for the asylum application, housing for asylum seekers and means of subsistence. The Migration Board takes decisions on the application for asylum, and in case of a negative decision, an appeal can be made to the appeals court[144]. The highest instance is the Migration Court[145] which only rarely is resorted to.

The Swedish Aliens Act was in 2006 amended to include persecution based on gender or sexual orientation, and the set of guidelines on investigation and assessment of women's protection needs from 2002 was revised[146]. Just as under CEAS, focus in the coming sections will be placed on the concept of a 'refugee', provisions on gender and access to justice.

[141] Aliens Act (2005:716), of 25 September 2005.
[142] Aliens Ordinance (2006:97) Issued: 23 February 2006
[143] M Bexelius (2008) p. 74.
[144] My translation, in Swedish this instance is called 'migrationsdomstolen'.
[145] My translation, in Swedish this instance is called 'migrationsoverdomstolen'.
[146] M Bexelius (2008) p. 74. s

4.1.1 The Aliens Act and related acts

The Aliens Act, section 1 lays down that[147]:

> "In this Act 'refugee' means an alien who
> - is outside the country of the alien's nationality, because he or she feels a well-founded fear of persecution on grounds of race, nationality, religious or political belief, or on grounds of gender, sexual orientation or other membership of a particular social group and
> - is unable, or because of his or her fear is unwilling, to avail himself or herself of the protection of that country".

It can be seen that gender and sexual orientation may provide grounds for being granted refugee status under Swedish asylum law. Hence, gender alone may constitute such a group that is covered by protection.

The Aliens Act, Chapter 18, section 1 lays down that a public counsel shall be provided unless in cases when there is no need for such, which is subject to conditions laid down in paragraphs 1 to 15, the function of the public counsel is to guide the applicant in questions concerning the asylum process. The Aliens Act contains no provisions on the right to an interpreter and consequently no right to the possibility to choose a female interpreter. The Law on the Reception of Asylum Seekers[148] lays down provisions on reception conditions.

It has been said earlier that it is important to be aware of the process as an important element in procedural justice. The obligation to inform is laid down in the Administrative Procedural Law 1984:223, regulating matters covered by administrative authorities. The scope of the duty to inform includes all persons that fall within its scope of functions. Furthermore, the Aliens Ordinance (2006:97) provides that aliens have the right to information about the procedures, their rights and obligations. Written information is available in form of leaflets in 14 languages. Information regarding gender specific matters is not provided by the Swedish Migration Board[149].

Bexelius stresses that Swedish asylum policy includes protection against gender related violence and gender discrimination, hence all women shall be given effective protection against torture and other inhuman or degrading treatment, including gender related violence. The responsibility to offer protection for women and girls subjected to gender related violence is in Sweden delegated to social services of the different municipalities. However, asylum seekers do not seem to be able to make use

[147] Aliens Act (2005:716), Issued: 25 September 2005.
[148] Lagen om mottagande av asylsökande m.fl. (1994:137).
[149] Thematic Report: the duty to inform applicants about asylum procedures: the asylum-seeker perspective, European Union Agency for Fundamental Rights (2010).

of this protection as the right to financial aid or housing applies to Swedish citizens and persons in possession of a permanent or temporary residence permit only[150].

Consequently, it is the Migration Board that will provide for the asylum seekers' rights concerning housing. As regards economic and social rights, relevant provisions are found in the Law on Reception of Asylum Seekers. Asylum seekers will be offered housing by the migration office and should the asylum seeker not have own financial means, he or she can apply for financial aid[151].

4.1.2 The gender guidelines

In 2001 guidelines on examination and assessment on women's need for protection were adopted, which in 2006 were amended by the guidelines on examination and assessment on women's need for protection and need for protection on the grounds of sexual orientation[152]. Zamacona notes in her assessment of the new guidelines that the purpose has been to create a format for the application analysis that shall facilitate for women to tell about their experiences, which may be of sensitive nature, so that all relevant aspects can be taken into account[153]. The guidelines are a practical help to guide procedures in the Swedish asylum process and below it will be discussed how they have been used in asylum procedures.

4.1.3 Use of the gender uidelines

It is laid down that if there is reason to believe that the woman may have sensitive information to disclose, she shall be given the choice of a female or male interviewer. Furthermore, it shall be explained why this question is asked. In the report on the implementation of the new guidelines by Zamacona, it was found that this question had, in the majority of the cases researched, not been asked[154]. The woman shall furthermore be asked whether she prefers a male or female interpreter and whether she prefers a male or female legal advisor[155]. The report emphasizes that women and men in a family are interviewed separately, although the woman's testimony is often used only as a confirmation of what her husband has already told during his interview[156].

The findings moreover point to that a family is often interviewed together and that women are not asked further about their potential claims[157]. This is interesting as it points to a lack of knowledge on

[150] M Bexelius (2008) p. 205-206.
[151] Lagen om mottagande av asylsökande m.fl. (1994:137).
[152] Riktlinjer för utredning och bedömning av kvinnors skyddsbehov, 2001.
[153] M Zamacona Aguierre (2008) p. 22, my translation.
[154] Ibid, pp. 37-38.
[155] Utlänningshandboken, kap. 40, Riktlinjer och Bedömning av Kvinnors Skyddsbehov och Skyddsbehov på Grund av Sexuell Läggning, 2006-03-28.
[156] M Zamacona Aguierre (2008) p. 88.
[157] Ibid, p. 86.

the side of the officials: not only does it mean that women are not being heard, but it also means that a woman may be interviewed with her husband, that is, the potential perpetrator of the violence.

This presumption that it is the husband's activities which lay as ground for the persecution may be based on how the woman acts and presents herself in the procedure, which in turn is built on gender roles in her home country. This has been recognised in the Asylum Gender Guidelines by the United Kingdom Appeal Appellate Authority, which lists reasons as to why female asylum seekers may not put themselves forward in an interview situation:

- that official matters are generally dealt with by the man in the family;
- a concern not to offend their husband or male associate(s) / relative(s) by acting independently;
- fear of disclosing information which will bring them into disrepute;
- fear that details of the interview may be disclosed to others;
- fear of dealing with officials;
- a belief that she may achieve safety in other ways; and
- the fact that accepting that one is an exile may be very difficult[158] .

Hence, there are a number of factors which work disadvantaging for asylum seeking women if one takes into account the asylum procedure in Sweden. The guidelines demand that all family members must be *investigated* separately, although there is no demand that all family members are *interviewed* separately[159]. This may have crucial consequences for the woman, as she has no guarantee that she will be able to tell about her experiences as she may not be able to do so in the presence of her husband or children for reasons explained above.

After requests form the UNHCR to give both men and women equal access to assessment of their asylum claims, Sweden has adopted guidelines to ensure that both men and women are heard in the asylum process, as was seen above[160]. There are shortcomings in the implementation of the right to choose an interpreter, counsellor and interviewer and when these procedural aspects are neglected early on in the procedure it may affect women's possibilities to be heard at a later stage. Zamacona means that this points to a split view of the asylum process, where the actual assessment of the claim is regarded as more important than the procedure leading up to this assessment, i.e. whether the woman can voice her claim. Thus the importance of the process being non-discriminatory *in its entirety* is ignored.

[158] Immigration Appellate Authority, Asylum Gender Guidelines (2000) para. 5.11.
[159] M Zamacona Aguierre (2008) 86.
[160] Ibid, p. 83.

Zamacona finds that there is a higher prevalence of permanent residence permits granted to women who arrive and claim asylum as part of a family than as being granted to women arriving alone. She further points to that when women claim asylum for individual reasons there is a lower rate of residence permits granted than when the claim is made on the husband's or child's situation.

The findings by Zamacona point to that gender specific persecution is seen as a private matter and that the responsible authority has argued that the woman can turn to the State authorities in her home country to enjoy protection in cases of gender specific persecution. Such cases relate to violence within the family where the woman has been subject to violence by her husband or where for example soldiers have sexually abused the woman in her home, either in the presence of her husband or in his absence. The internal flight alternative is in cases of violence against women seen as offering enough a solution to the violence the woman is subjected to, which is based on country specific information[161]. However, no account is taken of women's lived experiences of how the State authorities truly act in cases of violence against women.

4.2 Grounds for the asylum claim

The current section will discuss case-law and must be read with the private-public notion as background. Chapter 2 dealt with substantive and procedural law in relation to gender-based persecution, this chapter builds on that and attempts to shed light on how asylum legislation has been interpreted in case law. In a study carried out by Zamacona, it was found that of the 100 asylum cases that were studied, gender related persecution were claimed in 25 of these and gender specific persecution[162] in seven cases. However, in neither of the cases were a woman granted asylum based on gender specific grounds[163].

Gender-based violence starts to be seen as a human rights concern which is essential to have in consideration when discussing violence against women in the asylum claim[164]. The Gender Guidelines by the UNHCR are an important source of information in this regard. Gender-based violence that will be explored here concerns political participation and gendered social mores, as concerns gendered specific violence, female genital mutilation and violence within the family will be explored.

[161] M Zamacona Aguirre (2008) pp. 67-68.
[162] Gender specific persecution concerns persecution on grounds of rape, sexual violence and abuse, FGM, marriage related harm, violence within the family, forced sterilisation and abortion, i.e. gender-specific persecution concerns such violence that can only affect women. Gender related persecution regards such violence that may not be gender specific, but is in some regard connected to gender, e.g. a woman whom transgresses social mores, which also a man can do. See H Crawley (2001) p. 42, and M Zamacona Aguirre (2008) p. 12.
[163] M Zamacona Aguirre (2008) p. 64.
[164] As this topic has been dealt with extensively elsewhere, I refer to e.g. S Engle Merry (2009) p. 79, for an overview of gender violence as a human rights concern.

4.2.1 Women's political participation

Women may not recognise their activities as being political; hence the activities they carry out may neither be recognised as such. Their political participation differs from that of men and while men participate to greater extent in the public sphere, women carry out their participation largely in the private sphere. That women for example take care for rebel soldiers can be difficult in the asylum claim, as this activity takes place in the private which is not traditionally recognised as a sphere where actions are carried out that give rise to persecution[165].

Although sexual abuse is committed by an agent of the State, Crawley notes that because of the sexual nature of the offence, it is often personalised, and as such it can have a negative effect on the asylum claim[166]. The personalised view of the violence is related to the discussion of the public-private sphere which leads to that claims by women are not recognised as persecution, as the violence might not be attributable to the State *per se*. Women may also be sexually assaulted because of the fact that family members are politically active or they may be imputed with the opinions of their family members[167]. Politically active women may thus be subject to persecution in the shape of some form of violence against women due to theirs, or their family member's political actions/beliefs.

The Swedish guidelines recognise that there is a difference in men and women's political participation and the guidelines further recognise that in many cultures, the woman is not informed about her husband's activities. This is important in the regard that the purpose of the interview with the woman in the asylum process is often to confirm her husband's story[168].

4.2.2 Gendered social mores

Crawley discusses that gendered social mores can be seen in amongst other, legislated discrimination and marriage related harm. Violence against women may be condoned by the State, and is often carried out by the community or family members. An example is so-called honour killings whereby the woman is killed by family members in order to restore honour, which could be seen in Chapter 3. The loss of honour may have happened due to failure to conform to social or religious norms such as failure to prove virginity upon marriage.

The Swedish Migration Court ruled on a case of a Somali woman who in 2009 claimed asylum in Sweden. She belonged to a religious clan and upon her first husband's death she started a relationship with another man who, after she became pregnant, left her. Her half-brother tried to murder her as he considered that she had brought shame upon the family by having a sexual relationship with a man to

[165] H Crawley (2001) p. 79-95.
[166] Ibid, p. 80.
[167] Ibid, p. 84.
[168] M Zamacona Guierre (2008) p. 88.

whom she was not married. The Migration Court recognised that the ground for her claim is often difficult to document and focused instead on whether the story was clear and consistent. The Migration Court held that it is important to consider social structures in the applicant's home country in making an assessment of the claim and in this regard in the in the assessment of the internal flight alternative. The Migration Court recognised that this alternative was not a viable one; there was in parts of the country an on-going internal armed conflict and in other parts her perpetrators were situated. The last option was Puntland, another part of Somalia, which was not seen as an option as she had no connections there[169].

4.2.3 Female genital mutilation

Female Genital Mutilation (FGM) is defined by the WHO as all procedures that involve the partial or total removal of the external female genitalia or other injury to female genital organs[170]. FGM is practised throughout the world although the practise is most deeply rooted in the Horn of Africa. It is recognised that FGM is a cross-cultural and cross-religions ritual carried out due to custom, tradition or as a ritual and importantly as a tool to control women's sexuality[171]. Where FGM is practised, not all women are subject to FGM and some families may resist the practise. FGM has been recognised as a human rights concern and women, whom may be compelled to undergo FGM against their will or fearing persecution because of refusing to undergo FGM, can be considered refugees[172].

FGM has been invoked as a ground for seeking asylum in a limited number of cases and Crawley argues that the most important reason as to why FGM should be recognised as a violation of women's fundamental rights is because of its link with the core of international human rights law which is the universal protection of the individual's autonomy[173]. In the ECtHR case of Izevbekhai and Others v. Ireland, the applicant feared that her daughters would be forced to undergo FGM, her asylum claim was however rejected as the ECtHR found it manifestly ill-founded. The ECtHR moreover considered the applicant's personal circumstances and found that she could relocate to another part of Nigeria, her home country[174].

FGM has long-term implications which are not limited to the carrying out of the act itself, but continues to pose health problems and the risk of being subject to, for example, infibulation again after having given birth. FGM thus affects the victim's entire life. Crawley therefore argues that FGM carried out 'without the woman's consent constitutes cruel, inhuman and degrading treatment'[175].

[169] Migrationsöverdomstolen. Målnummer UM7851-10. 2011-04-21.
[170] WHO June 2000 Fact Sheet no. 241.
[171] H Crawley (2001) pp. 175-180.
[172] Ibid, p. 181.
[173] Ibid, p. 184.
[174] Women's asylum news, No 103 (2011) p. 9.
[175] H Crawley (2001) p. 188.

Despite that several countries in Africa and other regions where FGM is practised have taken steps to criminalise FGM or introduce education programmes, the number of mutilated girls has not been reduced, whereby it is questionable whether State protection is actually available[176]. Crawley suggests that the internal flight alternative is not a reasonable option for women who fear persecution based on FGM. Although FGM often is not practised in all parts of a country, it is still not a feasible option for a woman to move to another part dominated by another ethnic group whose language she does not speak or whose customs she does not adhere to[177].

The Swedish Migration Court held, in a case concerning three Somali girls and their mother, that FGM may indeed be claimed as a ground for asylum and the Migration Court upheld the appeal authority's decision to grant refugee status[178]. The decision was preceded by an assessment of the situation in Somalia as regards FGM and attention was paid to that the risk for the girls to be subjected to FGM did not become less because they are getting older, in fact, this is a risk factor in itself as it becomes even more important to ensure that the procedure takes place. The Migration Court judged that the parents will not be able to protect their daughters should they be returned to Somalia.

4.2.4 Violence within the family

Crawley argues that violence within the family is a term that is broader than domestic violence as it refers to all violence women are subjected to, based on gendered perceptions of women hence the further use of this term. Violence within the family may take the form of physical, sexual and psychological abuse[179]. It has been noted by several scholars that violence within the family has received little attention, taking place in the private it has been difficult to research and violence within the family has been seen as a 'private concern' or a 'family matter'[180].

As claims of violence within the family are often seen as a private matter, it is not taken for the serious form of violence it is, which can be seen in cases reported to the ECtHR. In Bevacqua v. Bulgaria, the ECtHR found that the state authorities had not taken the steps necessary to protect the applicant's right of private and family life from her abusive husband[181]. In Opuz v. Turkey, the case concerned Ms Nahide Opuz who experienced violence within the family which eventually led to her husband's homicide of the applicant's mother, the ECtHR drew the conclusion that the State authorities had not intervened as they saw the situation as a 'family matter'[182].

[176] Ibid, p. 191.
[177] H Crawley (2001) p. 191.
[178] Migrationsöverdomstolen UM1173-12. 2012-10-12.
[179] H Crawley (2001) p. 129.
[180] See e.g. H Crawley 2001 or M R Jackman 1999.
[181] Bevacqua v. Bulgaria App no 57/1996/676/866 (ECtHR 12 September 2012) paras. 70-76.
[182] Opuz v. Turkey App no. 33401/02 (ECtHR 9 September 2009) para. 143.

Stigmatisation of being a victim of rape by an intimate partner makes it difficult for women to report, and as is argued by Jackman, women may find that they are not credible making their claim of violence because of a perceived lower status by virtue of their gender, while the male perpetrator is of higher status, hence there is a fear that the blame will fall on the victim[183].

Of the few cases on violence against women that has been decided by the ECtHR, the shared understanding to be drawn is that state authorities should perceive violence within the family as violence that women must be protected against. This is an important consideration as acts taking place in the private then can come under the attention of State's international responsibility.

The Swedish Migration Court had to rule on violence in the family in a case concerning an Albanian woman and her two children who in 2007 claimed asylum in Sweden. The Migration Court did not dispute that persecution within the private sphere may account to persecution and that gender related power structures must be taken into account in the assessment. The Migration Court made the argument that in certain cultures it is impossible for the woman to enjoy protection by the State. The Migration Court went on to assess whether there was a reasonable possibility to apply the internal flight alternative and further found that as Albania in 2006 adopted legislation condemning violence within the family, there would be a possibility that a civil court adopts a protection order against the perpetrator. Based on this fact alone, the appeals body drew the conclusion that the internal flight alternative was feasible[184]. There are no references as to whether the law is actually applied and effectively functioning.

The Migration Board's reasoning in a decision concerning a Kurdish woman from Iran, victim of domestic violence, resembles that of the Migration Court. The woman was in this case not allowed to move around freely and was treated as a slave by her husband and their daughter was to be married against her will to an older male relative. The Migration Board held in its decision that the woman would not risk social exclusion if she left her husband, as she lived in a larger city. It is noted in the report discussing the case that no references to country specific information or individual circumstances are made[185].

The UNHCR report discussing the case holds that more attention should be paid to gender specific persecution, country specific information and possibilities of State protection[186]. That attention to these factors is paid, is essential, as it could be seen in Chapter 3 that violence against women is condoned

[183] M R Jackman, Gender, Violence, and Harassment, in J. Saltzman Chafetz, Handbook of Sociology of Gender (1999, Springer).
[184] Migrationsöverdomstolen, UM1042-08.
[185] L Feijen and E Frennmark, Kvalitet i Svensk Asylprövning, Slutrapport från Projektet Förhöjd Kvalitet i Svensk Asylprövning (2011) p. 146.
[186] Ibid.

by the State in countries from which most asylum seekers originate claiming asylum in Sweden. It has moreover been held by the Migration Court that it is not sufficient to establish that an internal flight alternative is possible, an individual assessment must in cases where this is a possibility always be made[187].

4.3 A gender perspective in Swedish asylum policy?

It has been argued by several authors that national asylum legislation fails to address gender specific matters[188]. Bexelius and Zamacona have each written extensively on Swedish asylum policy and on the question whether such takes a gender-based perspective. Bexelius writes that there is a risk, by not taking a gender perspective, that the woman is not seen as having a right to asylum in her own right[189]. Earlier the Swedish Guidelines on gender were introduced. The guidelines are important as they deal with the question of gender-based persecution and aspects that need to be taken into account in such cases. The guidelines to a large extent incorporate what has been laid down in the 2002 UNHCR guidelines on gender-based persecution.

Despite the new guidelines, the Swedish asylum legislation as applied shows an unawareness of gender implications. Two examples are illustrative. First, often as regards families, the man/husband is thought to possess the persecution grounds and the woman is seen as confirming the husband's story, rather than being seen as having a claim to asylum in her own right[190]. Effectively, this means that although legislation and guidelines provide for recognition of gender specific or gender related asylum claims, deeply rooted beliefs of men's and women's roles underlie the assessment of the asylum claim which corresponds to the public-private dichotomy as discussed in Chapter 2.

Second, in a report on the quality of the Swedish assessment of asylum claims the authors noted that the Swedish Migration Board refused an Iraqi man protection with the argument that honour related violence only affects women. The facts of the case were such that the man would be forced to marry his cousin should he return to Iraq[191]. Importantly, gender-related persecution refers not only to claims made by women, but also men can be subject to gender-related persecution.

Bexelius argues that it is important to recognise that children and elderly persons may be especially vulnerable in the asylum process. She further argues that the asylum process must adhere to both a child- and a gender perspective[192]. Such an adherence would be a first step towards an inclusive asylum policy where background structures are taken into account to ensure that every person making

[187] Ibid, p. 167.
[188] See amongst other, J Freedman (2008), M Bexelius (2008) and H Crawley (2001).
[189] M Bexelius (2008) p. 82.
[190] M Zamacona Guierre and E Hökfelt, pp. 136-138.
[191] L Feijen and E Frennmark (2011) p. 145.
[192] M Bexelius (2008) p. 84.

an asylum claim does so on equal terms. However, singling out certain groups as extra vulnerable also inherits the risk of 'missing' the intersections creating the vulnerability. Hence, it is necessary to strike a balance between the particular focus on gender, children and the elderly and other factors that intersect.

In Swedish asylum *practice*, the public – private dichotomy appears to be persistent. This is seen in that men are perceived as being the ones who have been persecuted for their activities, while women are accorded the role of confirming men's story. Women are heard together with men and children, although it has been argued that women then are in such a position that they cannot tell about violence, due to fear of retaliation or shame.

The 2006 guidelines on the other hand seem to not only recognise, but also give concrete examples of, how to treat women asylum seekers. Zamcona finds that procedural obligations in the asylum process are often not followed, and to a certain extent procedures that are sensitive to multiple discrimination, are lacking[193]. The guidelines thus acknowledge the problems of how 'the private' has been interpreted and try to remedy the situation, but fail to address multiple discrimination.

4.4 Chapter Conclusion

This chapter has dealt with Swedish asylum policy and how such has incorporated the provisions under the CEAS. Furthermore, cases stemming from the Migration Court concerning gender-based persecution have been considered. First, as regards Swedish asylum policy, there is a provision on gender-based persecution laid down in legislation which arguably must make it easier for women to base a claim based on gender-related matters under Swedish policy than under the minimum rules provided for under the CEAS.

However, although the substantive right of bringing a claim based on gender, other obstacles appear. Women may have difficulties bringing *their* case, as often the husband is seen as the one who holds the grounds for asylum. As was seen above, when women are interviewed it was argued that the purpose was to confirm the husband's story. Since the interviews often take place with all family members together, it can be difficult for women to voice a claim of violence within the family if the perpetrator is her husband. Hence, to access the right of bringing a claim of gender-based persecution is difficult, not because that possibility does not exist, but because the procedures do not recognise women's experiences as laid out in the previous chapter.

[193] M Zamacona Aguierre, (2008).

Second, from the few cases studied, it is difficult to draw any accurate conclusions. However, as the decisions discussed have been handed down by the highest organ, they are of importance. Certain aspects can be drawn from the judgments; social structures in the country of origin are important for the asylum claim, country specific information reports are relied heavily upon in the decisions, and the internal flight alternative is seen as an option in the case of violence within the family unless absolutely not possible because of for example, war.

There may be a gender perspective in the policy and in the cases, however, as has been argued in the previous chapters, the entire situation must be considered and not fragments only, which is important when considering the internal flight alternative. This is of course important as women risk not being recognised as asylum seekers; first because their claim is based on what is perceived as violence taking place in the private. Second, while if they manage to indeed bring their claim based on such an act, then it is argued that they can make use of the internal flight alternative without considering the entire situation of the woman asylum seeker in her country of origin.

The substantive right to base a claim on gender specific grounds exists in Sweden, as well as guidelines how to incorporate women's different experiences. What does not exist however, is an understanding of how the notion of the public-private still lingers in asylum practice, hence, an *understanding* of background structures is arguably absent.

Chapter 5. Conclusion

Throughout this paper the central research question has permeated the factors explored in asylum policy. The central research question was as follows: *to what extent does EU and Swedish asylum policy recognise violence against women as a ground for granting asylum? And to what extent is that implemented at procedural level if measured against aspects of procedural justice?*

The paper started in the second chapter by setting out notion of the public – private dichotomy in asylum law. This part placed the central research question of this paper in its context, and it was seen that the notion of the public versus the private sphere influences how men and women are perceived in the asylum process. Second, the European asylum system was discussed and it was found that gender-based persecution to a limited extent is included under the CEAS. Furthermore, procedural safe-guards were found to be left to the national legislator with the sole requirement that legal aid should be granted in case of a negative decision on the asylum application.

The last part of Chapter 2 concerned access to- and procedural justice. Here it was argued that in order for women to have a 'voice' in the asylum procedure, certain factors are necessary to have regards to. The possibility to present one's case, provide input and to participate were factors that were found important if there shall be procedural justice. It was moreover found that Article 6 ECHR indeed must be applicable to asylum cases, however, still the national legislator has a choice of means how to provide access to justice, provided that this right is not deprived of its effectiveness.

Chapter 3 delved into a case-study on women in three countries from which the largest amount of asylum seekers originated in 2012. Intersections of gender and class where explored and how these interact with being a victim of violence against women. This chapter thus concerned the background structures that interact with asylum policy. It was seen that women are subordinate to men as regards economic and social capital and that violence against women is pervasive in the three countries studied. Hence, it is against this background that asylum policy must be understood.

In Chapter 4 Swedish asylum policy and practice were explored. The findings showed that gender-based persecution, thus also violence against women, is a potential ground for claiming asylum under Swedish asylum law. However, what arose is that despite this progressive legislation, few cases were actually based on this ground. Moreover, despite the implementation of guidelines that comprehensively deal with gender questions in the asylum process, these guidelines are to a great extent not followed.

Under EU asylum policy, violence against women as a ground for granting asylum is only recognised to a very limited extent. Gender, as such, is not a ground on which a claim can be based, but must be read together with for example political opinion. This points directly to the public-private dichotomy and a lack of recognition of women's claims, because policy makers have continued to follow the perceived 'model asylum seeker', i.e. a man carrying out activities in the public.

Using aspects of procedural justice theory to measure recognition of violence against women at procedural level, will depend on the findings as to whether violence against women is recognised as a grounds for granting asylum. As it was found that violence against women is very limitedly recognised, if not to say not recognised at all, the procedures under EU asylum policy do not provide for recognition of violence against women in the asylum procedures. In fact, when measuring provisions on asylum procedures against procedural justice notions, it appears that asylum seeking women have very limited possibilities of making a gender-based claim or to have backgrounds structures taken into account in the asylum procedures, if a Member State would follow the minimum rules set out under the CEAS.

It has been seen in Chapter 4 concerning Swedish asylum policy that gender-based persecution is included in the list of grounds in the Aliens Act on which asylum can be claimed. It has furthermore been seen that forms of violence against women comprise a gender-based ground that women can base a claim upon. Hence, as regards substantive law, violence against women is recognised in Swedish asylum policy. However, the interest is to what extent such is recognised and in this regards the findings are less positive. It appears that often claims are actually not based on such gender-related grounds but why this is not the case is not known.

The case-law examples from the Swedish jurisdiction show ambivalence towards gender in the asylum claim. In cases of violence within the family the decision making body appears to lean towards the possibility of the internal flight alternative regardless of whether State protection in the country of origin is in reality a feasibly option. These findings point to that also under Swedish asylum law, violence against women are only to a limited extent recognised as a ground for granting asylum. Importantly, certain forms of violence make a stronger case than other forms. Being a victim of FGM appears to be a form of violence against women that indeed is recognised as a ground for granting asylum. However, a caveat is necessary, a larger sample of case-law is needed to draw accurate conclusions in this regard.

In light of the above, can it then be argued that violence against women is recognised in asylum procedures? Looking only to the guidelines on examination and assessment on women's need for protection and need for protection on grounds of sexual orientation, indeed violence against women is

recognised in the procedures. Special attention is paid to that women must be able to make their own claim and to be given a female interpreter and counsel. In short, the guidelines appear to comprehend the particular complexity of how background structures such and gender, class and violence against women interact with asylum policy and tries to provide tools how to give women asylum seekers a 'voice', which was found to be an important feature under procedural justice considerations.

The problem, I argue, is that these guidelines are not followed to such an extent that it is indeed possible to talk about recognition of violence against women in asylum *procedures*. Procedural justice aspects are to a great extent focused on giving people a 'voice'. In Swedish asylum procedures, women, I argue, are not given a voice but are instead perceived as not having a claim to asylum in their own right and they are consequently also treated as such. Because the woman is not perceived as having her own claim to asylum, she is also not given a possibility to voice such a claim. This can be understood from that women are often interviewed together with their husband and children, which, as has been shown, makes it difficult to tell about experiences of, for example rape.

The intersectional approach taken in this paper has meant taking into consideration background structures of gender, class and violence against women and exploring how these interact with asylum policy. An intersectional approach furthermore draws attention to that asylum policy is not a neutral concept, i.e. that the situation is not such that, regardless of gender, class or in this case, violence against women, everyone enjoys equal possibilities. Indeed, the very opposite is true. EU and Swedish asylum policy, seen from an intersectional approach, are essentially seen without its context of background structures that interact with the policy, and due to the underlying notion of the public-private dichotomy, fail to a large extent to recognise violence against women as a ground for granting asylum, and fail to give women asylum seekers a 'voice' in the procedures.

Concluding, violence against women is to a greater extent recognised in Swedish asylum policy than under the CEAS. However, when recognition in asylum policy is measured against aspects of procedural justice, one will find that only certain forms of violence against women are recognised. At procedural level, recognition of violence against women is not implemented to such an extent that women are effectively heard in the asylum process. Further studies are therefore needed to capture women's experiences in the asylum process in cases of violence against women, in order to ensure that every asylum seeker is given a voice in the process with the result that every individual asylum seeker is able to also make his or her own claim.

Bibliography

Books and articles

- Azimi et al. (2008) Women and Men in Afghanistan: Baseline Statistics on Gender. Ministry of Women's Affairs, United Nations Development Fund for Women. Available at: <http://www.peacewomen.org/portal_resources_resource.php?id=548>.

- Bacon, R and Booth, K 2000, The Intersection of Refugee Law and Gender, *UNSW Law Journal*, Vol. 3.

- Bauer, H. M, et al. (2000). Barriers to health care for abused Latina and Asian immigrant women. *Journal of Health Care for the Poor and Underserved*, no. 11, 33-44.

- Bhabha, Jacqueline (2004) Demography and Rights: Women, Children and Access to Asylum, *International Journal of Refugee Law*, Vol. 16.

- Bexelius, M (2008) Asylrätt, kön och politik, Books on Demand, Visby.

- Bloch, A et al. (2000) Refugee Women in Europe: Some Aspects of the Legal and Policy Dimensions, *International Migration*, Vol. 38, No. 2.

- Boeles, P. et al. (2009) European Migration Law, Intersentia, Antwerpen.

- Brouwer, E (2005), Effective Remedies for Third Country Nationals in EU Law: Justice Accessible to All? *European Journal of Migration and Law*, No. 7.

- Byrne, B et al. (1996) Gender, conflict and development Volume II: Case studies: Cambodia; Rwanda; Kosovo; Algeria; Somalia; Guatemala and Eritrea. Report prepared at the request of the Netherlands' Special Programme on WID, Ministry of Foreign Affairs on a conference on gender, conflict and development of the Vrouwenberaad Ontwikkelingssamenwerking.

- Cholewinsky, R (2005) The Need for Effective Individual Legal Protection in Immigration Matters, *European Journal of Migration and Law*, 2005, no. 7.

- Connell, R.W (2002) Gender, Polity Press, Cambridge, UK.

- Crawley, H (2001) Refugees and Gender, Jordan Publishing, Bristol.

- Crenshaw K (1990-1991) Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Color, *Stanford Law Review*, Vol. 43.

- Edwards, A (2010) Transitioning gender: feminist engagement with international refugee law and policy 1950-2010. *Refugee Survey Quarterly*, vol. 29, no. 2.

- Engele Merry, S (2009) Gender Violence: A Cultural Perspective, Blackwell publishing, West Sussex.

- Erez, E et al. (2009) Intersections of Immigration and Domestic Violence: Voices of Battered Women, *Feminist Criminology*, Vol. 4 No. 1.

- Feijen, L and Frennmark, E (2011) Kvalitet i svensk asylprövning, Slutrapport från Projektet *Förhöjd Kvalitet i Svensk Asylprövning* Finansierat av Europeiska Flyktingfonden av UNHCR i samverkan med Migrationsverket.

- Freedman, J (2008) Women Seeking Asylum. The Politics of Gender in the Asylum Determination Process. *International Feminist Journal of Politics*, vol. 10, no. 2.

- Fredman, S (2005) Double Trouble: Multiple Discrimination and EU law, *European anti-discrimination law review*, no 5.

- Hoyle, C (2007) Feminism, Victimology and Domestic Violence; in Walklate, S, Handbook of Victims and Victimology, William Publishing, Devon.

- Jackman, M. R (1999) Gender, Violence, and Harassment, in J. Saltzman Chafetz, Handbook of Sociology of Gender, Springer, New York.

- Johnsson, E (2010) Equality Before the Law and the Social Contract: When will the United States Finally Guarantee its People the Equality Before the Law the Social Contract Demands? *Fordham Urban Law Journal*, vol. 37.

- Jones, P (2003) Introducing Social Theory, Polity Press, Cambridge.

- Klaming, L and Giesen, I (2008) Access to Justice: the Quality of the Procedure, TISCO Working Paper Series on Civil Law and Conflict Resolution Systems, University of Utrecht, no. 002/2008.

- Murphy J, (1993) Access to Legal Remedies: The Crisis in Family Law, *BYU Journal of Public Law,* vol. 8.

- Nash, J (2008), Re-thinking intersectionality, *Feminist Review,* no. 89.

- Hancock, A (2007) Intersectionality as a Normative and Empirical Paradigm, *Politics and Gender,* Vol. 3, No. 2.

- Ostrom, E (2009) What is Social Capital, in Bartkus, V, O and Davis, J, H (2009) Social Capital: Reaching Out, Reaching In, Edward Elgar Publishing Limited, the United Kingdom.

- Ray, A and Silverman, J (2002) Violence Against Immigrant Women: The Roles of Culture, Context, and Legal Immigrant Status on Intimate Partner Violence, *Violence Against Women* Vol. 8.

- Römkens, R (2004) In the Shadow of No Law. Navigating Cultural legitimacy and Legal Protection of Women Against Protection in Afghanistan, in Westendorp, I and Wolleswindel, R, 2005, Violence in the Domestic Sphere. Intesentia, Antwerpen-Oxford.

- Scott, J, 1986, Gender: a Useful Category of Historical Analysis, *The American Historical Review*, Vol. 91, No. 5.

- Simien, Evelyn, M (2007) Doing Intersectionality Research: From Conceptual Issues to Practical Examples, *Politics and Gender,* Vol. 3, No. 2.

- Sokoloff, N and Pearce, S (2011), Intersections, Immigration, and Partner Violence: A View From a New gateway – Baltimore, Maryland, *Women and Criminal Justice*, Vol. 21.

- Sweeney, P and McFarlin, D (1997) Process and Outcome: Gender Differences in the Assessment of Justice, *Journal of Organizational Behaviour,* vol. 18.

- Verloo, M (2006) Multiple Inequalities, Intersectionality and the European Union, *European Journal of Women's Studies*, Vol. 13, No. 211.

- Yuval-Davis, N (2006) Intersectionality and Feminist Politics, *European Journal of Women's Studies,* Vol. 13, No. 3.

- Zamacona Guierre, M (2008) Riktlinjer för Utredning och Bedömning av Kvinnors Skyddsbehov. Ett Fungerande Verktyg? Svenska Röda Korset, Ljungbergs Tryckeri.

Studies, reports and working papers

- Amnesty (2004) Mäns vald mot kvinnor i nära relationer, available at: <http://www.amnesty.se/vad-gor-vi/kvinnors-rattigheter/vald-mot-kvinnor/rapporter/>.

- Fundamental Rights: Challenges and achievement in 2011. Annual report of the European Union Fundamental Rights Agency. Available at: <http://fra.europa.eu/en/publication/2010/access-effective-remedies-asylum-seeker-perspective>.

- European Union Fundamental Rights Agency (2010), Thematic Report: the duty to inform applicants about asylum procedures: the asylum-seeker perspective, available at: <http://fra.europa.eu/en/publication/2010/access-effective-remedies-asylum-seeker-perspective>.

- Gender and Racial Discrimination Report of the Expert Group Meeting (2000) United Nations Division for the Advancement of Women, Office of the High Commissioner for Human Rights and United Nations Development Fund for Women. Available at: <http://www.un.org/womenwatch/daw/csw/genrac/report.htm>.

- Human Development Index. United Nations Development Programme. Available at: <http://hdr.undp.org/en/data/map/>.

- UK Border Agency, Country of Information Syria 2012.

- UNHCR *Handbook on the Protection of Women and Girls* (2008).

- UN General Assembly, In-dept Study on all Forms of Violence Against Women (6 July 2006) A/61/122/Add/1.

- UN Economic and Social Council, Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences. Mission to Afghanistan (9-10 July 2005) E/CN.4/2006/61/Add.5.

- UN General Assembly, Special Rapporteur on Violence Against Women, its Causes and Consequences. Mission to Somalia (14 May 2012) A/HRC/20/16/Add.3.

- UN General Assembly, Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences. Mission to Sweden (6 February 2006) A/HRC/4/34/Add.3.

- WHO Multi-country Study on Women's Health and Domestic Violence against Women Initial results on prevalence, health outcomes and women's responses, 2005, available at <http://whqlibdoc.who.int/publications/2005/9241593512_eng.pdf>.

- WHO Factsheet on Female Genital Mutilation, June 2000 Fact Sheet no. 241.

- Women's Asylum News, no. 103 (2011).

Legislative Acts

- Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status, Article 15 which lays down that states must only provide free legal assistance in an appeal situation. [2005] OJ L 326/13.

- Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. [2004] OJ L 304/12.

- Aliens Act (2005:716), of 25 September 2005.

- Aliens Ordinance (2006:97) Issued: 23 February 2006.

- Lagen om mottagande av asylsökande m.fl. (1994:137).

- Utlänningshandboken, kap. 40, Riktlinjer och bedömning av kvinnors skyddsbehov och skyddsbehov på grund av sexuell läggning, 2006-03-28.

International Documents

- Asylum Gender Guidelines, United Kingdom Immigration Appellate Authority (2000).

- The Convention on the Elimination of All Forms of Discrimination against Women, preamble. Available at:
<http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.

- The Convention on Eliminating All Discrimination Against Women, General Recommendation No. 19. Available at:
<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>.

- Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5.

- European Union, *Charter of Fundamental Rights of the European Union*, 7 December 2000, Official Journal of the European Communities, 18 December 2000 (OJ C 364/01).

- Guidelines on international protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, available at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=3d36f1c64>.

- UNHCR 1951 Convention Relating to the Status of Refugees

- 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, May 2002 (UNHCR Guidelines on Gender-Related Persecution). Available at:
<http://www.unhcr.org/3d58ddef4.html>.

Case-law

- Golder v. the United Kingdom, ECtHR (Application no. 4451/70, 21 February 1975).

- Airey v. Ireland, ECtHR (Application no. 6289/73, 9 October 1979).

- Granger v. the United Kingdom, ECtHR (Application no. 11932/86, 28 March 1990).

- Bevacqua v. Bulgaria, ECtHR (Application no. 57/1996/676/866, 12 September 2008).

- Opuz v. Turkey, ECtHR (Application no. 33401/02, 9 September 2009).

- G.R. v the Netherlands, ECtHR (Application no. 22251/07, 10 January 2012).

- Migrationsöverdomstolen, Målnummer UM1042-08 (12 February 2008).

- Migrationsöverdomstolen, Målnummer UM1173-12 (12 October 2010).

- Migrationsöverdomstolen, Målnummer UM7851-10 (21 April 2011).

Websites

- Report by Freedom House, Freedom in the World 2008 - Afghanistan, 2 July 2008, available at: <http://www.refworld.org/docid/487ca1eac.html>, accessed 5 May 2013.

- Freedom House, Women's Rights in the Middle East and North Africa 2010 - Syria, 3 March 2010, available at: <http://www.refworld.org/docid/4b99011dc.html>, accessed May 4 2013.

- UNDP tracking the Millennium development Goals, available at: <http://www.undp.org.af/undp/index.php?option=com_content&view=article&id=87&Itemid=30>.

- UNDP Gender Inequality Index, available at: <http://hdr.undp.org/en/statistics/gii/>.

- United Kingdom: Home Office, *Country Of Origin Information Report - Syria*, 15 August 2012, available at: <http://www.refworld.org/docid/50374cf72.html>, accessed May 4 2013.