

Sophie Louise Correia
International and European Law, Masters of Law Student
*To what extent do EU laws and policies approach future, and actual female asylum seekers,
in a manner that is consistent with feminist perspectives?*



SOPHIE LOUISE CORREIA

FEMALE ASYLUM SEEKERS IN EU LAW.

*To what extent do EU laws and policies approach future, and actual female asylum seekers,
in a manner that is consistent with feminist perspectives?*

Dissertation to obtain a
Master's Degree in Law,
in the specialty of International and European Law.

Supervisor: Veronica Corcodel, Assistant Professor of the NOVA School of Law

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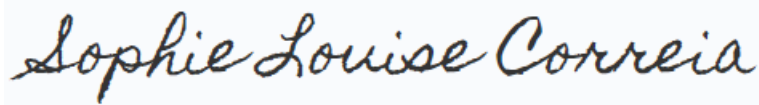
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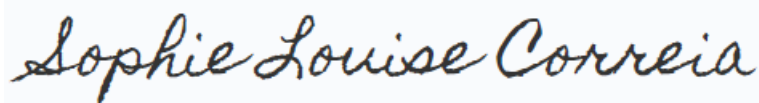
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The citation format

This thesis uses the citation style of the American Psychological Association (APA) 7th edition.

Specifically for the table of cases, legislation, declarations, resolutions, regulations, and recommendations, a clear form of citation has been used and is a part of the references.

The Portuguese abstract is written in accordance with the former Portuguese Language Orthographic Agreement previous to the Portuguese Parliament Resolution no 35/2008,
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Declaration

This is a declaration that the body of the thesis or dissertation, including spaces and notes, occupies a total of 135,277 characters.

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Acknowledgement

The lessons learned throughout this thesis have been so impactful. It will never be possible to truly understand what a person goes through when fleeing a place they called home out of force and fear. This acknowledgement goes out to all those in search of safety within the EU and beyond. I hope that we seek better steps to a more humanised, truly holistic and deeply rooted gendered legal regime within the EU that supports, uplifts and creates the environment in which the EU was founded to be.

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To Gabi for getting me through the last hurdle, your calmness and support really made this thesis a reality. Thank you for being you, besos

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Agradecimentos

As lições aprendidas ao longo desta tese foram tão impactantes. Nunca será possível compreender verdadeiramente o que uma pessoa passa ao fugir de um lugar que chamava de lar por força e medo. Este reconhecimento vai para todos aqueles em busca de segurança dentro da UE e além. Espero que avancemos em direção a um regime legal de gênero verdadeiramente humanizado, integral e profundamente enraizado dentro da UE, que apoie, eleve e crie o ambiente no qual a UE foi fundada para ser.

De forma mais pessoal, quero agradecer à Veronica Corcodel pela sua sabedoria e abordagem gentil como orientadora. Ela inspirou-me a, um dia, alcançar um entendimento tão profundo e conhecimento em direito de asilo e migração da UE como ela possui.

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List of Abbreviations

APA	American Psychological Association
CEAS	Common European Asylum System
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEPOL	European Union Agency for Law Enforcement Training
CFR	Charter of Fundamental Rights of the European Union
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EIGE	European Institute of Gender Equality
ESC	European Social Charter
EU	European Union
EUA	European Union Agency on Asylum
EURODAC	European Asylum Dactyloscopy Database
FRA	The European Union Agency for Fundamental Rights
NGO	Non-Government Organisation
THB	Trafficking in Human Beings
TFEU	Treaty on the Functioning of the European Union

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THB	Trafficking in Human Beings
UNHCR	United Nations High Commissioner for Refugees

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Abstract

Women fleeing their national states in search of safety and security to the EU has been reported to be on the rise in recent years. Worsening human rights abuses against women have been a catalyst for this. Yet in some part, what this in fact reveals is that the EU is starting to truly recognise the presence of women in their journey to seek asylum or refuge in the EU. Women have been fleeing in high volumes for many years. This thesis aims to show how they have been overlooked through policy, regulations and law. What has been implemented as gender sensitive is not sufficient, and continues to violate human rights, and place women in situations highly susceptible to human trafficking. The pinnacle legislation of the 1951 Refugee Convention in which subsequent policies and legislations have derived from, was originally based on the perception of a refugee or asylum seeker as the 'persecuted male', fleeing conscription or the consequences from politically motivated acts. This narrative has continued to remain as the default thinking. To the very detriment of women.

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Resumo

Segundo relatos, nos últimos anos, o número de mulheres obrigadas a fugir dos seus países em busca de proteção e segurança para a União Europeia está em ascensão. O agravamento dos abusos dos direitos humanos contra as mulheres tem sido um catalisador para esta situação. Ainda assim, em algum momento, o que este facto revela é que a UE está a começar a reconhecer verdadeiramente a presença de mulheres na sua jornada de pedido de asilo ou refúgio na UE. As mulheres têm fugido em grande número ao longo dos anos. Esta tese tem como objetivo mostrar como têm sido negligenciadas através de políticas, regulamentações e leis. As medidas implementadas, consideradas sensíveis ao género, não são suficientes, continuam a violar os direitos humanos e colocam as mulheres em situações altamente suscetíveis ao tráfico humano. A legislação máxima da Convenção de Refugiados de 1951, da qual políticas e legislações subsequentes derivam, foi originalmente baseada na percepção do refugiado ou requerente de asilo como o "homem perseguido", em fuga do recrutamento militar ou de perseguições políticas. Esta narrativa continua a ser o pensamento padrão, em detrimento das mulheres.

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CHAPTER ONE

1.1 Introduction to the topic

The journey from persecution to safety is one that can elicit the worst of humanity, but also the best. It is a journey, which people make as a last resort. The individual female experience fleeing persecution is a journey full of the harshest levels of all societal stereotypes and discrimination that one can place on a woman. It is unique, multidimensional and often life threatening. The current climate for those seeking asylum in 2023, reaches a new intensity, yet the EU's policies are not adapting and reacting in quick succession. EU policy and legislation has aimed to work at incorporating gender sensitivities in order to acknowledge these stereotypes and protect from the harm against them. This has been carried out through what seems to be a generalised approach by the EU, rather than one that takes a look at the realities of individuals' real experiences. On top of this what has not been accounted for are the barriers to access that enable these gender sensitive provisions to take effect for individuals. This thesis aims to explore these barriers further, and at the heart of it looks into some of the key issues women face throughout their journeys as a result of both EU law and policy but complementary international instruments as well.

Whilst introducing the topic it is important to touch upon the interplay of EU anti-discrimination law; EU migration and asylum law; and EU criminal law (specifically the anti-human trafficking Directive). This is because they all influence, intersect and impact each other and thus the analysis throughout this thesis. The intersection between EU anti-discrimination laws and migration and asylum laws focus on upholding the human rights of those seeking asylum or refuge, so that they do not experience discrimination which could harm their application for protection, and their reception into the host countries. It is recognised that discrimination plays a huge part in how both criminal law and asylum and migration law is interpreted. Furthermore, EU criminal law, specifically the anti-human trafficking Directive, interlinks with EU migration and asylum law due to the high levels of exploitation of those seeking refuge or asylum. Therefore it is essential for the EU to acknowledge this and incorporate this overlap into its policies. The interplay of all three ensures that there is special acknowledgement of the experience of asylum seekers and

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refugees, and that they are considered in aspects of cooperation between Member States, as these issues are cross-border issues, as well as providing holistic support that promotes the integration of asylum seekers and refugees. This intersection is an essential aspect to uphold the human rights of asylum seekers and refugees, thus influencing the theme of gender throughout the law.

The topic of this thesis was initially inspired during the preliminary stages of research through the study of Jane Freedman's work, (a leading scholar in the field of gender and international relations). The human aspect she places at the heart of analysing complex policies inspired this thesis to focus on analysing the interactions and considerations women have with EU asylum law and policy. Her work inspired the focus on using a feminist standpoint theory throughout this research (defined in the methodology section later), aiming to show how vital it is for those with lived experiences, and women to be at the table shaping the reforms of law and policies that affect this group. It determined the focus to be around the impact of EU law and policy on women including border control and how this may create vulnerabilities to human trafficking. Therefore there will be a main focus throughout this thesis on female migrants seeking to reach the EU, and applying to asylum once they reach the EU, as it is a journey that deserves the research and analysis, to potentially improve this in the future through laws and policies. A spotlight is needed to shine a light on the barriers put in place by policies and laws that simply create a resistance for those seeking safety and sanctuary. It removes the human aspect that Freedman so cautiously places in her research and sparked the initial design of this thesis.

The first section of the thesis aims to analyse key areas of EU asylum law and policy to address how it has incorporated the nuanced experiences, needs, and vulnerabilities of women seeking asylum or refuge. Its aim is to determine the impact this has on women and whether it is sufficiently adapting to the discriminations women are facing in today's society. The first section mainly focuses on the experience of women already with the status of asylum seeker.

This then develops on to look at the connection between border control policies and human trafficking and what effect this has on women. This section focuses a lot on female asylum seekers access to EU borders and the dangers it creates. Dating back to the establishment of

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the Schengen Area from the Schengen Implementation Convention of 1990, the EU has created an 'exclusive' space that has in turn motivated the fierce protection of its external borders. This fierce protection harms the most vulnerable trying to enter. The justification for such measures are presented as "saving human lives and countering trafficking" (Liguori, 2019) however the harsh reality results in human rights violations. The EU has prioritised border control to prevent the entry of 'illegal migrants,' aiming to secure its borders and preserve freedom of movement within. However, this emphasis on border security has disproportionately affected women, leaving them more vulnerable to cross-border crimes like human trafficking and sexual exploitation. This thesis aims to provide a comprehensive examination of the female asylum seekers' journey, from their arrival and residence, to the potential exploitations they face, potentially as a result of the construction of policy and legislation.

Throughout this analysis, a recurring theme emerges: EU policies and laws lack a true understanding of women's experiences, which exposes them to danger instead of providing protection. The interlinked connection between female asylum seekers' experiences, EU policy, border control, and human trafficking remains underexplored in existing literature. This study seeks to shed light on these crucial links and highlight the need for gender-inclusive policies that genuinely safeguard the well-being of female asylum seekers. These two main chapters aim to show a holistic overview on the experience within EU borders as well as the experience of entering through the external borders of the EU. The thesis will then conclude with final remarks and hopes of a desired future for female asylum seekers.

1.2 Terms and definitions

Defining these following key terminologies plays an essential role in not only clearly presenting the body of this thesis but implores the reader to take into their understanding the part the law plays in labelling individuals in society and the severity and impact these labels may have on the actual lives of individuals. It is primarily important to establish the distinction between asylum seekers and refugees to understand the legal impact these statuses impose in contribution to the topic of discussion for this thesis.

1.2.1 Asylum seekers

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The Amsterdam Treaty first developed binding EU asylum legislation, in which the Qualification Directive 2011/95/EU set out the ‘*definition of and the standards of treatment for, refugees and beneficiaries of subsidiary protection*’ (Tsourdi & De Bruycker, 2022, p.g.6). Article 2 (f) defines those ‘*beneficiaries of subsidiary protection*’ as individuals not able to qualify for the status of refugees but are third nationals who have strong grounds that demonstrate their potential harm if returned to their residing state (European Council on Refugees and Exiles, 2013). The UNHCR supports this with an international definition that states in its glossary that asylum seekers are those individuals “*whose claim has not yet been finally decided on by the country in which the claim is submitted.*”(World Health Organisation, 2021).

1.2.2 Refugees

It is within international law that recognises the status of refugees, and offers specific protections, most notably under the ECHR (Tsourdi & Costello, 2021). Western media has somewhat moulded public perception of what a refugee is, through its stories that centre around fear mongering. However international law defines a refugee under the 1951 Refugee Convention as persons of ‘*well-founded fear of persecution*’ leaving their national residence and unable to return to it (1951 Refugee Convention, Art 1(A)2.). It does not however include any reference to the sex or gender within this definition (The Council of Europe, 2019).

1.2.3 Human Trafficking

At the broadest level, the EU has enshrined that trafficking is fundamentally prohibited under Article 5 (3) of the CFR however it does not define exactly what it is, who is affected and how this is prohibited. The 2000 UN Convention against Transnational Organized Crime was the first international convention adopted by all EU Member States to establish and define the term ‘*trafficking in persons*’ (Voronova and Radjenovic, 2016). Directive 2011/36/EU is the leading piece of EU legislation that is currently holding the EU accountable to managing human trafficking and establishes the outlines and definitions of what this includes. Currently Directive 2011/36/EU Art 2 (1) sets the official definition to what trafficking is as the ‘*The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a*

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position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.' (Directive 2011/36/EU). The EU has taken strides to recognise the gendered element through human trafficking, particularly in Directive 2011/36/EU which acknowledges the different experiences of women.

1.2.4 Gender

The term gender can be defined in many ways due to its individualistic interpretations and how it is socially constructed. It can vary depending on the culture and context. Gender goes beyond just what is assigned biologically at birth and is personal to how an individual identifies. This thesis will use the terms 'women' and 'female' to represent a wide group of persons that express themselves using this gender and respect all those within this broad category.

1.2.5 Feminism

The main principle of feminism is equality, yet within this structure there are many different branches of feminism, different motivations and also fractions which divide this principle. The purpose in particular for the heavy feminist approach in this thesis is summed up by Shaw (2000) to '*acknowledge and explore the structural factors which contribute to the void between legal and substantive equality, crossing disciplinary boundaries and transversing conventional divides.'* (Shaw, 2000). The principle of intersectional feminism, coined by Crenshaw (1991), intersects both race and gender, one cannot be looked at without the other. Constructs of race and gender intersect, and cannot be separated in discussions but instead be looked at how their narratives dominate and interact together (Loftsdóttir & Hipfl, 2012). Both aspects contribute to the understanding of how the issues within this thesis occur and worsen, such as experiences seeking asylum and refuge and coercion into trafficking.

1.3 Research Question

To what extent do EU law and policies approach future and actual female asylum seekers and refugees, in a manner that is consistent with feminist perspectives?

1.3.1 Research problem

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The purpose of this thesis is to analyse the gender sensitive provisions evidenced in the main EU directives, legislation and policies that seek to protect asylum seekers and refugees. To analyse their impact on the female experience and whether it in fact does more harm than good. This transcends through to those policies and legislations beyond those that specifically govern the protections for all asylum seekers and refugees, but also to EU border policies, and anti-trafficking policies, in order to evaluate the very real holistic experiences of those fleeing persecution to EU borders that most predominantly affect women the most. This includes not only EU migration and asylum law as it applies to those seeking to reach the EU, with such limited options to do so, but also females who have been registered as asylum seekers in the EU or who have received the status of refugee.

1.4 Outline of Chapters

Chapter 1 has provided an introduction to the topic, presenting the reader with the basic grounding in the law that affects female asylum seekers the most. It then dives deeper into previous research and literature in this field to deepen the knowledge of the reader to assist in understanding the complexity of this sociolegal analysis. Lastly it further presents the methodology used within this thesis to demonstrate the research process. Chapter 2 initiates the discussion section where the research question will be broken down into parts. Chapter 2 reviews the construction of women in EU asylum law and policy. As well as taking a more specific look into EU border control and how this is affecting asylum seekers and their increased susceptibility towards human trafficking. The aim of the discussion chapters is to show how despite many gender sensitive laws and policies, what is actually occurring is detrimental to women with little protection from the law. Finally, Chapter 3 will conclude the discussion.

1.5 Literature Review

This literature review aims to give the reader a broad understanding of the topic area, both the sociological background and the legal grounding that supports it.

1.5.1 Asylum in the EU

The general trend in most recent years is the narrative that the EU is desperately seeking to succeed in the challenge of combating the ‘*problem*’ of the migration of asylum seekers to,

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and through its borders (Lutz, 2019). There is common consensus in the literature that ‘illegal migration’¹ (essentially those without the rights to reside or enter the EU) is seen as first and foremost a ‘security issue’ by the EU in order to protect the borderless state of the Schengen Area (Welfens, 2019).

‘Illegal Migration’ into and within the EU’s borders, are not solely regulated by EU law, but involve other international obligations along with the ECHR and ESC that Member States have entered into, as well as their own national law (Tsirli & O’Flaherty, 2020). The ECHR doesn’t specifically state the right for asylum for those entering the EU, however under Art 2 (the right to life) and Art 3 (the prohibition of torture) turning away asylum seekers who potentially will be subject to torture and death would be against the principle of non-refoulement (European Union Agency for Fundamental Rights, 2020a).

Despite a negative narrative erupting at least since 2015 towards asylum seekers and refugees in both the media and across the EU and its member states, the EU through CEAS, has attempted to regulate and push for higher standards for asylum seekers and refugees. However with such a limited gender perspective, women seeking asylum are not holistically valued and accounted for their specific needs.

1.5.2 Examples of how the law protects women entering its borders.

The Treaty on the Functioning of the European Union (TFEU) makes clear in Article 8 that ‘*in all its activities, the Union shall aim to eliminate inequalities and to promote equality, between men and women*’, the EU considers itself to be leading in the fight towards gender equality (Abels and Mushaben, 2012). Women whilst seeking asylum face a vast category of issues, from gender-based violence during transit to the EU (and within), to gaining residency, housing and working rights, conditions upon arrival, poverty and poor living standards. This thesis will aim to review the literature that provides a holistic perspective on how EU law and policy creates gender specific provisions to improve and protect these conditions for women. However, this thesis acknowledges that some nuances or aspects will

¹ The term illegal migration is used in parenthesis as this terminology holds much tension in how Western governments and media use it to create a narrative of asylum seekers as criminals. This thesis recognises the tensions this term holds and uses it in a way only to describe the situation as clearly as possible.

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be limited in its evaluation. Specific factors that affect women the most is gender-based violence, which is a cross cutting theme affecting many aspects of seeking asylum.

Specifically, women face unique challenges as they navigate the asylum process within the EU. The Council of Europe's report (2019) emphasises the necessity of protecting women from gender-based violence, which is prevalent during both their migration journey and the asylum procedure. Additionally, they often encounter discrimination and stereotyping from authorities and individuals involved in the asylum process. To address these issues effectively, there is a clear need for female interpreters and staff, as they play a vital role in supporting women seeking asylum. These interpreters can foster effective communication, helping women overcome difficulties in reporting crimes and understanding the complexities of the asylum process (Personal Communication, Interviewee B, 2022). Moreover, it is important to recognize the intersectional vulnerabilities that many women face. They may experience multiple forms of discrimination based not only on their gender but also their race, nationality, language barriers, and other factors. Women will face different discriminations based on the origin they have travelled from and the political status of this as well. Policy frameworks must acknowledge these intersecting identities to provide tailored support that truly meets the diverse needs of women seeking asylum. By acknowledging and addressing these specific protection needs, we can create a more inclusive and responsive asylum system that ensures the safety and well-being of all women within the EU.

Analysing the different push and pull factors that influence women's decisions to seek asylum in the EU is important to acknowledge. Developments have been made to create more gender-sensitive legislation; however, reports from those working directly with refugee and asylum-seeking women see the reality of the weaknesses in the protection from specific abuse and exploitation (European Union Agency for Fundamental Rights, 2020b). In the context of a current post-pandemic world, with many states entering recession in Europe because of this, and the subsequent Ukraine Russia conflict, the geopolitical climate will have a further influence of exacerbating these inequalities for women. This is a new environment in which asylum seeker women are experiencing that currently lacks critical research, but is important to acknowledge the context of this.

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The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, also known as the Istanbul Convention is an international convention signed by the EU, as well as 14 Member States, with another 14 EU Member States ratifying this convention (Istanbul Convention, 2011). It places a significant focus on the protection of the asylum seeker and refugee women, acknowledging the factors that make them more vulnerable to violence, abuse and discrimination (Stoyanova, 2018). This is the first convention that aims to mitigate harmful policies on women, by providing additional protection, for example to those who are facing gender-based violence that potentially affects their status and ability to seek safety within a host country. Article 59 (1) of the Istanbul Convention (2011) refers to those with residence status that depend on the spouse or a partner and states that *'upon application, an autonomous residence permit'* are granted. This aims to ensure that women do not have to rely on the spouse sponsorship if domestic violence is occurring. This is a very positive example of gender sensitive policy making as it attempts to rectify the deep misunderstanding of the experiences of women, as often women are then required to remain in abusive relationships for the status of their residency, which this policy aims to negate (Peers et al., 2000).

1.5.3 Acknowledging the interplay race and gender has on women seeking asylum

This thesis recognises that simply looking at one aspect, e.g. gender is limiting and takes into consideration the huge impact that race also plays in the experiences and interactions of female asylum seekers and EU law and policy. It is widely acknowledged by scholars that gender interacting with other factors such as age, ethnicity, class etc. will create positions of privilege and hierarchy amongst the distinctions of refugees and asylum seekers (Welfens, 2019). Their experiences in relation to the law will vary by influence of these categories and in a manner that is shaped by these intersecting identities. Welfens (2019) further notes that *'there is no mention of how gender in interaction with other social categories shapes vulnerabilities throughout different phases of the migratory process'*. Amelina and Lutz, (2020) use the term *"axes of inequality"* to demonstrate the interplay of race and gender which are multidimensional and not to be considered as a simple hierarchy structure of social inequality. This thesis acknowledges this limitation in the literature and attempts to acknowledge the undercurrent theme of race throughout.

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Crenshaw (1991) was the first to define ‘*intersectionality*’ and is still considered the leading scholar in this field, she principally demonstrated that the experiences of black women will differ widely from the experiences of white women and must be given the space to be considered in feminist analysis. Understanding the interplay of race within the female experience of asylum seeking helps to understand the ability of individuals' access to social and political rights, however it is incredibly individualised and often does not follow a ‘*universally applicable pattern*’ (Amelina and Lutz, 2020, pg.53). A reductionist approach cannot be taken here and it is an incredibly complex topic to study in the nature of EU asylum law and policy. The intersectionality of race and gender will affect how women are impacted by EU law and policy, how they are perceived by officials and how they are received at the borders. This will influence their experience of the law. Other social factors like age and disability for example also have an impact, however there is a real lack of research and literature to explore the intersections of these social factors, which thus hinders the ability to draw grounding conclusions in this regard.

1.5.4 Securitisation, The Schengen Area and human trafficking.

Securitisation and harsh legal border control in the EU has been argued to in fact provide fruitful conditions for trafficking (Andrijasevic, 2007). The emergence of such harsh controls has especially intensified with the so-called ‘*migration crisis*’ the EU has faced in the last decade. Most notably discussed is the 2015 arrival of nearly one million refugees to EU borders (Tsourdi & De Bruycker, 2022). Harsh securitisation has an even harsher effect on women. One example of this, as borders become more problematic to enter, the fees of ‘handlers’ (those working within organised crimes to smuggle people across the borders) increases, often women are the most vulnerable here, and can be coerced into trafficking to pay back these debts. Many feel they have no other options available to them and are coerced by threats of violence if they do not repay, with savings spent on making the journey to the EU or poor social security set up by Member States, many have no other options (Personal Communication, Interviewee D, 2022). It keeps them locked into the trafficking trade under fear and coercion due to their initial ‘help’ of crossing borders for example. Of course, it is not to say that the EU should strip away all border control but the first-hand experiences of women who are crossing these dangerous borders should be incorporated into the policies and strategies used to protect women.

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It is essential to understand the workings of the Schengen Area, and how it has impacted the EU's priority on securitisation and thus a consequence of developing human trafficking. The Schengen Agreement was founded in 1985 and establishes free movement across all EU Member States (minus Ireland) along with Iceland, Norway and Switzerland (non-EU Member States) (DiRienzo and Das, 2017). In response to this, by 1995, a complex system of border policy was introduced in order to protect this newly formed Schengen Area (Tsirli & O'Flaherty, 2020). Because of this free movement within, benefitting mainly EU citizens, entry points to the EU have become a high priority point for securitisation.

This investment of securitisation has had a detrimental consequential impact not only to irregular migrants but also to those seeking asylum, most notably women. This is due to the fact that such harsh securitisation can place them in more dangerous situations. DiRienzo and Das (2017) argue there are two parts to the issues of border control in relation to human trafficking firstly the increase in cost and challenges with harsher securitisation of borders as mentioned above increasing the threat of 'handlers', and secondly the ease of flow of information and knowledge that in turn assists human trafficking through no internal border controls. Making it easy to locate groups of vulnerable people desperate to seek refuge within the EU and exploit them. It thus seems like a middle ground is still yet to be found within the EU. DiRienzo and Das's (2017) empirical research states that a deeper study of borders will provide better policy to combat human trafficking. Although their research does not present an acknowledgement towards gender, these findings help to develop an understanding of the impact borders have on trafficking. It was concluded that different regions of the EU present slightly different border regimes and that in turn is affecting the levels of human trafficking, thus policies should be targeted to specific regions and their specific challenges (DiRienzo and Das, 2017).

Furthermore, the Schengen Area has in fact established a dynamic between poor to rich countries within Europe for example Romania to Germany e.g. supply and demand of trafficking (Europol, 2016). It has enabled the free movement within the EU that has facilitated the structure of the human trafficking network by allowing those from poorer parts of the EU to be coerced into human trafficking with the promise of better life within richer parts of the EU. This however is often very far from the reality, when instead a cycle of abuse and harm occurs in place of the promises made by smugglers and traffickers.

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However, the most common criticism from scholars analysing human trafficking and the laws surrounding it is that there is a severe lack of concrete evidence-based data and research invested into this area despite it being a serious issue of concern for not just the EU but globally, and for multiple years (Brooks & Heaslip, 2019). There is a vast number of unidentified victims that will never, and have never been recorded, due to the nature of the crime to silence victims as a method of control (Bosma and Rijken, 2016). It is thought that over 7000 people are estimated to become victims of trafficking in the EU per year (European Commission, 2022b). To further exacerbate this problem, there is still currently not an EU wide established method for collecting the data on victims, each member state has its own monitoring and reporting systems and thus makes it incredibly challenging to track trends across the EU and compare data (Bąkowski & Voronova, 2021). The very nature of the crime is to silence and control, resulting in the lack of reporting from many victims, and thus very difficult to provide accurate accounts of what is happening. This produces two principal problems; it is difficult to deeply and truly understand the evolving nature of this crime and secondly establish laws that then regulate the issue in a targeted enough manner to have impact in prevention and protection. However, human trafficking has very often been identified as a gendered crime through the statistics that demonstrate how specific types of human trafficking affect women at a disproportionately higher level (Cameron et al., 2020). Overall, it is women that are estimated to constitute 71% of victims across all types of human trafficking crimes and make up 99% of victims of sexual exploitation (UNODC, 2018).

Martin et al.'s (2006) research studied groups of women affected by sexual exploitation in human trafficking and showed that one correlative factor to how human trafficking is affecting women more, equates to higher levels of poverty and unemployment presenting women with no other options. It can be deduced that those fleeing persecution and seeking asylum will more likely be in situations of poverty due to the situations they may be fleeing from. There have been many studies on the link between migration and human trafficking, yet this area does not have sufficient concrete and empirical data. What can be concluded is that factors that motivate migration, particularly those seeking asylum and refuge, motivate human trafficking and to fully combat this crime, the drivers of migration need to be addressed (Rao & Presenti, 2012). Rao and Presenti (2012) argue that human trafficking can in fact not be deeply understood without addressing the drivers of migration as their

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interconnectivity is influential on each other. They substantiate this claim by going beyond the simplistic evaluation that poverty is a catalytic factor for trafficking but establish that it is always a combination of factors that drive trafficking from quality of education, national policies on employment, as well as nuanced social and cultural factors.

Interestingly, Cameron et al (p.g.4, 2020) supports this notion of poverty at the heart of influencing trafficking against women, and digs further into the constructs of society to argue that *'discriminatory practices in the attainment of education, training, and employment have largely contributed to the feminization of poverty, which has further contributed to the overall vulnerability of women'*. Ultimately the role society plays within gender dynamics has a strong reflection on how women become more vulnerable to certain crimes, how laws are created and how well they are implemented and received by victims. This concept constructed by Cameron et al (2020) in essence reflects the underlying theme of this entire thesis. It captures the core to what ties all the above themes that this literature review has presented. It is the core concept that the institutions, and general fundamental building pieces that enable society to function, when women are interacting with them, are contaminated with varying levels of discrimination (both direct and indirect) which goes on to shape and strengthen this concept of 'vulnerability'. This 'vulnerability' has a crucial part to play in the lives of female asylum seekers and refugees. It shapes legislation, perceptions, and strongly influences their lived experiences.

1.6. Methodology

1.6.1 Approach

The main research question seeks to investigate the ways in which women are considered in EU migration and asylum law and policies, and whether gender considerations are sufficiently well addressed in EU migration asylum law. Therefore a doctrinal analysis of relevant EU legislation (primary and secondary) is best placed to review a range of Directives, policies, laws and conventions to acknowledge a topic that spans many countries and institutions. Furthermore, this is complemented with a socio-legal methodology. A socio-legal methodology draws in the social aspects that impact on the interpretations and interactions of laws and policies. When researching topics that involve a gender lens, it is essential to be able to present a view on the broader societal context as these laws and

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policies are so greatly influenced by this in a real world context. Overall, socio-legal methodology helps provide a more comprehensive understanding of how laws function within societies, how they influence individuals and communities, and how they adapt or evolve over time in response to changing societal needs and values (Schiff, 1976).

1.6.2 Doctrinal analysis

This thesis principally uses a doctrinal analysis, as it does not strictly focus on just EU law but instead several instruments that are considered to be highly relevant to the experience of women who reach the EU and apply for international protection. The outcome for choosing this main methodology is to bring rigour when exploring the research question, and show the differences and similarities to make sense of a very complex intertwined legal system. The method taken as part of this doctrinal analysis included an analysis of the key areas of asylum law and policy to explore whether these instruments integrate gender considerations in an authentic way,

1.6.3 Socio-legal approach

This complementary strand to the methodology of this research, whilst it is not the main focus, provides a necessary layer. This is due to the topic concerning such social and ethical issues that continue to change as a result of a more globalised and dynamic international environment. The aim of including this is to present the overall theme that real life considerations should be included in policy making. For women it can often mean life or death by further exacerbating the risks of gender based violence, trafficking and exploitation. O'Donovan (p.g5, 2016) defines socio-legal approach as a '*commitment to study law within its context*'. The law should be strongly influenced by the society it is governing, and the institutions that it interacts with.

As part of this socio-legal analysis, this thesis will implement a feminist standpoint theory which originated back in the 1970's and constructs the underlying theme and argument of this thesis. There are many varying feminist theories, and many more emerging. These theories certainly could be applicable to this research. However due to the choice in methodological approach of not using women's voices directly, this theory attempts to combat this limitation by advocating for the unique knowledge from those marginalised to be used to better shape

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policies and laws. This theory stands out more prominently against other theories that look at for example post-colonialism, cultural and marxist feminism, by focusing on the value of lived experiences building knowledge bases and using this to reduce the harm and discrimination to women. This is key in being able to produce gender sensitive laws or policies that in reality fall short of establishing concrete protections for all. Allen (2017) explains feminist standpoint theory as the impact power relations have on dividing and segregating social groups into those who are more dominant and those less dominant. It is argued that only those who have been segregated into the nondominant groups are the only ones able to understand the complex realities. Scholars use this theory to gain valuable insights when analysing topics that affect those most disregarded in society due to power dynamics controlling and keeping them there (Allen, 2017). Feminist standpoint theory is considered a feminist theory because it explicitly focuses on understanding and challenging gender-based oppression and inequality. Its central concern is the marginalised position of women within societal structures and the unique insights that can arise from those experiences (Allen, 2017). This theory is relevant to this research question by acknowledging the importance of those with lived experiences, and the voices of women who should predominantly influence the legislative making process.

The method of this socio-legal approach involved using interviews to draw on '*legal realism in its focus upon how law actually functions in society*' (O'Donovan, Pg. 16, 2016). Semi-structured interviews were conducted with leading experts in the field. This decision was made from an ethical standpoint to use the knowledge and expertise gathered from experts with direct contact to either beneficiaries or detailed research in order to prevent any possibility of causing trauma to those who have experienced the harsh realities of life as asylum seekers. The voices of women hold a strong and respected presence within this thesis, however from the intermediary perspective of experts and researchers closest to the beneficiaries. This can be considered to be a diluted perspective from the ground, however the intended purpose of this thesis is achievable through this method and greatly outweighs the potential harm which can be retraumatizing.

The sampling method used for these interviews was purposive sampling for non-probability sampling in order to make an informed judgement that reflected the experts working most closely in the field, with the most ethical approach. The semi structured questions were

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different to each interviewee in order to speak mostly to their area of expertise as the range of interviewees differed in this regard. The platform Zoom was used to host these interviews in order to forego physical barriers and reach a wider range of participants across the globe including the US, the Netherlands, India, Portugal and the UK. This provided a richer spectrum of experiences, expertise and knowledge to the conversations.

<u>Full Name</u>	<u>Position</u>	<u>Organisation</u>	<u>Expertise Area</u>
Interviewee A	Human Rights Lawyer and Researcher	Commonwealth Human Rights Initiative	Human Rights Law
Interviewee B	Lawyer	Association for Legal Intervention and European Council on Refugees and Exiles (ECRE)	International and European Law / Migration and Asylum Law
Interviewee C	Doctoral Student	Oxford University	Social Intervention and Policy Evaluation
Interviewee D	Associate Director of Communications	Polaris	Human Trafficking, EU and International
Interviewee E	International Coordinator	La Strada International	Human Trafficking in Europe

Table 1: Interviews conducted for qualitative research².

Furthermore the method also included the participation in two conferences to deepen the understanding of the research by learning the stories of those with lived experiences and their interactions with law and policy. The two conferences hosted by ‘A Plataforma Portuguesa

² *DISCLAIMER: All interviewees have consented to be a part of this research. All interviewees opinions are personal to them and their experiences, and not directly from the organisation they are a part of. The organisation names listed have been provided to accredit the expertise area and provide a contextual background to the interviewees opinion.*

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para os Direitos das Mulheres’ presented the ‘*Conferência de abertura dos 16 Dias, 16+ Formas de Violência: Dia Internacional pela Eliminação da Violência contra as Mulheres e Raparigas: do global para o local*’³ and ‘*Conferência internacional sobre o sistema de prostituição – Encontro abolicionista*’⁴. These conferences heard the voices of women, who have experienced both trafficking and seeking refuge in the EU.

1.6.4 Social and ethical considerations

It was determined that the most ethical and non-triggering approach to sourcing interviewees would be to focus on those working in the fields of migration, gender and trafficking in order to collate their understanding through their first-hand interactions and knowledge with refugee and asylum-seeking women. This was a conscious decision to reduce the contribution to potential harm to these individuals who have experienced trauma and instead use the rich resources available from experts. The reduction of harm to the individuals however outweighs this slight limitation.

1.6.5 Limitations

This thesis evaluates a limited scope of EU asylum law and policy and expands upon some international conventions as well. It does not however deduce that these are the only areas which have an impact on the argument. There are further areas of law and policy that also strongly demonstrate how the EU’s legal response asylum policies impacts displaced women who seek to reach the EU and apply for Asylum. This methodology was also further limited due to the choice to focus on access to protection and the protection grounds, for example applying for asylum and being in the asylum procedure. However the experience of women in the asylum process goes far beyond this. This thesis provides a snapshot, and recognises the limitations of its ability to truly paint a holistic response to the research question.

³ Translation: Opening conference of the 16 Days, 16+ Forms of Violence: International Day for the Elimination of Violence against Women and Girls: from global to local.

⁴ Translation: International conference on the prostitution system – abolitionist meeting.

CHAPTER TWO

2.1 An overview of key EU gender sensitive instruments that regulate asylum seekers

A gendered analysis of women in European asylum policy and law is an academic debate that stems back to the 1980s. Since then, developments in the law have occurred in which gendered frameworks were introduced and a plethora of academic debate following. It can be questioned as to why this topic is still of importance in 2023, when these gendered frameworks exist. However the momentum has dropped for these topics that require constant development as the needs and experiences of asylum seeking women also change. The system has become ever more complex, a purposeful design to deter asylum seekers from European borders. However what has actually occurred is not deterrence but worsening conditions affecting the most vulnerable. For example, where certain points along the border of the EU are now subject to a heavy militarised presence it has caused the displacement of routes to the EU through more dangerous paths. Paths that are particularly physically demanding, highly dangerous with little resources for survival and open to smugglers and traffickers taking advantage, to exploit people attempting to cross (European Asylum Support Office, 2020).

As defined above, those seeking asylum and refuge are often provided with special protections within the law. This chapter will investigate the Directives and policies from a feminist standpoint theory. Directive 2011/95/EU of the European Parliament and of the Council sets out the specific standards for those entering the EU as non-EU citizens (also known as third-country nationals) and who seek international protection in the EU (Tsourdi & De Bruycker, 2022). This Directive was introduced to ensure greater protection standards that were inclusive of the ECHR and CFR (European Council on Refugees and Exiles, 2013). The CFR is the main instrument within the EU that provides protection for asylum seekers under Article 18. It is, however, Article 19 that gives the most protection from prohibiting the return to the dangers the individual has fled from (Charter of Fundamental Rights of the European Union, 2016). Article 19 states that '*No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment*' (Charter of Fundamental Rights of the

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European Union, 2016). Despite leaving a broad interpretation of what ‘*inhuman or degrading treatment*’ is, it still supports the case for many who are suffering and seeking safety in the EU to be protected by this all encompassing provision. The protection of asylum seekers is firmly grounded in EU primary law as well, in Art 78 of the TFEU states that “*The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement.*” (Treaty on the Functioning of the European Union, 2012). This demonstrates the objective of offering a high protection to international protection seekers.

The principle of non-refoulement is one that is central to the protection of female asylum seekers. *Hirsi Jamaa and Others v Italy*, is an ECHR case, and although not under EU law it is important for EU Member States, due to them being a party to the ECHR. In this case, even though this did not specifically concern females, it contributes to the development of this area of law due to the outcome of the case creating a shift in attitudes. This shift in attitudes can be highly beneficial for female asylum seekers. It concerned a group of migrants and asylum seekers who were intercepted by Italian authorities while attempting to cross the Mediterranean Sea from Libya to Italy. The Italian authorities returned them to Libya without any individual assessments of their protection needs, simply based on bilateral agreements between Italy and Libya (Giuffré, 2012). The Grand Chamber held that Italy's actions did indeed violate the applicants' rights under the ECHR. The Court found that the collective expulsion of the applicants to Libya without individual assessments exposed them to a real risk of being subjected to torture, inhuman or degrading treatment in Libya (Giuffré, 2012). By not providing any effective remedy or access to the asylum procedure, Italy had failed to comply with its obligations under the ECHR. The ECtHR emphasised that the principle of non-refoulement (prohibition of returning individuals to places where they face serious human rights violations) applied in this case, and Italy had a duty to protect the applicants' rights and ensure they were not subjected to ill-treatment upon return (Giuffré, 2012). This landmark judgement, whilst it cannot apply or directly decide on the basis of EU law, it highlighted the importance of individualised assessments, which is essential for female asylum seekers who may have a range of different protection needs in asylum procedures. Without it, the scope of discrimination can widen. The case set a precedent, and a shift in

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attitudes in this area, that there will not be impunity for Member States to not uphold the principles of non-refoulement. The requirements to respect the rights of migrants and asylum seekers will be upheld under the ECHR, a crucial element of the female asylum experience (Giuffré, 2012).

The following sub chapters begin with outlining what Articles 67(2), 78 and 80 of the TFEU and Article 18 of the CFR, have compounded to encourage the European Union to develop a common policy on Asylum (Klaiber, 2019). This common policy is known as The EU's Common European Asylum System (CEAS). The overall outcome for a common approach is to uphold the principle of non-refoulement established in the Refugee Convention 1951 and ensure international protection to third nationals (Klaiber, 2019). This chapter will further analyse the different policies that make up CEAS by reviewing them with the lens of 'vulnerability', a factor often attributed to women. This chapter will close with a case study that shows how fragmented the 'common approach' actually is by reviewing EU Member State Denmark's application of laws and policies and how other EU member states have reacted towards this. This case study attempts to strengthen the argument to provide an example of the current practice happening in the EU. This chapter aims to provide a holistic and grounded review of the realities women seeking asylum are facing when interacting with EU law and policy.

2.1.1 CEAS

CEAS promised great hope for an integrated and harmonised fair approach to asylum seekers and refugees, first established in 1999 (Bauloz et al., 2015). It was the Tampere Declaration that set out what CEAS aimed to achieve for the standards of processing asylum seekers, ensuring fair procedures in a dignified way, and greater protection (European Asylum Support Office, 2020). Therefore greatly enhancing the experiences for female asylum seekers who often were not treated in such dignified ways. It was proposed to be implemented in two stages, the first which set up minimum standards, and the second phase to achieve a higher degree of harmonisation with a '*single asylum procedure*' (Sandu, P.g2, 2023). Supplementing this idea of unification and a harmonised system towards asylum in the EU, is Art 80 of the TFEU, which emphasises the EU's goal of solidarity to share the responsibility of 'illegal migration' across EU Member States (Sandu, 2023). This can be

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seen to thus reduce the burden on certain countries, and thus provide resources to ensure special protections are met for women.

Many scholars argue that despite the intention and framework set up by the EU to facilitate a harmonised approach to asylum and refugee migration, there are multiple, conflicting and complex policies that govern every aspect, which in fact create a very fragmented approach. In reality the EU's attempt to regulate all concepts and policies of asylum in the EU is a scattered and mismatched system (Bauloz et al., 2015). This scattered and mismatched system affects the most vulnerable the most who rely heavily on these protections. The core of CEAS comprises the Dublin Regulation, EURODAC Regulation, Reception Directive, Procedures Directive, Temporary Protection Directive and Qualification Directive (Bauloz et al., 2015). The construction of CEAS mentions very little about identifying the needs and rights of women as a priority. Many have been calling for the adoption of legislative progress to reform CEAS, which would improve the process of how asylum seekers find protection within the EU, particularly women, however this has not yet been achieved (European Asylum Support Office, 2020). This is essential if EU laws and policies want to reach total gender equality and equity within them.

It has been argued that the major problem with EU asylum law and policies is in fact the '*limits of legislative harmonisation*' (Tsourdi & De Bruycker, p.g. 7, 2022). One of the goals of CEAS was to gradually reach harmonisation across the EU on asylum policies (Tsourdi & De Bruycker, 2022). Harmonisation is the concept that requires Member States to align EU laws within their national laws, as required under Art 114 TFEU, however the level of whether this is full or partial harmonisation is where it leads to discrepancies (Klamert, 2015). European legislation may state the requirement for full harmonisation, where Member States may not deter from certain regulations, or it can provide for '*minimum*' harmonisation only, leaving some discretion to Member States on how they harmonise, and simply set a minimum standard threshold (Klamert, 2015). Where there is a lack of harmonisation there is a lack of standardised protections. Protections that women especially rely on. There are many arguments concerning EU asylum policy and law that even the minimum standards are not enough, or even these are not met by Member States to protect the rights of asylum seekers

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and refugees, particularly those experiences of women. Many can argue that they are neglected in CEAS and it fails to truly provide legitimate protection for them. Furthermore, a critique of the elements of CEAS is that it has low implementation rates amongst EU Member States in turn effectively reducing the rights of asylum seekers and refugees.

These criticisms of CEAS are well known amongst EU institutions and fiercely debated amongst legal scholars. In response, the Commission presented the New Pact on Migration and Asylum in 2020 to reignite the reform of CEAS (Sandu, 2023). Currently still under negotiation, the Commission hopes to implement it before 2024, therefore it is important to take this as proposals in discussion, rather than binding instruments. It was presented as an end to the notorious Dublin Regulation III, and emphasised once again this notion of solidarity. Mouzourakis (2018) argues that its proposals in fact worsen the situation for asylum seekers by further fragmenting the law and moving away from EU standardisation, towards more power to national states to derogate and potentially not even meet the minimum standards previously set out by EU law. This can be detrimental to the experiences of women seeking asylum where the impact of this is felt even deeper for those already prejudiced and ‘vulnerable’ in society. Vezzoli et al. (2022) argues that the European Commission’s proposal for a New Pact on Migration and Asylum is drastically moving towards harsher and tighter border controls to further reduce ‘illegal migration’ into the EU. The European Commission however, has argued that a very large portion, 80% of its humanitarian budget is in fact placed for both the support to communities receiving those seeking refuge and asylum, and for those individuals seeking asylum, to meet their basic needs (European Commission, 2020). Furthermore, it has been argued that the Pact has a stronger focus on vulnerable groups within the asylum process, stating that there is potential for this to develop an asylum policy that positively supports those at each stage of the asylum process if it is translated into legislation (Gazi, 2021).

As a general overall consensus, there has been concern to whether the new Pact can deliver on the positive promises and raises concerns for in fact impacting the situation for asylum seekers for the worse. However what is predominantly highlighted throughout this analysis of CEAS is that it is not such a common approach. As a result it harms the ability to provide higher protections for women. The hope for the future in regard to the new Pact is on rocky

territory and has the potential to further exacerbate the already deeply ingrained current issues.

2.2 An overview of key international gender sensitive frameworks that regulate asylum seekers

Before diving into analysing EU Asylum law and policy, it is first important to take a high level look at a key international instrument that works in conjunction with EU asylum law and policy and which has great power in influencing and shaping it. Not only this, but it also sheds light on where EU policies may fall short. It provides a contextual understanding to uplift and support the research question. These international instruments perhaps give some hope if also complied with, to create a more holistic approach to gender sensitive laws and policies. There are indeed a select few international gender sensitive frameworks that this thesis could explore, for example The Global Compact on Refugees (2018) as well as UNHCR's Handbook for the Protection of Women and Girls (1991). However, for the purpose of seeking a more streamlined and detailed approach this section will specifically focus on two; CEDAW (1979) and the Istanbul Convention (2011) as they draw in a recognition of intersectionality, and offer the potential to bridge the gaps in EU laws and policies and offer more nuanced solutions.

2.2.1 CEDAW

The purpose of analysing CEDAW (1979) is to set a foundation of knowledge towards one of the most leading gender sensitive instruments recognised internationally, that affects female asylum seekers. Despite some of the limitations that will be discussed during this sub-chapter, the choice of including an analysis on CEDAW (1979) is primarily to raise awareness of the gaps within EU law that CEDAW (1979) could replace. As well as advocating for its implementation in all EU countries to provide female asylum seekers better protections in Member States courts to defend their rights and embed these judgements for future cases. Where EU law is failing women, by implementing CEDAW (1979) it adds another layer of protection for female asylum seekers to utilise.

CEDAW (1979) is a leading human rights legal instrument that is monitored and evaluated by the Committee on the Elimination of Discrimination against Women (Briddick, 2022). Whilst

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CEDAW(1979) did not originate from the EU, it has been ratified by all Member States and influences EU decision making. It was primarily established to provide a gender angle to implement human rights and to recognise the lack of this within other international treaties (Hellum and Aasem, 2015). It promoted the incorporation of equality between sexes into ratified states legal systems (Querton et al., 2012). Furthermore, it exerts significant influence on the interpretation and application of EU Asylum law and policies, placing particular emphasis on the inclusion and empowerment of women within them. It has been argued that CEDAW (1979) has the ability to shape policy debate, language and generally set a high value for the rights of women, which is important in changing the social structures that affect the experience of women through the law, particularly female asylum seekers (Buenger, 2014). An example of this is that the CEDAW committee has also been well known to embrace an intersectional approach in relation to all women, and encourage the adoption of the convention for Member States, claiming that it is the ‘basic concept’ they must oblige to (Briddick, 2022). Intersectionality is a principle that is often lacking across many policies within the EU that affects such a broad spectrum of female asylum seekers. It ensures that all women, with different needs, experiences and cultures are recognised within this legislation. However, CEDAW(1979) has been argued to be a paradoxical convention that set its purpose to establish the legal boundaries of gender equality, but instead allows states to ‘*pick and choose*’, principally defeating the initial objective in protecting rights. Buenger (2014) however argues that CEDAW(1979) is not influential enough to enforce Member States to uphold the rule of law and human rights if they have found it unsuitable for them to do so, there is a strong lack of accountability. Buenger (p.g. 70, 2014) notes this to be due to the ‘*lack of powerful enforcement mechanisms*’. This is an essential failure that needs to be addressed. Without this ability, in principle, CEDAW(1979) could help raise an awareness of prioritising the recognition of intersectionality within EU law and policy, but in reality would not hold much value in being accountable to it. Until this is addressed, CEDAW (1979) remains weak in filling the missing gaps for the protections of female asylum seekers.

Briddick (2022) however argues the opposite, and presents her research which determines that CEDAW(1979) is adaptive to local contexts, and paves the way for progressive gender sensitive human rights protection. This adaptivity to local context is a very significant gap within EU asylum law and policy. Thus a truly essential element to strengthen EU laws and

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policies. It constructs the needs and protections for women not as an afterthought, but as a strong theme throughout, ensuring that gender sensitivity has been considered at all stages. Briddick (2022) argues that there is a heavy weighting in the definition of ‘*discrimination against women*’ within CEDAW Article 1, which works to encompass direct and indirect discrimination to challenge practices that are overlooked for their gender dimension and usually mistaken as neutral. Briddick (p.g. 227, 2022) states that “*CEDAW’s definition of discrimination against women reaches out of the Convention, to apply to rights protected in other human rights instruments, and under customary international law.... and also requires States to provide gender-sensitive interpretations of those instruments.*”. It can be viewed that CEDAW(1979) in fact acts as an advocate across many of the policies and laws women will interact with as asylum seekers or refugees. It promotes the inclusion of discrimination to have influence over other instruments, which could essentially enhance and fill a gap within EU law. Resulting in better recognition of the female asylum seeker experience and journey, to enable them to have more specialised protections.

2.2.2 The Istanbul Convention

As mentioned in the literature review in Chapter one, the Istanbul Convention (2011) is an international instrument with human rights and gender equality at the centre. It is supported by 4 pillars as its foundation; prevention, protection, prosecution and co-ordinated policies (Istanbul Convention, 2011). This sub-chapter will predominantly focus on the protection pillar which prioritises support services within the treaty, a very practical, solution oriented approach in which when complimented with EU policies could have the potential to offer stronger protections to female asylum seekers. This however will be evaluated throughout the next section.

Art 9 of the Istanbul Convention states that ‘*Parties shall recognise, encourage and support at all levels*’ NGO and civil societies essential contributions to combating violence against women (Istanbul Convention, 2011). A factor that is essential in providing extra practical protection for female asylum seekers who feel they cannot turn to authorities when experiencing abuse or maltreatment in the asylum process, one example is due to fear of their application process being rejected. However, in reality of this provision, NGOs have argued that there is a lack of funding from the EU to enable them to carry out more stringent and

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long-term initiatives to ensure the better protection of refugees and asylum seekers who are particularly vulnerable to violence (Keynaert and Guieu, 2015). The Istanbul Convention (2011) provides protections, however without the complex deep-rooted network of NGOs, often women are left with lack of practical support. Without funding from the EU, there is a very limited ability to see the benefits of this provision in the Istanbul Convention (2011). Freedman's (2016) research identified that inadequate accommodation on reception into EU borders increases the vulnerability towards gender-based violence leading to further victimisation for women. Therefore showing how the gender sensitive provisions, without the mechanisms in place (such as NGO work) to enforce them, supported by the EU, actually creates a layer of vulnerability to female asylum seekers. Freedman (2016) gathered evidence from those with lived experiences in order to form this research, a key aspect in determining the real impact of these laws and policies on the lives of women seeking asylum. This research focused on the geographical location of the Greek islands, and during the time of 2015 - 2016 in which there was a predominantly high influx of asylum seekers in this geographical area, in which some of the findings, it's important to note, will be heavily influenced by. If funding for NGOs crucial work is written into policies, it provides a genuine practical protection for female asylum seekers who rely heavily on this. This is a complementary strand in the argument to protect those most vulnerable in the asylum process. For many asylum and refugee women the services that NGOs provide can be life saving, and this is recognised in international frameworks. It is important to acknowledge this aspect in the holistic analysis of EU asylum law and its detrimental effects on women.

Furthermore an interesting angle that Canning (2019b) found in her research showed that the fear, threat and uncertainty of immigration status, housing, and the barriers to living the basic daily life as an asylum seeker prevented many NGO workers from carrying out effective work to help improve the mental health status of women. This demonstrates a very interesting example of how EU asylum policy can be so deeply damaging to women in ways that are not so obvious on the surface. The complexities of the application process increase anxiety and fear, which affects female asylum seekers ability to engage with the process and potentially be successful in seeking asylum. It thus affects the support mechanisms such as NGOs ability to truly protect these women. Asylum policies and laws have not accounted for this impact, and do not recognise this particularly nuanced impact. It is why it is essential for those with

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lived experiences of asylum seekers to be consulted on developments of asylum policy. To work towards a future where policies show an in-depth understanding of what the impacts are on women in reality.

2.3 The term ‘vulnerability’ and how it shapes the female asylum process in the EU

Mustaniemi-Laakso et al. (2016) argue that the EU’s commitment to the protection of vulnerable groups, which include women, and the acknowledgement of the disproportionate harm women face as asylum seekers and refugees is underdeveloped. Mendola & Pera (P.g.5, 2021) argue that *“If the legal definition of vulnerability remains vague, the practice of vulnerability assessment by humanitarian organisations in the field also proves lacking.”*. The ambiguity and lack of development of the term vulnerability has serious consequences on the protections it affords to female asylum seekers. It’s a fundamental factor to policies being able to demonstrate consistencies with feminist perspectives.

The first iteration of legislative instruments under CEAS acknowledges the need to separate out vulnerable groups within asylum seekers, and has undergone an evolution in the second iteration of CEAS (Mouzourakis et al., 2017). This evolution however has been criticised to now leave a very fragmented approach to vulnerability, spread across different and often discreet EU asylum laws and policies (Mouzourakis et al., 2017). The key EU legislation that is reviewed in this chapter constructs CEAS and is aimed at protecting asylum seekers. This includes the Reception Directive 2013/32/EU, Qualification Directive 2011/95/EU and the Dublin Regulation No 604/2013. These will be reviewed by focusing on the term ‘vulnerability’, which the law often uses to describe those that do not meet the standard default (white males).

The term ‘vulnerability’ is understood interchangeably within law and society. What factors determine someone as vulnerable is a complex topic to tackle within EU asylum law and policies and even more complex when vulnerabilities intersect, such as race, gender and sexual orientation for example. This is currently a highly debated topic within EU asylum research but proves challenging to determine a clear pathway to improvement in its impact on the female asylum experience. Simply defining someone as vulnerable within the asylum process does not determine them to automatically be privileged with receiving rights and

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protections that seamlessly work to ensure a safer and positive asylum process. This is particularly true for female asylum seekers. Mendola & Pera (2021) argue that vulnerability should be reevaluated within the law through a lens of intersectionality to provide a deeper investigation of 'vulnerability traits'. This is necessary to determine effective protection for the most marginalised leading to more genuine concrete EU policy and legislation to provide agencies on the front line the correct approach for assessment of 'vulnerability' (Mendola & Pera, 2021). Without this aspect of intersectionality there is very little hope for the real and pressing developments this area of EU law and policy needs. The inclusion of intersectionality within EU law and policy is lacking. However there is a further lack within the current literature, of research into this nuanced topic to provide an evaluated analysis from the experiences of female asylum seekers. This thesis supports the argument and hopes for further research to explore this area.

Vulnerability is used as a distinguishing feature in the process of asylum for women, and requires EU Member States to act in a manner that matches the special needs of these vulnerable groups (Mouzourakis et al., 2017) . EU asylum law and policy lacks a specific definition of what vulnerability is. Instead it determines broad groups of people that can be considered 'vulnerable' in the asylum process. The main objectives of these provisions on vulnerable persons are to categorise and protect this broad group and establish a process in which to do so (Mouzourakis et al., 2017). Some examples of explicit recognition of women as vulnerable can be seen in Article 20, 3 of the Asylum Qualification Directive, 2011/95/EU, which identifies pregnant women as vulnerable and Article 21, Reception Directive, 2013/33/EU which identifies victims of female genital mutilation (Mendola & Pera, 2021). Gender alone has not consistently been considered to be warrant enough for additional protection, it must be accompanied by further layers of 'vulnerable categories' as demonstrated in the policy references above. Further examples include groups of women who have been persecuted by the country or government in which they flee from, those who suffered violence due to their gender (which includes being a target for sexual exploitation and forced pregnancies)(La Spina, 2021).

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2.3.1 The Reception Conditions Directive

The Reception Conditions Directive 2013/33/EU (RCD) is in fact the single legislation that establishes that special protections are awarded to the vulnerable groups it sets out in Article 21 (Mustaniemi-Laakso et al., 2016). There have been mixed opinions that by virtue of establishing and defining a group of vulnerable people that it creates an exhaustive list. Thus excluding many others in need for special protections, or acknowledging the intersections of certain vulnerabilities.

However in *M.S.S. v. Belgium and Greece*, the ECtHR identified a lack of protection to satisfy even basic human rights (Velluti, 2016). Despite the fact that the ECtHR is not a part of the EU legal order, this case gained a high profile internationally to demonstrate the basic human rights protections required for vulnerable asylum seekers. This can have great influence on judges deliberating similar cases within the EU legal order and presents how EU law is currently lacking. Furthermore it has an indirect capacity to shape the expectations female asylum seekers should be protected by within the EU legal order. Specifically, the ECtHR ruled that Member States have a positive obligation, as per the RCD, to provide accommodation and decent material conditions to asylum seekers, considered as such vulnerable. Moreover, it extended the concept of inhuman and degrading treatment to encompass the extremely poor living conditions experienced by asylum seekers. Consequently, the Court used Greece's failure to comply with the RCD as an "aggravating factor" towards a lack of redress (Vellutti, 2016). When Member States are dealing with vulnerable groups, case law has set out that it must comply with the basic needs as established in the RCD otherwise there is a potential breach of Article 3 of the ECHR.

The use of the term vulnerable within law and policy itself has been controversial, particularly when considering its application to women like in the RCD. It has been argued that by determining groups of people as vulnerable, it entrenches the societal notion of a lack of agency for these groups, perpetuating their perception of weakness. Nonetheless, Mouzourakis et al. (2017) offers a thought-provoking perspective. They suggest that the act of women undertaking their journey, regardless of the legal context, can counterbalance this notion of fragility (Mouzourakis et al., 2017). The immense challenges and risks they face

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while migrating to seek safety actually highlight a significant level of agency. In which laws and policies should acknowledge and incorporate. An important point to note.

Whilst this use of terminology has had its benefits in the recognition of the differences women face during the migration process, the language used still depicts a picture of weakness. Freedman (2019) argues that in order to actually reap the protections afforded to asylum seekers and refugees they must fit a mould in which they are deemed vulnerable enough and ‘*worthy enough*’ of. Freedman (p.g4, 2019) states that women’s “*vulnerability to violence is not intrinsic to their status as women, but created by the conditions of migration and exacerbated by EU policies*”. An example is that often female asylum seekers have limited opportunities for work, and have very little compensation or abilities to reduce their economic precarity, this can preclude to a whole host of vulnerabilities. One includes potentially trapping them in abusive relationships for example, as their only reliance for survival is on the male counterpart, rather than the support from authorities and protections enshrined in EU law and policy. Furthermore, policies related to immigration enforcement might discourage migrant women from reporting incidents of violence due to fear of deportation or detainment. A study conducted by UNHCR Cyprus which mapped ‘*the experiences and impact of sexual and gender-based violence*’ using a cohort of both males and female asylum seekers in the study found that ‘*49% of all women assessed were identified as victims of sexual or gender-based violence*’ (European Union Agency for Asylum, 2022). Despite this being a country specific study, the statistic demonstrates the high majority of women who are subjected to violence. This can give an indication that if EU law and policies are in any way perceived to be linked to women's status of asylum, there is a correlation that a high majority are affected by violence, and thus a high majority may be reluctant to report this. Recognising these dynamics between policies and their application for women is crucial for designing effective policies that address the unique challenges faced by women and ensure their safety and well-being. However, Art 59 (3) of the Istanbul Convention as explored in the previous sub-chapter provides an addition to EU law to plug the gap here. It states that ‘*where the competent authority considers that their stay is necessary owing to their personal situation*’ (Istanbul Convention, 2011). Article 59 determines the residence status, which theoretically sought to protect women from being vulnerable to domestic violence where their residence status depended on a spouse (Istanbul

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Convention, 2011). The Istanbul Convention (2011) however states that in order for women to be protected from domestic violence and be free from remaining in a relationship purely for the security of residence status, the following process is carried out. Firstly it is for the ‘*competent authority*’ to determine their vulnerability. The power lies in those inexperienced to the true realities of the female asylum experience. This process shows that this acknowledgement of vulnerability in the law is simply this. An acknowledgement. Not a concrete and truly protective right for women. Stefani (2022) supports this in his research that determines that the law creates this ‘ideal’ type of refugee or asylum seeker, which creates easier opportunities to be identified. However, what about individuals who do not align with this identity? Frequently, the determination of residency is also influenced by the subjective judgement of officers during the initial implementation of the law, as they screen individuals (Stefani, 2022). This shows a subjective process; adverse to discrimination, prejudice and stereotyping.

Despite the heavy use of the term vulnerable in the Reception Directive, it has also taken an interesting move away from solely using the terminology of ‘vulnerable’ within the law. Often this term has negative connotations and depictions of weakness which in turn places how society views women. Instead it uses the term ‘special reception needs’ to describe the layer of protection many women will need without the often perceived ‘stigma’ of the term ‘vulnerable’ (Stefani, 2022). Vulnerable, as Freedman (2019) showcased, is not intrinsic to being a woman. It demonstrates a move towards a more neutral gender balanced approach to providing protections. To move away from a definition that often is a negative stereotype for women and can thus inform their perception and possible protections offered. By developing the language policies use, it has an impact on how society views female asylum seekers and can potentially take steps towards validating their needs and placing the same value on it for both women and men.

2.3.2 The Qualification Directive

The purpose of the Qualification Directive 2011/95/EU originally set out to provide the minimum standards for asylum claims and harmonise the outcomes of decisions. Yet it can be argued that this primary goal has not been achieved when viewed from a feminist standpoint. The purpose of this particular section is to focus on the Directive’s approach to persecution in

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the applicants country of origin. However it is important to acknowledge that in addition to this, Article 20 does indeed set a more general framework related to the conditions to take into account when implementing the Directive.

As mentioned above, the EU Qualification Directive 2011/95 Art 20, provides a defined list of those deserving of special protections, however this is only applicable to this group after an evaluation of the situation from which they have fled from. It is the ‘*subjective vulnerability*’ that is in fact taken into account first, before any protections are offered (Stefani, 2022). This refers to the most visible or commonly understood vulnerabilities, rather than the ones that may not be able to be seen or lack the understanding from authorities determining them. This creates firstly a very defined category with ample subjective discretion of its application from authorities. What can be seen as a result of this method is that many women are receiving inconsistent levels of protection if firstly they are outside of this exhaustive list, and secondly interact with authorities in a highly subjective and potentially discriminatory manner. If a woman's circumstances do not precisely align with the criteria set out in these policies, she might be excluded from receiving adequate protection. When subjectivity is a predominant aspect in determining laws, there is ample room for gender discrimination. In the case of *R.K.S v Refugee Appeals Tribunal and Minister for Justice, Equality and Law Reform* ([2013]), despite this not being a case from EU courts, the judgement set a resounding claim that there is high precedence that asylum decisions rely on ‘instinct’ and a ‘feel for credibility’. It sets the precedent that there is indeed room for discrimination when policies are set out in a way that leaves ample room for discretion. Creighton (p.g.1, 2022) supports this and argues that this judgement shows how ‘*In this sense, the procedure stipulated by EU law grants substantial discretion*’ to those within authority positions which leaves ample room for biases, discrimination and un-regulatory practices. Vulnerability is a factor examined by the state (Gazi, 2021). This causes a real sense of power dynamics between asylum seeking women and the state. A concept in which from a feminist standpoint view is incredibly diminishing towards achieving truly gender sensitive policies. They determine what is considered vulnerable and what are the levels and circumstances of this. Often these thresholds to determine this within EU asylum law and policy are missing, vague or lack actual added protection for women. It leads to discrepancies

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and inconsistent experiences of the law when determining the protection of women asylum seekers and refugees.

The CJEU has imposed a more literal interpretation of the Qualification Directive which requires the successful proof of both points under Article 10 (1) of the Qualification Directive of ‘*protected characteristics*’ and the existence of ‘*social protection*’. Although not specific to women, the CJEU established in *Minister voor Immigratie en Asiel v. X* ([2013]) that both of these requirements need to be met in order to receive the protections from the Qualification Directive (UN Women, 2017). Despite the fact that Article 10 (1) states that ‘*gender related aspects, including gender identity shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group*’, in reality many women are not recognised amongst many Member States as members of a ‘particular social group’ and therefore are falling outside the scope of these protections in many cases (UN Women, 2017). If the CJEU took a more liberal approach of just satisfying ‘*protected characteristics*,’ women would more likely fall into the interpretation, and much more easily be awarded the protections required. It therefore can be argued that the Qualification Directive through its interpretation has failed to harmonise the outcome of its application for women seeking asylum.

2.3.3 The Dublin Regulation III

The Dublin Regulation III has had a huge impact on women seeking asylum and is one of the main regulations that has raised much controversy in the debate regarding the protection of asylum seekers. To put simply, its purpose consists of ensuring that one Member State is responsible for the processing of an individual's application for international protection (Klaiber, 2019). Furthermore, where most controversy lies, is the requirement to return an individual to the Member State where its application was first processed or a Member State of first irregular entry. It is important to review the Dublin Regulation III as it plays a large part in the difficulties many women face, by its very nature.

The main aspect of the Dublin Regulation III focuses on return to the point of entry. For many women this is incredibly dangerous, this can expose women to being taken advantage of, or having to often rely on illegal methods of travel or not being able to seek work and support themselves and their families for example. The systemic flaw principle of joined

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cases from the Court of Justice of the European Union judgement in N.S. and M.E ([2011]) helped to improve the area of this law consequently for women, by now blocking their transfers if human rights abuses have occurred. Thus breaking the cycle of potentially sending them back to their abuser or risking putting them in harmful situations. It helps to prioritise the human rights of the individual first, before anything else. Human rights are often overlooked in place of following procedures. The CJEU as a result of this judgement found that if there are grounds to believe human rights abuses will occur then it warrants enough to block the transfer (Mustaniemi-Laakso et al., 2016). The idea of systemic flaws was established and was crucial in the decision. It stated that only if it was found that there are systemic flaws in the asylum procedure due to human rights abuses in accordance with Article 4 of the CFR, then it would constitute an incompatibility to warrant a transfer. As a result of this case Art 3(2) was amended in the Dublin Regulation III to *'the effect of barring transfers to a EU Member State, where there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union'* (Mustaniemi-Laakso et al., p.g. 15, 2016). This can be considered a significant step in inadvertently protecting women who can benefit from this established protection. Often the first place of entry harbours a lot of danger for women, for example it's away from family or support systems, and often smugglers are rife in these areas where they know that there is a high percentage of asylum seekers. Therefore it protects them from having to return to environments where there are serious threats to their safety. However in practice this is still a very timely, strenuous and resource demanding process to present evidence that human rights abuses have occurred according to Article 4 of the CFR. A luxury of which many women seeking asylum do not have, for example, the knowledge of this protection existing, and the ability to source legal advice reduces the actual impact. So it is highly debatable whether the real impact of this is actually reducing the human rights abuses of those most marginalised such as women in reality.

In the CJEU judgement of C.K. and Others v. Supreme Court of Republic Slovenia ([2017]), the courts determined the application of Articles 3(2) and 17(1) of the Dublin Regulation III which related to the psychiatric needs of a mother and child specifically from Slovenia to

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Croatia. The facts of the case predominantly referred to the poor living conditions of the reception centres and the need for special protections for women who had just recently given birth and suffering from potential antenatal depression. The case highlighted the need to consider the specific vulnerabilities and protection needs of female asylum seekers, particularly pregnant women and families with young children, when applying the Dublin Regulation III (2013). It underscored the importance of ensuring that the receiving country's reception conditions are adequate and respectful of human rights before transferring vulnerable asylum seekers. This case served as a significant precedent in emphasising the duty of Member States to take into account the individual circumstances and protection needs of vulnerable groups, including women. It reinforced the principle that transfers under the regulation should not lead to situations where asylum seekers are subjected to inhuman or degrading treatment, especially due to their specific vulnerabilities (C.K. and Others, 2017). In such cases, the authorities of the responsible Member State must consider objective factors, such as medical certificates, to determine the potential impact of the transfer on the applicant's health (C.K. and Others, 2017). They must ensure that the asylum seeker is accompanied during the transfer by appropriate medical staff and receives necessary care upon arrival. If the asylum seeker's health conditions do not allow for an immediate transfer, then the requesting Member State may choose to examine the asylum request itself under the discretionary clause of Article 17(1) of the Dublin III Regulation.

2.4 The reality of how women are constructed in EU asylum law and policies, and beyond.

This next sub-chapter leads on from the analysis of the above research which provided a critique of how women are viewed through the lens of vulnerability in EU Asylum law and policy, to then shed a light on the realities of female asylum seekers experiences today under EU law and policy. This helps to holistically analyse the research question to investigate whether these laws and policies in reality are consistent with feminist perspectives. This sub-chapter acknowledges that it only presents a snapshot of what is occurring in the EU, and is important to primarily acknowledge first that many EU Member States are advocating positively for asylum seekers and refugees. Denmark represents a special case, yet one with the growing power of a domino effect across the EU. Ultimately this case study questions the very founding principles of the EU and its place in society (Gammeltoft-Hansen & Madsen,

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2021). This subchapter surfaces a real problem area, in that the EU is moving away from its foundations rooted in human rights, dignity and respect if it cannot guarantee a humane and fair treatment of third nationals entering its borders.

To provide the contextual background to this case study; 2015 after the so-called ‘*migration crisis*’ as often labelled by many European media outlets, many Syrians entered European borders to seek refuge. Denmark, cooperated by providing temporary residence statuses, until determined otherwise by the state (Singhvi, 2022). This temporary protection was introduced by the Danish Aliens Act, section 7(3), and applied to those who met the definition in the Refugee Convention 1951 (Danish Refugee Council & European Council on Refugees and Exiles, 2022). In 2021, Denmark made the controversial decision to stop renewing the temporary residencies of Syrians on the basis of their analysis that parts of Syria, in particular Damascus, was marked as safe (Nielsen & Møller, 2022). A Country of Origin report declared the Damascus region as ‘safe’, despite the country still amidst a war, with severe human rights abuses happening, those particularly harrowing for women (Singhvi, 2022). This sub chapter aims to look at this decision to view how this has primarily affected female asylum seekers, and how the use of EU asylum policies and law have been constructed to enable this. Its aim is to present a specific case study to support the argument that the lack of adherence to the basic standards set by EU laws and policies very blatantly puts the lives of women seeking asylum and refuge in jeopardy.

The situation in Denmark is particularly harrowing for female asylum seekers and refugees. Despite Denmark being a signatory to the Istanbul Convention (2011) in which Article 60 (3) specifically requires gender sensitive practices for refugee and asylum policies, Denmark has chosen to introduce, through its Aliens Act (2007), laws that scholars have argued violate both international and European asylum law and policy. This law revokes the temporary residence permits of Syrians. This disproportionately affects women due to the recognition that men are often found exempt from this due to their recognised risk of being conscripted. Thus there is no threat for them to return to Syria. For women this is not the case. What is ironic is that Denmark in fact ranks 2nd in the EU on the Gender Equality Index (European Institute for Gender Equality, 2023). This demonstrates that the rights of female asylum seekers are so often overlooked, and the ability to see how provisions will disproportionately affect women more negatively, are forgotten. From a feminist standpoint theory, the argument

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would show that the lack of inclusion of women's voices and experiences in the legislative making process has had a significant impact on this.

Denmark has ratified the Geneva Convention 1949 and is bound by the ECHR (Danish Refugee Council & European Council on Refugees and Exiles, 2022). Furthermore, Denmark has adopted both CEDAW and the Istanbul Convention (2011), which as noted above provide specific gender guidelines. Gammeltoft-Hansen & Madsen (2021) state that the example of Denmark demonstrates how asylum law and human rights law have become what is known as '*regime entanglement*' where different areas of law and policies are intersecting and impacted by the other. This entanglement has dire consequences for those considered most vulnerable.

2.4.1 Vulnerability in practice

To continue the analysis on the term vulnerability within the law and the real life examples of it, Canning (2019a) in fact argues that Denmark is a case study that proves that women are made to be more 'vulnerable'. It has been argued that the restrictive policies and practices adopted by Denmark are worsening the mental health of women seeking asylum, and also impacting their cases for asylum by restricting their access to support, in particular female interviewers and interpreters which are essential for their understanding of their rights and implementing them (Canning, 2019a).

Nielsen & Møller (2022) research looks into the data surrounding the decision making process of asylum claims. What can be deduced from this research is that very little is actually known from a data perspective as to how decision makers are determining the credibility for asylum claims, and further special protection needs and establishing 'vulnerability' (Nielsen & Møller, 2022). Many appeals for the right to remain in Denmark as a result of their 'vulnerability' to return to Syria since 2021 have occurred. However Nielsen & Møller's (2022) research shows that when reviewing the credibility of these appeals and even primary applications of asylum, the decision-making process resembles a 'discretionary practice'. It has been described that the '*decision-making process*' is a '*discretionary practice consisting of shifting authorities*' with the asylum seeker often the only witness to the case, unfortunately on the wrong side of the power dynamics to actually dispute any wrongdoings successfully (Nielsen & Møller, P.g 4, 2022). Many can argue that as a result of

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such discretion it leads to discrepancies and simply shows a discriminatory practice that threatens the rule of law (Nielsen & Møller, 2022).

The landmark case of *M.D. and others v. Russia* ([2018]) in fact set the precedent that it is unsafe to return those to Syria. In summary, the court concluded that deporting individuals to Syria violates Article 2 (right to life) and Article 3 (protection from torture, inhuman, or degrading treatment or punishment) (Bendixen, 2021). Despite Denmark declaring Damascus as safe, the Strasbourg Court determined the opposite and declared that all parts of Syria are unsafe (*M.D and Others*, 2018). However even with this judgement in place Denmark could still claim that they are not forcing those to return, as there are no concrete paths agreed with the Syrian Regime to practically transfer them. The diplomatic process for this is far from being achieved. So in reality, no one will actually be sent back to Damascus, but instead housed in detention centres waiting for the moment that diplomatic relations will arise that establish clear paths back to Syria. Detention centres that are increasingly housing women due to the disproportionate treatment that the conscription rule exemplifies men from having their residency revoked. When these diplomatic relations will occur, is unknown. The impact and trauma of being held in detention centres is detrimental to the well being of many, with women at the forefront of this suffering. The ruling of *M.D and Others* ([2018]) held that those being held in detention centres can in fact be likened to the principle of ‘forced return’ and thus is a violation of the ECHR with or without diplomatic ties (Bendixen, 2021). Yet the fight to hold Denmark accountable has been unsuccessful so far to stop this from continuing.

2.4.2 The Dublin Regulation in practice

When viewing this situation, it is easy to assume that this only affects those with asylum in Denmark being threatened with the potential for being sent back to Syria. However, due to the Dublin Regulation III, it stipulates that those need to be sent back to the first point of entry to the EU. The situation in Denmark presents a serious issue to many facing the potential return to Damascus, some Member States like Sweden are automatically returning asylum seekers to Denmark regardless, however some Member States courts are taking into consideration the impact of obliging with the Dublin Regulation III to return those whose first point of entry is Denmark (Lighthouse Reports, 2023). The general consensus shows that in

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many Member States they are granting asylum seekers the right to stay while their cases are being determined if it is safe for them to return to Denmark, to protect them from having to be housed in detention centres with the threat of a return to Damascus (Lighthouse Reports, 2023). EU Member States are resisting the strict compliance with the Dublin Regulation III for the good of the asylum seeker (predominantly women). It shows a greater intention in the EU to go against policies and directives when they are causing human rights issues. There is hope that this can bring a shift in prioritising the rights of asylum seekers and acknowledging the negative implications as a consequence, on female asylum seekers.

The ECtHR judgement from the case of *Tarakhel v Switzerland* ([2014]) demonstrated that returning asylum seekers to the point of entry where there is the potential for human rights abuses would be a violation of Art 3 of the ECHR (Flegar, 2016). This judgement effectively pressured many EU Member States from supporting the practices of Denmark and claimed that sending asylum seekers or refugees back to their point of entry as required by the Dublin Regulation III would cause a potential for a human rights abuse in Denmark. The influence of the ECtHR as mentioned previously cannot apply and decide on EU law, only ECHR, however its influence helped to shift the narrative away from Denmark as the right approach to asylum and refugee strategies and policies. It demonstrated not only that what Denmark is currently enforcing, is crossing the lines of its obligations under human rights but it restores the faith that EU Member States are actively standing up to not support this practice. However whilst this judgement was positive in that respect, it did further conclude that the assessment where the non-refoulement principle takes effect, needs to be considered in the wider context, for example the country of return and the context of what is occurring there (Flegar, 2016).

In conclusion this subchapter has shown how in plain sight EU Member States are committing human rights violations which from a feminist standpoint theory would argue that due to the power dynamics in society the negative effect on females is overlooked and unimportant. There are weaknesses within EU law and policy in protecting them. However, it also shows that this is not the consensus across EU Member states. Member States are rejecting laws in order to put the human rights of the individuals first. It provides light and hope in a dark place. What remains from this analysis is the urgent need to remind EU Member States of Art 2 Treaty of the European Union (TEU) (2012), which presents a core

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foundation of the EU in which it is built off; *'human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities'*. Klaiber (P.g 12, 2019) perfectly demonstrates the point that EU Member states should rather be focused on a *'humanitarian and individualised'* approach than *'making applicants for international protection objects to the action'*.

2.5 The effects of EU regime of border control on women

Reaching the borders of the EU as an asylum seeker has slowly become more precarious, vicious and inhumane since the so-called 'migration crisis' in the EU in 2015. This is due to many factors, however to provide context this has predominantly occurred due to illegal push back methods and countries closing off routes where access to borders is safer. Now, many have to travel through very dangerous geographical terrain. The toxic narrative towards those seeking asylum has only worsened since, which plays a huge influence on; how societies react, and the politicians they vote in and thus the policies and legislation that gets enacted. The EU has enacted many policies that aim to provide added layers of protection to the most vulnerable, such as women, as they enter EU borders and seek asylum. However when securitisation of borders acts as a top priority, how effective and fully implemented are these policies? Chetail (2019) argues that migration (including that of asylum seekers) influences the phenomenon of state sovereignty, and as migration increases so do laws and policies, created to reassert a state's sovereignty in order to control this migration of asylum seekers. This establishes a domino effect of an increase in asylum seekers, which creates an increased perceived threat to state sovereignty and thus an increase of potentially harsher policies. Funding is funnelled more into initiatives that criminalise crossing borders and strengthen this attempted 'deterrent' effect by making borders harder to cross. This in reality just makes the route more deadly and harmful above any impact on deterrence (Freedman, 2016). This is what is currently happening at EU borders and it is breeding human rights abuses that are having a severe effect on women too.

In 2021 Frontex reported that in just the first 9 months of the year the EU saw 133,900 illegal crossings (Cornelisse and Reneman, 2022). A statistic that has only grown in a post-pandemic era with political and economic tensions across the globe worsening. However this chapter does not solely focus on those just entering the EU but also those crossing

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internal borders of the EU. These harsher external border policies are feeding into ways that enable internal cross border crime such as human trafficking. This is an international crime that has a very gendered aspect to it regarding sexual exploitation, plus a predisposition to target asylum seekers. Therefore this chapter will first explore how the EU is securitising its external borders and the impact of this on women. It will then develop to focus on human trafficking, a topic very relevant to border securitisation but also can be seen as a negative product of the harsh securitisation policies of the EU that deeply endanger female asylum seekers.

2.5.1 EU policies controlling its external borders

The ‘migrant crisis’ is perceived as one of the biggest crises of our time, but what it is in fact, is a crisis of fundamental rights abuses at European borders. Despite the policies in place, which will be reviewed in this subchapter, what is occurring is often violent ‘*pushbacks, detention measures and accelerated asylum procedures at the borders*’(Cornelisse and Reneman, P.g1, 2022). It has been researched that men make up the majority of those crossing into EU borders illegally, however recently there has been an increase in the number of women (Freedman, 2021). This increase, some may argue, can in fact be attributed to the acknowledgement of women in the asylum journey, and in fact have been crossing EU borders just as men, but data analysis has de-prioritised their importance. Though this cannot be proved it is an important theory to keep in mind. Despite the fact that many policies place women into a category of ‘vulnerability’ as seen in the previous chapter, the protection of this group in reality is deprioritised due to the persistent and dominant focus of securitisation (Freedman, 2021). This subchapter will review and set the scene of the legal and policy foundations of securitisation of EU borders by looking specifically at the ways and consequences of how the Schengen Borders Code and the Regulation on Frontex has securitised EU borders. It will focus on the female displaced person who seeks to reach the EU and apply for international protection within the EU. This will be analysed from the lens of the feminist standpoint theory to evaluate the experiences of women and girls established from these policies and regulations. This thesis acknowledges that the securitisation of EU borders is also impacted by the agreements the EU has conducted with non-EU states in order to prevent third country nationals from seeking refuge in the EU such as the agreement

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adopted between Turkey and the EU. However, for the purpose of keeping a concise narrative, this thesis will not look into this area, but it is important to state at the outset.

2.5.2 The Schengen Borders Code

The purpose of the Schengen Borders Code (Regulation (EU) No. 2016/399) (SBC) is to support the legal framework in relation to the borders of the EU, both internal and external. The relationship between border control and surveillance and international protection is often conflicting. The SBC (2016) allows for the denial of refugees and asylum seekers from entering the borders if they do not meet the provisions set out, however there are exceptions that seek to entrench their protection (Mouzourakis, 2018). The SBC (2016) contains ‘*fundamental rights protection clauses*’ which national legal systems are required to comply with (European Union Agency for Fundamental Rights, 2020a). This conflict between border control and asylum protection can be traced at least back to 2015, where the increased numbers of asylum seekers that fled to the EU, triggered a disregard for the protections put in place by the SBC (2016). Preamble 26 of the SBC (2016) sets out that its internal borders control the Schengen Area (Guild, 2021). However in 2015 Germany and Austria reintroduced intra-Schengen border controls and a total disregard for the protections in the SBC (2016) and created a domino effect across EU states copying this approach (Guild, 2021). The complexities of reintroducing intra-Schengen borders, one could argue, are particularly complex and intricate to allow Member States to in fact take certain measures that would allow them to do this and prevent any punishment as a result (Personal Communication, Interviewee A, 2021). What is interesting is that the Commission in response to this ‘crisis’ in 2015 sought to confirm in fact that intra- Schengen border control checks should fall under the responsibility of the Schengen states constitutional laws, therefore easily escaping any protections established for third nationals under the SBC (2016) (Guild, 2021). Many scholars have concluded that despite the SBC’s ability to protect asylum seekers and refugees “*on humanitarian grounds, on grounds of national interest or because of international obligations*” under Articles 14(1) and 6(5)(c) of the SBC (2016), what is commonly seen is the driving force to deflect these issues instead (Mouzourakis, 2018). For women, this is detrimental, as they would most commonly fit within the protections on humanitarian grounds, many travelling with children, fleeing sexual violence and/or persecution from their national states. However what can be seen here is an ignorance

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towards the protections needed for women, by the SBC (2016) and the Commission deflecting these issues most commonly to Member States. Resulting in the experiences of women entering the borders varying drastically, and reducing their ability to enforce their protections that have been given by these instruments. The protection for women in particular through the SBC (2016) is not coherent across the EU. This makes instruments such as the SBC (2016) redundant for women to rely on.

However, recently in 2021 there have been proposals for the reform of the SBC (2016). Some of them have been praised, for example bringing better EU coordination which also includes references to pandemics and focuses more on the movement of third nationals to the EU (Mouzourakis, 2018). Yet from a feminist standpoint theory, these proposed changes are not enough to challenge such strong power dynamics and in fact worsen the situation. The proposed amended SBC (2016) introduced the possibility for police checks along the intra-Schengen borders for the purposes of controlling the migration flow of third nationals (Bouvier, 2022). These checks are based upon the decisions of ‘competent authorities’ as systematic checks are prohibited (Bouvier, 2022). Within this amendment there is no reference to the conscious elimination of discrimination based on gender or race during these police checks. It is well known amongst scholars that the law is often then taken into the hands of individuals and is very subjective (Creyghton, 2022). This has the element of both unconscious bias and a more sinister layer of the potential for discrimination. It has been shown throughout research that people outside of the white, heterosexual male image are disproportionately affected by police stops (European Union Agency for Fundamental Rights, 2021). Bouvier, (2022) argues that this amendment has the potential to violate the right to freedom of movement within the EU (Art. 3(2) TEU, Art. 21 and 77 TFEU) which ‘*in practice amount to discriminatory border controls*’. Furthermore what raises high concern is that these amendments also include the possibility for apprehending people caught without a valid document at internal borders. When this is coupled with a practice of police checks that have the high potential to be discriminatory there is a drawn conclusion that these will severely unfavour those of colour. The amendments also allow the ability for detention ‘*up to 24 hours and transfer them to the EU state they think the person came from, without any individual assessment*’ (Bouvier, Pg. 1, 2022). This amendment simply demonstrates a complete disregard to the fundamental human rights of those seeking asylum, placing women

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and children too, who are often travelling with women, at further risk of violation in the hands of authorities.

2.5.2 The regulation on Frontex

Frontex is often described as the gatekeeper to external European borders with its full title as the ‘European Border and Coast Guard Agency’. It was founded by the Council Regulation EC 2007/2004 which has been amended in 2019 to Regulation (EU) 2019/1896. Its main purpose is to strengthen EU cooperation with regards to external border control (Léonard, 2010). Frontex has been growing rapidly, with a recent budget of 300 million Euros for 2021-2027, this symbolises the power this agency holds in upholding the rules and regulations to EU borders (Kalkman, 2020). Frontex sits within a mechanism of complex border policies, yet has been given a lot of autonomy to carry out its duties. It has nine key objectives, including monitoring and protecting the borders, fighting cross-border crime and return and reintegration at the heart of its operations which claim to be achieved through ‘high ethical standards’ (Frontex: *Who We Are*, 2023). In many ways the SBC (2016) can be seen as what should exist in law and the regulation of Frontex to be viewed as what should exist in practice to protect fundamental human rights (Léonard, 2010). The current literature is heavily dominated by much negative analysis towards this agency and the cooperation it receives from the EU, due to its inhumane practices that have been exposed in many recent media outlets and NGO publications (Personal communication, Interviewee B, 2022).

Frontex’s risk analysis establishes the foundation for its policies and practices. Stachowitsch and Sachseder (2019) argue that the risks and solutions established by Frontex are in fact informed by gendered and racialised framings of concepts such as vulnerability which perpetuates the legal response towards asylum seekers and their negative experiences. Feminist analysis of the regulation of Frontex is sparse within the literature available. However, research by Stachowitsch and Sachseder (2019) argue that the continued narrative of viewing asylum seekers as dangerous and vulnerable (predominantly women) fuels their justification for such harsh detentions and deportations and disguises some very sinister methods of border control. It can be argued that Frontex’s practices have instilled the narrative that asylum seekers are criminals (Kalkman, 2020). Therefore asserting a so-called need for detention and harsh practices. More however is needed to identify the specific points

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and level of impact this gendered and racialised risk analysis has on the conduct of security operations affecting asylum seekers. Currently there needs to be more data and investigation around this area.

The violation of the principle of non-refoulement has been frequently seen across the literature on the regulation of Frontex. A violation that breaches not only EU law (such as the EU Charter of Fundamental rights) but international laws (Personal communication, 2022). Kalkman (P.g. 9, 2020) states that '*without monitoring and transparency, compliance*' it is very difficult to determine where, how, and what Frontex are doing that violates these principles and the foundation of fundamental human rights. The terminology of push backs, despite not being strictly legal terminology, refers to the practice of physically pushing boats coming into EU territory filled with humans seeking to gain entry to the EU back into another jurisdiction. A practice deeply violates the principles of non-refoulement, found in many international treaties in which the EU are bound by (as explored above). Non-refoulement is also enshrined in the CFR Article 19 (2), one major concern of this is that the Lisbon Treaty indicated that the European Commission nor the Court of Justice of the EU has the competence to enforce the Charter of Fundamental rights (Kemeny & Vit, 2020). Therefore reducing accountability. Frontex continues to operate under what can be likened to as impunity.

There is a contradicting debate as to whether Frontex is improving the situation at the external borders of the EU or if it is in fact contributing to harmful human rights practices. In which deeply affects female asylum seekers. This contradiction can be seen throughout the literature and is something that plays into allowing Frontex to still continue despite strong allegations against them. What is also interesting is that even though Frontex is grounded in EU law, many in fact argue it is operating as an independent agency. Overall the prioritisation of securitisation does little to deter but produces greater harm. Freedman (2021) supports this and argues that they are in fact '*counterproductive*' and instead push asylum seekers to risk their lives in increasingly more dangerous ways, giving increased power to the smuggler industry as a route out. This leads to creating a conducive environment for a thriving human trafficking market.

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2.6 What are the implications of harsh securitisation?: A focus on human trafficking

Due to the Schengen Area there is a general consensus of us vs them, with the external borders of the EU so fiercely protected, but neglects the fact that crime and corruption is just as strong within the EU. As seen above there is a predominant focus on securitisation of borders. This subchapter will look into whether this securitisation has had an impact on human trafficking, if it has in fact influenced it or reduced the impact of this cross border crime, particularly in regards to women. This is particularly important as part of this thesis, as it ties in all dynamics of various aspects of the female asylum experience, from the effects of policies, to the impact of harsh border control, to the potentially consequential increased vulnerabilities towards human trafficking. Sex trafficking in particular is predominantly affecting female asylum seekers, who are placed in such conditions that leave them as easy targets towards this crime. The cycle of human trafficking starting from root causes to implementing policy has been recognised to be a highly gendered cycle (Europol, 2016). Rao and Presenti's (2012) research concluded that two root factors predominantly made women more vulnerable to trafficking; such as countries with high levels of poverty and low levels of gender equality combined, increase the likelihood for women to be trafficked. Brooks and Heaslip (2019) summarise that in fact the increasing effects of globalisation is developing in a way that does not favour women economically or socially, and creates a greater sense of vulnerability for trafficking. This globalisation is taking on new levels with the displacement from war, corrupt leaders, insurgent groups coupled with a post pandemic economy. These global issues make female refugees and asylum seekers further vulnerable to trafficking.

Human trafficking has been a serious topic of concern for the EU for many years and is set to continue to become ever more challenging and complex as border control becomes harsher, technology advances and laws fail to keep up. Furthermore as migration of asylum seekers and refugees increase, it has an influence over this cross border crime. Currently the role of the EU in combating human trafficking falls under policies, directives, laws and EU agencies. Europol, Eurojust, CEPOL, EUAA, EIGE, FRA and Frontex are the primary agencies that are leading the coordinated efforts in anti-trafficking (Voronova & Radjenovic, 2016). Human trafficking at the EU level is not a standalone issue, it intersects multiple policy making areas, migration, securitisation, citizenship, organised crime, prostitution etc (FitzGerald &

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Freedman, 2021). Trafficking occurs within the EU, and from outside the EU into EU borders, it therefore triggers both EU law, national law and international law.

It is therefore important to evaluate how the EU's border control is '*fundamental to anti-trafficking and anti-smuggling interventions, situating the debate within the wider nexus of globalisation and the securitisation of migration.*'(Miller & Baumeister, P.g.1, 2013). Miller & Baumeister's (2013) research found that tight border controls, instead of curbing the influx of asylum seekers, in fact had a severe effect on their human rights and in fact hindered anti-trafficking interventions. This is supported by Forin & Healy's (2018) research which found that the harsher the border controls coupled with a lack of 'legal alternatives' provided the ripe conditions for smugglers to take advantage of those vulnerable and seeking asylum, most commonly women for sex trafficking. Miller & Baumeister (2013) in fact call for combined coherent border control policies that incorporate anti-trafficking initiatives with migration in mind in order to truly be able to tackle this cross border crime. This is particularly important for seeking redress and justice for asylum seeking victims of human trafficking whose residence/legal status may be at jeopardy to provide evidence or appear in court. This hinders greatly the ability to prosecute those involved in human trafficking crimes, and deter those from continuing this crime. Without this incorporation of holistic anti-trafficking motives in border control policies, asylum seekers, in particular women, are being made more vulnerable and at greater risk of violation.

The new Pact on Migration and Asylum (the new Pact) intended to advocate for better border control policies as a new instrument that could strengthen and tie together the elements missing in border control to work in favour of protecting asylum seekers, in particular those more vulnerable such as women and children. The Communication from the Commission on the new Pact explicitly highlights the Commission's commitment to combating human trafficking and the early identification of potential non-EU victims. This focus is emphasised in the recently implemented Security Union Strategy 10 (European Commission, 2020). However, despite these hopeful aspects, scholars have expressed significant criticisms regarding the new Pact. They argue that the predominant focus on return policies and detention at the border diminishes essential legal protections and restricts access to rights upon which many asylum seekers and refugees heavily rely upon. This situation could create an environment that inadvertently fosters human trafficking and exploitation. As such, the

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failure of the EU to prioritise and incorporate more comprehensive and protective measures in the Pact is considered a significant disservice to all those seeking asylum (European Commission, 2020). Striking a balance between border control and safeguarding the rights of those seeking asylum remains a pressing challenge for the EU.

In conclusion, while combating human trafficking is undoubtedly important, an excessively harsh securitisation approach can have unintended consequences, such as neglecting asylum seeker/refugee protection, undermining human rights, and marginalising vulnerable populations. A balanced approach that addresses the complexities of trafficking, including its root causes and the protection of different types of victims, is crucial for effective and ethical anti-trafficking efforts.

2.6.1 How is the EU attempting to tackle human trafficking?

It has been argued that the EU Directive 2011/36/EU and the EU strategy 2021 - 2025 are the most prominent EU instruments leading the fight to tackle human trafficking (Bosma and Rijken, 2016). Directive 2011/36/EU takes on the approach of the three P's; prevention, protection and prosecution (Bosma and Rijken, 2016). In December 2022, the European Commission put forward a revision of Directive 2011/36/EU, which has specific amendments that relate to adding forced marriage, illegal adoption, as well as harsher sanctions for companies complicit in trafficking (European Commission, 2022b). The revision also aims to combat the role of social media and the internet in facilitating trafficking, amongst many other new revisions (European Commission, 2022a).

The EU has taken significant steps by implementing crucial Directives aimed at protecting trafficking victims; however, quantifying trafficking through data remains a challenge, impacting the effective enforcement of rights. Compiling comprehensive data proves difficult, especially since women often feel unsafe to report trafficking incidents. Criminalising the purchase of sex may also discourage clients from reporting instances of forced coercion, further complicating data collection (Personal Communication, Interviewee E, 2022). Despite these challenges, advancements have been made in understanding trafficking, and efforts to gather data have improved. However, a recurring issue lies in the underutilisation of collected data, as leading organisations often move on to the next set of data analysis without fully implementing actions from the previous information (Miller

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&Baumeister, 2013). Moreover, government delays in sourcing data can lead to inaccuracies and difficulties in connecting data points, especially when migration routes change (Personal Communication, Interviewee D, 2022). Without placing greater emphasis on improving data tracking and analysis, the EU faces obstacles in achieving substantial and targeted change (Personal Communication, Interviewee D, 2022). A more concerted effort to address these challenges is necessary to enhance the EU's ability to combat human trafficking effectively. Overall, successfully prosecuting perpetrators is a challenging endeavour (Personal Communication, Interviewee D, 2022). While there are protections in place for trafficking victims, enforcing their rights remains difficult as well which is often due to reluctance on the part of the state (Personal Communication, Interviewee E, 2022). To address these complexities, a holistic approach is essential, encompassing increased awareness and outreach for vulnerable groups, close monitoring of companies employing them, and the establishment of adequate working standards, such as minimum wage regulations (Personal Communication, Interviewee E, 2022). Additionally, creating legitimate and secure complaint mechanisms is crucial to support and protect victims (Personal Communication, Interviewee E, 2022).

Directive 2011/36/EU has garnered significant praise, representing a notable shift from the Council Framework Decision 2002/629/JHA that lacked emphasis on protection and prevention, adopting a more victim-centred approach instead (Bąkowski & Voronova, 2021). EU law places considerable focus on victim protection, as seen in Directive 2012/29/EU and Directive 2004/80/EC, which are vital instruments in safeguarding the most vulnerable (Probst, 2018). Directive 2012/29/EU aims to combat re-victimization by providing essential support to prevent the recurrence of vulnerabilities that could lead to exploitation, while Directive 2004/81/EC focuses on granting residence permits to trafficking victims who are third country nationals (Probst, 2018).

However, critiques have surfaced regarding the implementation of Directive 2011/36/EU, despite its commendable efforts to prioritise gender and victim sensitivity. Scherre and Werner (2016) argue that its full potential as a leading force in the fight against human trafficking would be recognised internationally if diligently applied by all stakeholders, including legislators, judges, prosecutors, police, and public administrators. The impact of Directive 2011/36/EU on the experiences of women in trafficking cannot be underestimated,

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but research indicates that gender considerations are sometimes tokenistic, meaning that they only look like laws and policies are moving towards gender equality, but in reality only offer a pretence of this. Scherre and Werner (2016) argue that it is inadequately applied in certain Member States, significantly affecting victim identification, support, and justice provisions.

Recognising the dynamic nature of trafficking and the influencing factors, a recent briefing in early 2023 has called for a revision of Directive 2011/36/EU, acknowledging the need to address evolving challenges (Huemer, 2023). Simultaneously, the EU has adopted an EU Strategy Combating Trafficking in Human 2021–2025, with a focus on ensuring accountability and action for prevention and protection. Trafficking is viewed as a 'cross-cutting theme,' recognising the multi-faceted elements and factors involved (Huemer, 2023).

Despite the progress made in adopting a more victim-centred and gender-sensitive approach through Directive 2011/36/EU, the issue of residence permits reveals inherent shortcomings. Council Directive 2004/81/EC mandates cooperation during criminal proceedings, which can potentially jeopardise already precarious residence permits for refugees (Probst, 2018). Many females in particular who have been coerced into trafficking will fear potential deportation or removal of residence permits if they participate in criminal proceedings. This lack of recognition of the female experience in trafficking undermines trust in protection systems. It also lacks a consideration for other legitimate reasons such as trauma and fear of further violence that hinder active participation in criminal proceedings. The provisions put in place may appear hollow, and linking residency permits to ongoing criminal proceedings reflects a deeply rooted misogynistic perspective, neglecting the needs of women, and also women of colour who are often discriminated on during criminal proceedings (Probst, 2018). It can be argued that the law provides a somewhat theoretical notion of victim-centred legislation rather than an actionable one.

Poland provides an example of a Member State demonstrating the impact of the connection between residence permits for refugees and their employment status, where losing a job leads to the loss of the residence permit. This linkage disregards the basic human rights that refugees are entitled to. Polish law allows only one month to find new employment, and this provision is often exploited by employers who fail to fulfil contractually stipulated pay,

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taking advantage of refugees' limited power to dispute the situation due to fear of deportation (Personal Communication, Interviewee B, 2022). Such practices fundamentally violate the rights of refugees, and as an EU Member State, insufficient action is taken to address these issues from the EU. These regulations have disastrous implications for women as they are more often targeted and coerced by traffickers who know they have no other options to survive if they lose residency in the country or need further funds due to poor employment laws connected to residency to support their family. The complex interplay of asylum or refuge status and employment leaves them vulnerable to exploitation (Personal Communication, Interviewee B, 2022). The issue of poorly implemented labour laws are deeply interconnected with trafficking and necessitates a comprehensive effort to combat exploitation effectively, which has the angle of predominantly affecting women more due to their 'vulnerabilities' created by society (Personal Communication, Interviewee B, 2022). The human trafficking industry preys on these vulnerabilities, perpetuating exploitation. This country-specific example from within the EU provides a snapshot of the inner workings of some Member States, revealing a lack of accountability in the enforcement of EU asylum law. It highlights the urgency to address these systemic challenges and protect the rights of vulnerable individuals, particularly women, from exploitation and trafficking. The EU should step in to recognise that the actions of certain Member States are in fact contributing to the enhanced vulnerability of women to trafficking. Addressing these issues is imperative for effective and comprehensive anti-trafficking efforts to holistically protect female asylum seekers.

CHAPTER THREE

3.1 Conclusion

The EU is currently facing multiple challenges, including the post-pandemic crisis and conflicts near its borders. These crises often exacerbate the flaws in asylum policies and the disproportionate impact on those who are most vulnerable in society. Welfens (2019) argues that moments of 'crisis' often bring to light the flaws within policies and highlight those who will be most affected. What has been demonstrated throughout this thesis, if left as it is, will only grow to be even more detrimental to female asylum seekers in this current moment of what can be felt as 'crisis' for the EU.

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This thesis has shed light on the EU's attempts to address gender inequalities in its laws, policies and regulations concerning asylum seekers and refugees. It has evaluated a range of EU instruments from the Receptions Directive, Qualification Directive to the Dublin Regulation III and it has compounded its analysis to provide extra context to EU ratified international instruments such as CEDAW (1979) and the Istanbul Convention (2011). In order to truly portray a well rounded and grounded argument of comparison and areas for improvement. Demonstrating that many gender sensitive legislation exists. Yet its impactability is questionable and lacks the individualistic layer needed to truly protect female asylum seekers.

It then provided a real life demonstration of how these instruments are used in 'crisis' within the EU currently, and the discriminatory angle it has taken as a result of a lack of truly functional gender sensitive inclusive policies. It adds an important layer to support Chapter One in demonstrating how in reality we have many well intended gender sensitive policies but they lack the intended protection outcome. One point that is very prominent throughout Chapter Two is that the Dublin Regulation III has significant implications for women seeking asylum, generating controversy surrounding the protection of asylum seekers throughout their journey. This has been shown through the importance placed on vulnerability. Vulnerability assessment becomes a critical factor, but it often lacks a clear criteria and can be influenced by subjective judgments, leading to inconsistent protection for women. This observation in fact is a recurrent theme throughout the thesis. What is essential in incorporating into Dublin Regulation III is for Member States to holistically consider individual circumstances in an unbiased, non discriminatory manner, and their protection needs before applying the Dublin Regulation III. This approach can in fact be extended to all the policies and instruments looked at in Chapter Two. It leads to the conclusion that where there is a recurring theme throughout the policies in what they lack, then there must be a remit in assessing the way they are constructed. Going back to the roots of how these policies and laws are constructed is important. When you continue to operate the same, the same problems occur. A different approach needs to be taken. Including those voices with lived experiences to be advisories to these gender sensitive provisions will truly enable their application and guide away from the inadequacies in the protections.

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One point that is very prominent throughout Chapter two, demonstrates that securitisation and harsh border controls can hinder anti-trafficking interventions, which deeply impacts female asylum seekers. Scholars emphasise the need for coherent border control policies that integrate anti-trafficking measures, particularly to protect vulnerable asylum seekers like women. The new Pact on Migration and Asylum has potential to address these issues, but criticism remains. This is due to its focus on return policies, potentially fostering exploitation. While combating human trafficking is vital, excessive securitisation without a comprehensive approach can inadvertently harm asylum seekers and undermine their rights. A balanced approach that addresses the complexities of trafficking, including its root causes and the protection of vulnerable populations, is crucial for effective and ethical anti-trafficking efforts. The EU must strike a delicate balance between border control measures and the protection of those seeking asylum to ensure the safety and well-being of all vulnerable individuals.

Overall to close out this thesis, it is important to acknowledge that incorporating gender doesn't just take one approach, however it has been demonstrated in this thesis that the EU presents what is called a '*double democratic deficit*' that women lack representation within the multiple layers of the EU's institution and consequently there is a lack of '*gender sensitivity in EU policy-making*' (Abels and Mushaben, 2012, pg. 14). What can be denounced from this research is a two step solution. The joining of those with lived experiences as asylum seekers or refugees along with those working within the field, to the legislative maker. Those with lived experiences need to be at the forefront of crafting legislation that is gender sensitive. Until then women will continue to suffer. An expert in feminist perspectives should further be an advisory aspect to the creation of these laws to ensure that there is no potential for biases, or discrimination to play out affecting those on the wrong side of the power dynamics. Secondly, stronger enforcement mechanisms are required alongside legitimate consequences for not adhering to these gender sensitive policies to break this continuum of forceful ignorance by the EU to the needs, experiences and vulnerabilities women are facing currently migrating and living as asylum seekers and refugees to the EU. As demonstrated by practical examples in both Denmark and briefly in Poland, EU Member States are conducting practices that advertently harm asylum seekers and by proxy inflict disproportionate harm on to women.

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To make progress towards gender-sensitive protection for female asylum seekers and refugees, the EU must implement consistent procedures across Member States, promote harmonisation in asylum outcomes, and address issues such as how vulnerability is used within laws to regulate how individual assessments are carried out. Furthermore, a centralised system to collect data across all EU Member States, with a commitment to analyse and create action based on them is needed. Not only on the impact of gender sensitive provisions, but influencing factors such as human trafficking as well. Data driven analysis is crucial to support the development of gender sensitive laws alongside those with lived experience and feminist experts to holistically provide laws and policies that protect, not further harm. Only through collective efforts of a diverse group of stakeholders, and genuine commitment to gender-sensitive policies can the EU effectively protect and support those seeking refuge within its borders.

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