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**FGM/C in Asylum Policy:  
The long way towards a gender-sensitive approach**

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## **Abstract**

With increased migrants and asylum seekers world flows, Female Genital Mutilation/Cutting (FGM/C) has become a reality outside of practicing countries, worldwide. This work examines the gender-sensitivity of the European Union's Asylum policy with respect to FGM/C, as it can seriously affect the protection and wellbeing of female asylum seekers. The lack of it, hinders them acting as agents of change.

To capture the complexity of the phenomenon within a human rights perspective, this thesis takes Transnational Feminist Theory as a conceptual and analytical framework that places the experiences of women in a broader socio-cultural context. It explores and uncovers the level of gender-sensitivity of existing law and policies, particularly Directives of the Common European Asylum System. Analysed empirical data, which includes GREVIO's first country reports based on the Istanbul Convention's demanding requirements, reveal a discrepancy between policy standards and operative implementation.

The Thesis's innovative character and main contribution lies in a theoretical perspective with a broader socio-cultural context and new instrumental empirical data from the implementation of the Istanbul Convention. Gender-sensitivity in the whole policy cycle is key to uphold the Human Rights of those affected by FGM/C, protect their wellbeing and contribute to their empowerment.

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## **List of Abbreviations**

AIDA	Asylum Information Database
CAT	UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEAS	Common European Asylum System
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CFREU	The Charter of Fundamental Rights of the European Union
COI	Country of Origin Information
CRC	Convention on the Rights of the Child
CSO	Civil Society Organisations
CSR	UN Convention Relating to the Status of Refugees
EASO	European Asylum Support Office
ECHR	The European Convention on Human rights
ECtHR	European Court of Human Rights
EU	European Union
FGM/C	Female Genital Mutilation or Cutting
FEMM	European Parliament's Committee on Women's Rights and Gender Equality
GBV	Gender-Based Violence
GREVIO	The monitoring body of the Istanbul convention is the Group of Experts on Action against Violence against Women and Domestic Violence
ICCPR	International Covenant on Civil and Political Rights
MS	Member States
NGO	Non Governmental Organisation
TFEU	Treaty of the Functioning of the European Union
UN	United Nation
UNFPA	The United Nation Population Fund
UNHCR	The United Nations High Commissioner for Refugees
UDHR	Universal Declaration of Human Rights
UNICEF	United Nations Children's Fund
RQD	Revised Qualification Directive
RPD	Revised Procedures Directive
RRD	Revised Reception Conditions Directive
VAW	Violence Against Women
WHO	World Health Organisation

## Introduction

The thesis topic was chosen on account of the criticisms in which the EU Asylum Policy has received from NGOs, UN agencies/treaty bodies/entities and the European Parliament FEMM Committee for the lack of gender-sensitivity, which disproportionately affects women witnessing multiple vulnerabilities and marginalisation. Including those affected by Female Genital Mutilation/Cutting; whether they have been subjected to the practice or are at risk of it.<sup>1</sup> The author will use the abbreviation ‘FGM/C’, taking into consideration cultural sensitivity.

FGM/C used to be a cultural practice of no concern to those outside of practicing countries. However, especially in the last decade it has received more attention from the international community. Today numerous international conventions and treaties recognise FGM/C as a violation of girls and women’s Human Rights and many countries have criminalised the practice. FGM/C is a cultural tradition, which involves mutilation or cutting of the female genital. The practice according to the World Health Organisation (WHO) has no medical purpose.<sup>2</sup> Nowadays there are still around 200 million girls and women living in the world that have undergone FGM/C.<sup>3</sup> Although FGM/C is mostly performed in Africa, the Middle East and Asia, the increased flow of migrants and asylum seekers has resulted in the practice becoming more visible in other parts of the world.<sup>4</sup> Most of the girls and women from FGM/C practicing countries who seek asylum, do so in European Union (EU) Member States (MS).<sup>5</sup> The United Nations High Commissioner for Refugees (UNHCR) has estimated that around 25 000 girls and women from practicing countries have sought asylum in the EU and around 62% of them have already been subjected to FGM/C, whereas a significant number of women presenting an asylum claim are doing so based on a fear of FGM/C.<sup>6</sup> Furthermore, the End FGM

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<sup>1</sup> Committee on Women’s Rights and Gender Equality Committee on Women’s Rights and Gender Equality, ‘Report on the on the situation of women refugees and asylum seekers in the EU’, *European parliament* [website], 10 February 2016, p. 5,

<<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A8-2016-0024+0+DOC+PDF+V0//EN>>, accessed 20 February 2018.

<sup>2</sup> World Health Organization, ‘Female Genital Mutilation: Fact Sheet’ *WHO* [website], January 2018, Key Facts, <<http://www.who.int/mediacentre/factsheets/fs241/en/>>, accessed 20 February 2018.

<sup>3</sup> *ibid.*

<sup>4</sup> *ibid.*

<sup>5</sup> The UN Refugee Agency, ‘Too Much Pain; Female Genital Mutilation & Asylum in the European Union - A Statistical update (March 2014)’ *UNHCR* [website], March 2014, p. 1,

<<http://www.unhcr.org/53187f379.pdf>>, accessed 20 February 2018.

2018.<<http://www.unhcr.org/53187f379.pdf>>, accessed 20 February.

<sup>6</sup> *ibid.*, p. 2-3.

European Network reports that each year 180 000 girls and women are at risk of being subjected to FGM/C in Europe.<sup>7</sup> It is therefore a transnational issue, which not only concerns practicing countries but also the EU and other parts of the world.

NGOs and those specialising in the issue of FGM/C, criticise the lack of knowledge on FGM/C and its cultural implications in Europe, although awareness is growing.<sup>8</sup> Additionally, the phenomenon affects not only the physical and mental health of women and girls, but also their social life. For these reasons, they require recourses, *inter alia*, medical, psychological and moral support throughout the asylum system. Furthermore, there is a lack of gender-sensitive procedures, *inter alia*, training of staff and identification of specific needs, child specific provisions, interviewing methods and accessing of asylum claims in addition to accommodation facilities. The lack of these services consequently affects their protection and wellbeing.<sup>9</sup>

Gender-sensitivity has been for most parts missing from international law although in the last decades there have been some improvements, especially when it comes to gender-based violence. According to international law, violence against women (VAW) is a violation of Human Rights. FGM/C has been considered VAW officially since the 1993 World Human Rights Conference in Vienna and therefore falls within International Human Rights Law.<sup>10</sup> The discourse on FGM/C within the International community as a human rights violation became more visible around 1979 with increased criticism mainly from feminists, but also the media towards UN for not opposing to a practice that oppressed women.<sup>11</sup> Nevertheless the practice remained a culturally sensitive topic for some time in the Western world. In 1997 an official joint statement was issued by WHO with the United Nations Children's Fund (UNICEF) and The United Nation Population Fund (UNFPA), which supported the

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<sup>7</sup> End FGM European Network, 'FGM in Europe', *End FGM European Network* [website], March 2016, p. 13, <<http://www.endfgm.eu/female-genital-mutilation/fgm-in-europe/>>, accessed 5 March 2018.

<sup>8</sup> *ibid.*

<sup>9</sup> End FGM European Network, 'FGM in EU Asylum Directives on Qualification, Procedures and Reception Conditions: End FGM Network Guidelines For Civil Society', *End FGM European Network* [website], March 2016, p. 8, <[http://www.endfgm.eu/editor/files/2017/03/End\\_FGM\\_Asylum\\_Guide.pdf](http://www.endfgm.eu/editor/files/2017/03/End_FGM_Asylum_Guide.pdf)>, accessed 20 February 2018.

<sup>10</sup> UN General Assembly, 'Vienna Declaration and Programme of Action', *Refworld* [website], 12 July 1993, Art. 38, <<http://www.refworld.org/docid/3ae6b39ec.html>>, accessed 5 March 2018.

<sup>11</sup> R. Howard, *Human Rights and Development in Africa: Women's Rights in English-Speaking Sub-Saharan Africa*, Rowman and Littlefield, 1986, p. 202.

eradication of FGM/C for health- and human rights reasons.<sup>12</sup> Since then more UN institutions have been involved with the eradication of FGM/C at both international and national levels.<sup>13</sup>

### *Problem definition*

Legislations and policies that can benefit those affected by FGM/C in EU MS's asylum systems are already in place. They include provisions in revised directives of the Common European Asylum System (CEAS), which MS are obliged to transpose into their national law. Numerous conventions and treaties add to the existing protection mechanisms. The Directives take into account gender-based persecutions including FGM/C as a possible ground for asylum. Victims of sexual violence, *inter alia*, those who have been subjected to FGM/C are defined as a vulnerable group, and they should be received with gender-sensitive procedures and by trained staff.<sup>14</sup> However, the diverse laws, policies and practices in each MS, have the result of undermining gender related issues in many cases, which in large part derives from an Asylum system that has been seen through the lenses of the male experience. Consequently it creates gaps in the system, especially in the protection of women.<sup>15</sup> Other factors that can contribute to these gaps is the lack of data and knowledge when it comes to FGM/C and asylum seekers, notably in regards to gender-sensitivity. The lack of clear definitions and obligations, constitutes an additional weak spot when it comes to gender-sensitive provisions related to vulnerable people and their specific needs. Lack of monitoring is also an issue when it comes to State's implementation of the directives in practice.

The thesis proposes to explore ways in which existing gender-sensitive provisions, in particular those of the CEAS could be enhanced in practice. Ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) can enhance existing provisions by legally binding State Parties to improve gender-sensitivity, which

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<sup>12</sup> World Health Organization, 'Eliminating female genital mutilation: an interagency statement UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCHR, UNHCR, UNICEF, UNIFEM, WHO' *WHO* [website], 2008, p. 3, <[http://apps.who.int/iris/bitstream/10665/43839/1/9789241596442\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/43839/1/9789241596442_eng.pdf)>, accessed 8 March 2018.

<sup>13</sup> *ibid.*

<sup>14</sup> End FGM European Network, 'FGM in EU Asylum Directives on Qualification, Procedures and Reception Conditions: End FGM Network Guidelines For Civil Society', *op. cit.*, p. 6.

<sup>15</sup> Committee on Women's Rights and Gender Equality, *loc. cit.*

includes within the Asylum System in the case of those who have been or are at risk of being subjected to gender-based violence, *inter alia*, FGM/C. The Convention requires State Parties to interpret all of the Refugee Convention grounds in a gender-sensitive manner and to provide gender-sensitive reception conditions, support services and asylum procedures. The convention also requires States Parties to collect disaggregated relevant statistical data and support research in the field of all forms of violence, which includes FGM/C. Furthermore, they have a monitoring body, GREVIO that monitors the implementation of the Convention in State Parties and makes recommendations for improvements.

### *Research questions*

The thesis will seek to answer the following research question: “*To what extent is the EU Asylum Policy, particularly provisions of the CEAS Directives, gender-sensitive in the case of FGM/C?*”. In doing so, it explores to what extent the Istanbul Convention enhances these provisions, to which degree the EU Member States are applying existing gender-sensitive provisions when it comes to FGM/C related asylum cases in practice, and what can be improved? By answering these questions, the thesis seeks to shed a light on the functions of the current EU Asylum Policy in regards to gender-sensitive provisions that can benefit asylum seekers affected by FGM/C, both in regards to terms of protection and wellbeing. Moreover, how Asylum Policy and the practices of MS can be enhanced in the same respect. The author hopes to inspire a deeper understanding of gender-sensitivity and what it entails. More importantly, from a Transnational Feminist perspective, as western structures can lack further the cultural aspect of gender-sensitivity among other factors. The ultimate goal of the thesis is to offer a deeper understanding of the current EU Asylum Policy in terms of gender-sensitivity, especially in regards to the treatment of those who are affected by FGM/C.

### *Methodology*

The author looked at the topic from a Transnational Feminist perspective and used a combination of methods: literature review, interviews and policy analysis reports/tools. Namely, a systematic literature review was conducted, mainly through various databases, including *ProQuest and EBSCO*. Scholarly work that was relevant to the



topic came from peer reviewed academic journals, *inter alia*, *Human Right Quarterly* and *Feminist Legal Studies*.

There have been conducted researches on FGM/C that focus more on the assessment of asylum claims, but not much attention has been brought to asylum procedures leading up to the assessment, which can affect women's wellbeing and asylum status. The thesis focuses on this very aspect and explores the level of gender-sensitivity in regards to FGM/C in Asylum Policy and the discrepancy between policy and practice, as it ultimately affects those affected by FGM/C, their protection, and the accommodation to their specific needs. Additionally, it explores how enhancing gender-sensitivity in asylum policy could improve the treatment of those affected by FGM/C.

Throughout the thesis an analysis will be conducted on legal- and official documents, researches, articles and interviews by researches, specialists on FGM/C and institutions of the UN, EU and NGO's. Interviews form a UNHCR documentary "Too Much Pain - The Voices of Refugee Women" will be used, as it will strengthen the thesis by incorporating the experiences of women who have gone through FGM/C and have experiences from the European Asylum system. Furthermore the documentary features interviews with specialists, which are relevant to the thesis topic. This enabled the author to gain a deeper understanding on different asylum systems, and how they are affected by diverse law and policies. The relevant policies of two MS will be compared, Sweden and Italy. Interviews were conducted with Dr. Hannes Sigurjonsson, Department of Plastic and Reconstructive Surgery, Karolinska University Hospital and Johanna Nelles, Administrator, Violence against Women Division, Secretariat of the Istanbul Convention monitoring mechanism.

The theoretical and conceptual framework of Transnational Feminist Theory with a Sociological perspective serves the purpose of the deeper understanding of the thesis topic and can help explaining the power relation between institutions and practices, deeply rooted in patriarchal structures. However, the perspective of Feminist Theory has been criticised for being a perspective that comes from western women, applying universalistic ideas to all women. Furthermore, Human Rights have been criticised for being built on universalistic ideas, disregarding Cultural Relativist

ideas of different standards depending on culture.<sup>16</sup> There has been much debate on the issue between feminist perspectives. Radical feminists emphasise on the universal experience of VAW while Intersectional Feminists do not believe in the universal oppression of women, but rather that gender being one factor of many, such as race and migration status that affects women's inequality.<sup>17</sup> When improving the treatment of asylum seekers that have been affected by FGM/C many factors need to be observed such as power relations rooted from patriarchal structures like mentioned before, but other factor such as culture need to be taken into account in addition to power relations between the West and the so called "rest." The perspective from Transnational Feminism is based on gender, history, culture and geography and has its foundation in postcolonial-, cultural and feminist studies including critical studies, *inter alia*, Marxism and Post Structuralism. More importantly Transnational Feminism takes into consideration culture in a globalised context, which is important when dealing with a topic such as FGM/C and asylum systems.<sup>18</sup> While taking into consideration different feminist approaches within Feminist Theory, the perspective Transnational Feminism will be applied for the main theoretical framework to understand better how gender-sensitivity can improve the treatment of asylum seekers that have gone through FGM/C by accommodating to their specific needs.

### *The aim*

The aim of the thesis is to provide a theoretically informed analysis concerning the degree of gender-sensitivity of EU Asylum Policy in the case of FGM/C, identify key issues pertaining to old and new challenges concerning FGM/C in the EU. The thesis will add to the limited research on the treatment of female asylum seekers who are or could be affected by FGM/C, both in regards to their protection and the accommodation of their specific needs. Moreover, analysing the newly published GREVIO reports in regards to gender-sensitivity in relation to FGM/C and Asylum

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<sup>16</sup> A. D. Balta, 'Protection afforded to asylum seekers on Female Genital Mutilation/Cutting related grounds: a review of the theory and practice of Europe', MA thesis, Tilburg University, 2014, pp. 23, <<http://arno.uvt.nl/show.cgi?fid=135405>>, accessed 8 March 2018.

<sup>17</sup> M. K. Beard, 'Feminist Theory, Gender Mainstreaming and the European Union: Examining the effects of EU gender mainstreaming and national law on female asylum seekers in the United Kingdom and Republic of Ireland', PhD thesis, University of Sussex, 2016, pp. 23, <<http://sro.sussex.ac.uk/73093/1/Beard%2C%20Monica%20Katherine.pdf>>, accessed 8 March 2018.

<sup>18</sup> M. Blackwell, L. Briggs and M. Chiu, 'Transnational Feminism Roundtable', *Frontiers* [online journal], vol. 36, no. 3, 2015, p. 10, <[file:///Users/elinborgko/Downloads/Transnational\\_Feminisms\\_Roundt%20\(2\).pdf](file:///Users/elinborgko/Downloads/Transnational_Feminisms_Roundt%20(2).pdf)>, accessed 20 March 2018.

will present new important empirical data on the issue and inform policy analysis set standards.

Nonetheless there are limitations regarding the lack of data on practices related to FGM/C, yet by writing this thesis the author aspires to create more discussions and interests on FGM/C in Asylum Policy and the importance on collecting data to improve both the protection and the accommodation of specific needs of those who have or are at risk of undergoing FGM/C.

### *Structure*

The thesis consists of two parts. The first part will discuss the ‘Theoretical and Analytical Framework: Understanding Deeply rooted Constructs’, with the aim to gain a deeper understanding of what FGM/C is, the reasons behind its continuation and the importance of applying gender-sensitivity when dealing with the phenoma. Feminist Theory will be applied as a theoretical perspective to help conceptualise the thesis subject, reviewing conflicting theories on FGM/C and then focusing on the perspective of Transnational Feminism. FGM/C will be explored further as a Human Rights issue in the context of asylum, focusing on FGM/C as VAW, emphasising on the Istanbul Convention. The theoretical and analytical framework sets the scene for an insight of deeply rooted constructs.

The second part of the thesis, will discuss the ‘Policy Framework: Checking Policy Against Reality’, where EU Asylum Policy will be analysed in relation to gender-sensitivity and FGM/C, focusing on three main Directives: the Revised Qualification Directive (RQD), Asylum Procedures Directive (RPD) and Reception Conditions Directive (RCD) and to relevant provisions of the Istanbul Convention. Existing gender-sensitive provisions will then be reviewed against reality by analysing data on MS practices, including country reports from GREVIO. A case study will also be conducted to analyse different practices between a frontline and a receiving country. The policy framework will provide a deeper understanding of how policy is applied in practice, and what gender-sensitive provisions or an approach can enhance both future policies and practices. It is all about delivering Human Rights in practice.

## **Part I Theoretical and Analytical framework: Understanding deeply rooted constructs**

As has been mentioned gender-based violence was for a long time not considered a human rights issue, however this changed following much feminist activism. Now gender-based violence is defined as a human rights violation within International law.

Feminist Theory is important when analysing a topic, which relates to gender-based violence as it explains how it derives from unequal power relations between men and women. The first section will therefore discuss the main emphasises and perspectives of Feminist Theory. Nonetheless, although Human Rights have improved especially the legal status of women affected by gender-based violence such as FGM/C, loud criticisms have been voiced from different perspectives. Namely, those raised by Cultural Relativists and Intersectional Feminists on Human Rights for being universalistic and built on western values. Others criticise the lack of consideration of the diversity of women, which have different cultural backgrounds and are consequently affected differently in addition to having various needs. These ideas raised by the scholars *inter alia* MacKinnon 1983, Mohanty 1984, McEwan 2001 and Trueblood 1999 will be discussed in an additional section.

The second section will be devoted to Transnational Feminist perspective which is relevant for the thesis topic as it tries to bridge between tensions of Universalism and Cultural Relativism in a globalised context. Ideas from the scholars *inter alia* Blackwell, Briggs and Chiu 2015 and Grewal and Kaplan 1994 will be discussed. The perspective is also instrumental to the conceptualisation of gender-sensitivity in the context of FGM/C and asylum, which will be discussed further in a separate section. It is, like mentioned before, all about delivering Human Rights in practice.

### **1. Theoretical and Conceptual Framework**

#### **1.1. Contextualisation**

FGM/C used to be considered a cultural tradition of no concern to others, whereas it is now recognised as a violation of Human Rights by a number of UN institutions.<sup>19</sup> FGM/C being defined as a human rights violation within UN institutions came about

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<sup>19</sup> World Health Organization, 'Eliminating female genital mutilation', p. 3.

after increased criticism from feminists and the media about the lack of action against a practice that oppressed women.<sup>20</sup> A joint statement was made in 1997 by WHO, UNICEF and UNFPA that supported the eradication of FGM/C for reasons relating to health and Human Rights.<sup>21</sup> The UNHCR claims that FGM/C violates; “‘a person’s rights to health, security and physical integrity; the right to be free from torture and cruel, inhuman or degrading treatment; and the right to life when the procedure results in death.’”<sup>22</sup>

As has been made clear FGM/C is a cultural tradition and it is estimated that more than 200 million girls and women alive today have been subjected to it. FGM/C is mostly performed in Africa within certain communities in 29 countries.<sup>23</sup> FGM/C is also practiced by determined ethnic groups or communities in the Middle East, Asia, Eastern Europe and South America, though on a smaller scale.<sup>24</sup>

With the influx of migrants and asylum seekers, girls and women that have undergone FGM/C now live all over the world, including Europe.<sup>25</sup> Although the origins of FGM/C are not clear, the practice existed before Christianity and Islam. Furthermore historians claim that FGM/C was practiced in the fifth century BC, even Egyptian mummies show signs of the practice. FGM/C has been practiced in Africa, Philippines and certain tribes from the Amazon and Australia in addition to early Romans and Arabs. Western societies have not been free of practices such as FGM/C. In Western Europe and in the United States the practice was in the form of clitoridectomy and was still being performed in the 1950s. It was used to treat “‘hysteria, epilepsy, mental disorders, masturbation, nymphomania and melancholia.’”<sup>26</sup>

Definitions of the practice have varied over a long period of its use, additionally definitions can vary across cultures. At first when FGM/C gained more attention in the International community the practice was mostly referred to as female circumcision. However that term received criticism mainly for being compared to

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<sup>20</sup> Howard, loc. cit.

<sup>21</sup> World Health Organization, ‘Eliminating female genital mutilation’, p. 3.

<sup>22</sup> The UN Refugee Agency, ‘Too Much Pain; Female Genital Mutilation & Asylum in the European Union - A Statistical update (March 2014)’, op. cit., p. 1.

<sup>23</sup> United Nations Population Fund, ‘Female Genital Mutilation (FGM) Frequently asked questions’, *UNFPA* [website], February 2018, para. 13, <<https://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions>>, accessed 12 March 2018.

<sup>24</sup> World Health Organization, ‘Female Genital Mutilation: Fact Sheet’, loc. cit.

<sup>25</sup> The UN Refugee Agency, loc. cit.

<sup>26</sup> United Nations Population Fund, op. cit., para. 11.

male circumcision, which is a procedure that has other purposes and different physical and psychological effects.<sup>27</sup> Male circumcision is a procedure, which involves cutting of the penis foreskin. The reasons behind performing male circumcision are “mainly social and health related, in addition to religion and ethnicity.”<sup>28</sup> Like FGM/C there is a pressure from the community to conform to the tradition. However the effects of the practice are very different, while circumcision is believed to have health and sexual benefits, FGM/C has negative effects on health and sexual pleasure.<sup>29</sup> In Eastern and Southern Africa, male circumcision has been encouraged as it can reduce the transmission of HIV while FGM/C can increase it.<sup>30</sup> The WHO has also concurred that male circumcision decreases the risk of HIV.<sup>31</sup>

In the 1970s a new term emerged “female genital mutilation” which has been commonly used within the health and human rights field since then, as it is both a distinction from male circumcision and stresses the seriousness of the practice with it being a human rights violation aimed towards women and girls.<sup>32</sup> However in the late 1990s another term was introduced “Female Genital Cutting” as a criticism against the term “Female Genital Mutilation” for the reason of being demeaning, or painting a bad picture of those who perform it and that it could furthermore alienate the practice communities or cause a backlash. In some cases, organisations choose to use both terms, Female genital mutilation/cutting” or FGM/C, taking into consideration cultural sensitivity.<sup>33</sup>

According to the World Health Organisation FGM/C; “comprises all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons.”<sup>34</sup> There are four major types of FGM/C according to WHO:

**Type 1:** Often referred to as **clitoridectomy**, this is the partial or total removal of the clitoris (a small, sensitive and erectile part of the female genitals), and in very rare cases, only the prepuce (the fold of skin surrounding the clitoris).

**Type 2:** Often referred to as **excision**, this is the partial or total removal of the clitoris and the labia minora (the inner folds of the vulva), with or without excision

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<sup>27</sup> *ibid.*, para. 9.

<sup>28</sup> World Health Organisation, ‘Male Circumcision: Global trends and determinants of prevalence, safety and acceptability’ *WHO* [website], 2007, P. 5, <[http://apps.who.int/iris/bitstream/10665/43749/1/9789241596169\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/43749/1/9789241596169_eng.pdf)>, accessed 12 March 2018.

<sup>29</sup> *ibid.*

<sup>30</sup> United Nations Population Fund, *loc. cit.*

<sup>31</sup> World Health Organisation, ‘Male Circumcision: Global trends and determinants of prevalence, safety and acceptability’, *op. cit.*, p. 14.

<sup>32</sup> United Nations Population Fund, *loc. cit.*

<sup>33</sup> *ibid.*

<sup>34</sup> World Health Organization, ‘Female Genital Mutilation: Fact Sheet’, *op. cit.*, Procedures.

of the labia majora (the outer folds of skin of the vulva).  
**Type 3:** Often referred to as **infibulation**, this is the narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the labia minora, or labia majora, sometimes through stitching, with or without removal of the clitoris (clitoridectomy).  
**Type 4:** This includes all other harmful procedures to the female genitalia for non-medical purposes, e.g. pricking, piercing, incising, scraping and cauterizing the genital area.<sup>35</sup>

Some women have to go through excision again if it was not properly done for the first time, as was explained by Djenabou Teliwel Diallo, an anti-FGM/C activist in Belgium in the UNHCR documentary “Too much pain.” When she went through excision again at the age of 15 a vein got cut which resulted in massive bleeding and almost led to her death.<sup>36</sup> In addition when women have gone through infibulation they often have to go through cutting again or de-infibulation where the sealed vaginal opening is cut open again.<sup>37</sup> Re-infibulation is when the vagina is sealed again back together after de-infibulation, usually after giving birth.<sup>38</sup> This means that the pain and risk factors of FGM/C is not only bound to the period of the initial procedure but can last throughout their lives.

The practice is mostly performed on girls from as early as infancy up to the age of 15 commonly by traditional circumcisers.<sup>39</sup> The traditional circumcisers are usually elders in the community and relatives such as grandmothers, in some cases it is performed by barbers or traditional health practitioners.<sup>40</sup> Tools such as special knives, scissors and razor blades are mainly used. Sanitation is often inadequate and for the most part there is no use of antiseptics, which increases the risk of infections. Furthermore the use of anaesthetics is rarely used so the girl or the woman who is being cut goes through excruciating pain.<sup>41</sup> Some suggest that medicalisation of FGM/C might lessen the risks that accompany the practice while other disagree.

Today medicalisation of FGM/C is becoming more popular, the term refers to the practice being done by medical professionals. Medicalisation can be considered to have the benefits of reducing the risk of severe pain and infections, however Dr. Pierre Foldes Surgeon Urologist MD from France argues that the medicalisation of

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<sup>35</sup> *ibid.*

<sup>36</sup> *FGM Too Much Pain - The Voices of Refugee Women: (part 2) What is FGM?* [video], UNHCR, 17 March 2014, <<https://www.youtube.com/watch?v=MHTx0-kCsdY>>, accessed 20 February 2018.

<sup>37</sup> World Health Organisation, ‘Female Genital Mutilation: Fact Sheet’, *loc. cit.*

<sup>38</sup> World Health Organization, ‘Eliminating female genital mutilation’, *op. cit.*, p. 12.

<sup>39</sup> World Health Organisation, ‘Female Genital Mutilation: Fact Sheet’, *op. cit.*, Key Facts.

<sup>40</sup> United Nations Population Fund, *op. cit.* para. 14.

<sup>41</sup> *ibid.* para. 15.

FGM/C can not be considered a better practice, even though medically skilled doctors can avoid cutting a blood vessel they can cut deeper and make the injuries more severe. Dr. Foldes even goes as far saying that medicalisation makes the practice of FGM/C even worse than the traditional way of practicing it. Furthermore he criticises the fact that medical professionals are using their skills not to cure.<sup>42</sup> Their actions go against “The fundamental medical ethic to “Do no harm.”<sup>43</sup> Medical professionals are violating Human Rights such as the right to life, physical integrity and health. Furthermore it’s even more serious when they perform the practice where it is specifically prohibited by law.<sup>44</sup> Even though the practice of FGM/C has been criminalised in many countries there have been reports regarding the practice of re-infibulation done by medical professionals in Europe and North America, reasons being to uphold the patient's culture and choice of procedure although in some cases the patient did not ask for it.<sup>45</sup> By medicalising the practice for health or cultural reasons, it can also be interpreted as a certain legitimisation of the practice. Even though medicalisation is becoming more popular as it is believed to be safer, in reality both methods have many risk factors.

Risk factors can both be short and long term, with physical and psychological consequences also affecting women’s social lives. According to the WHO, the most common risk factors are; severe pain and bleedings, problems urinating and passing menstrual blood, cysts and infections, complications in childbirth and risk of newborn deaths. FGM/C also affects the sex life of women both physically and psychologically. Other psychological factors can be depression, anxiety and post-traumatic stress.<sup>46</sup> Ifrah Ahmed, an anti-FGM/C activist living in Ireland, described the procedure to be painful in every way not only physically but also mentally and emotionally.<sup>47</sup> Emotional pain can be related to the betrayal girls and women experience. According to Fabienne Richard who is a midwife and working in the Institute of tropical Medicine in Belgium they feel betrayed because people dear to them made them go through the procedure and many feel as if their childhood was

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<sup>42</sup> *FGM Too Much Pain - The Voices of Refugee Women: (part 2) What is FGM?*, loc. cit.

<sup>43</sup> World Health Organization, ‘Eliminating female genital mutilation’, loc. cit.

<sup>44</sup> *ibid.*

<sup>45</sup> *ibid.*

<sup>46</sup> *ibid.*, No health benefits, only harm

<sup>47</sup> *FGM Too Much Pain - The Voices of Refugee Women: (part 1)* [video], UNHCR, 7 March 2014, <<https://www.youtube.com/watch?v=JwepmsCr1bw>>, accessed 20 February 2018.



stolen away from them.<sup>48</sup> Dr. Foldes asserts that FGM/C affects girl's and women's future relationships with other women and men including their partner because of the affects the procedure has on them, not only related to her anatomy but also her sexuality and image. All of these factors have big impacts on their whole social life.<sup>49</sup>

Before analysing existing legal and policy framework relating to FGM/C in the context of EU Asylum Policy, the next chapter will analyse Feminist Theory in relation to FGM/C. The analysis will create grounds for the conceptualisation of the thesis subject and help gain a deeper understanding of the complex phenomena that is FMG/C.

## 1.2. Feminist Theory

FGM/C is a form of gender-based violence (GBV), which is mostly perpetrated by men or by traditions that derive from patriarchal structures as in the case of FGM/C, whereas the victims are in majority women and girls.<sup>50</sup> Applying Feminist Theory is important when analysing topics related to gender-based violence as it concerns gender inequality that derives from unequal power relations. Feminism has been a controversial movement and defined in many ways, however the main objective of feminism relates to gender equality. Feminism relates to political movements such as the fight for suffrage in addition to social theories and philosophies that mostly concern gender relations.<sup>51</sup> “Feminist theory looks at the origins, characteristics, and forms of gender inequality in order to focus on gender politics, power relations, and sexuality.”<sup>52</sup> Feminism deals with issues that are immediate, *inter alia*, “reproductive rights, domestic violence, maternity leave, equal pay, sexual harassment, discrimination, and sexual violence as well as long term issues as patriarchy stereotyping, objectification, and oppression.”<sup>53</sup> Feminist movements have produced a body of theory with the goal of explaining gender inequalities and how to overcome

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<sup>48</sup> *FGM Too Much Pain - The Voices of Refugee Women: (part 2) What is FGM?*, loc. cit.

<sup>49</sup> *FGM Too Much Pain - The Voices of Refugee Women: The need for an age and gender sensitive reception system (part 5)* [video], UNHCR, 7 March 2018, <[https://www.youtube.com/watch?v=\\_VoEMBA1V5E](https://www.youtube.com/watch?v=_VoEMBA1V5E)>, accessed 20 February 2018.

<sup>50</sup> European Institute for Gender Equality, ‘What is gender-based violence’ *EIGE* [website], 2018, para. 1, <<http://eige.europa.eu/gender-based-violence/what-is-gender-based-violence>>, accessed 25 March 2018.

<sup>51</sup> R. Peet, & E. Hartwick, *Theories of development: Contentions, arguments, alternatives*, The Guilford Press, New York, 1990, p. 240.

<sup>52</sup> *ibid.*

<sup>53</sup> *ibid.*

them.<sup>54</sup> Before discussing the evolvments within feminism and the different strands of Feminist Theory, the common definitions of ‘gender inequality’ in addition to ‘gender’ and ‘sex’ will be explained.<sup>55</sup>

Gender is usually thought as learned and sex as biologically determined, however sociologists consider both sex and gender to be constructed by social forces.<sup>56</sup> According to the sociologists Giddens and Sutton, gender inequality is sustained because of patriarchy where the power of men over women is socially constructed in society. Furthermore gender relations are built on male dominance that constructs the meaning of masculinity and femininity which put women in subordinate roles. Giddens and Sutton further explain that although gender relations are still deeply rooted by the patriarchy they also have the chance of changing.<sup>57</sup> Still today according to UN Women there are “differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources, as well as decision-making opportunities”<sup>58</sup>.

There have been different emphasises from feminists on which social processes affect gender inequality. While Liberal feminists have focused on sexism and discrimination of many different factors, *inter alia*, in the workplace and in the education system that contribute to inequalities between the sexes, Socialist feminists draw from Marxist Conflict Theory and blame patriarchy and Capitalism on the inequalities between men and women.<sup>59</sup> The so called post-movements that came about in the third wave of feminism focus on the different experiences of gender inequality and criticise former ideas of feminism that proclaimed universal gender inequality faced by women.<sup>60</sup>

Feminist movements have commonly been divided by feminist scholars into three so called “waves.” However it has to be considered that through history there have been many diverse movements with different emphasis and the waves only mark

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<sup>54</sup> A. Giddens & P. W. Sutton, *Sociology*, 7th edn, Polity Press, Cambridge, 2013, p. 653.

<sup>55</sup> *ibid.*, p. 653.

<sup>56</sup> *ibid.*, p. 638.

<sup>57</sup> *ibid.*, p. 640.

<sup>58</sup> UN Women, ‘Gender Equality Glossary’, *UN Women Training Centre eLearning Campus* [website], 24 April 2018, Gender, <<https://trainingcentre.unwomen.org/mod/glossary/print.php?id=36&mode=&hook=ALL&sortkey=&sortorder=&offset=-10>>, accessed 24 April 2018.

<sup>59</sup> Giddens & Sutton, *op. cit.* p. 653.

<sup>60</sup> J. Coleman, ‘An Introduction to Feminisms in a Postfeminist Age’, *Women's Studies Journal*, vol. 23, no. 2, 2009, p. 5.

the division of the most popular or visible movements in a particular time.<sup>61</sup> The first wave, usually referred to a period from the mid nineteenth century to the beginning of the twentieth century, focused on political and social equality of women, which included movements that emphasised on the right to women's suffrage and equality in law.<sup>62</sup> The second wave began in the sixties and focused as before on the social and political equality moreover with an added focus of liberation and empowerment. Furthermore radical movements fought against patriarchal male dominance over the universal group of women, where the popular slogan 'the personal is political' came about.<sup>63</sup> Radical feminists were one of the main supporters of those ideas, furthermore they considered VAW a tool in the systematic oppression of women.<sup>64</sup>

After the emergence of the second wave the critical voices of minority groups became more apparent which involved new approaches within feminism. Among them were Black-, Socialist- and Marxist Feminism.<sup>65</sup> The critique on the lack of representation of minority groups and the injustice that coloured women and other marginal groups experienced in addition to an increasingly changing globalised world which among other things produced multiculturalism, marked the so-called third wave or new feminism in the early nineties.<sup>66</sup> The movements criticised the former universal ideas of feminism that mainly derived from upper-middle class white women, for regarding women a single social group that experienced the same gender inequalities. This criticism thus started to change the discourse of feminism.<sup>67</sup> The approaches of the third wave emphasised more on the different forms of oppression between women that were influenced by factors *inter alia* history, ethnicity and culture rather than an unified experience of women derived from patriarchal oppression.<sup>68</sup> The most visible approaches from the third wave were the so called post-movements, *inter alia*, Post-modernism, Post-structuralism, Post-colonialism and Transnationalism which will be focused on in a separate section<sup>69</sup>.

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<sup>61</sup> *ibid.*

<sup>62</sup> Giddens & Sutton, *op. cit.*, p. 664.

<sup>63</sup> *ibid.*

<sup>64</sup> *ibid.*, p. 654.

<sup>65</sup> *ibid.*, p. 665.

<sup>66</sup> Coleman, *op. cit.*, p. 6.

<sup>67</sup> Peet & Hartwick, *op. cit.*, p. 241.

<sup>68</sup> *ibid.*, p. 240.

<sup>69</sup> *ibid.*, p. 665.

### 1.2.1. Conflicting theories on FGM/C

After conducting a literature review on theories related to FGM/C and additionally in the context of Asylum, the main theme detected was the tension between FGM/C; considered as VAW which is a human rights violation derived from the universal notion that all women are subordinated by patriarchal structures, versus; the notion that women do not experience the same universal subordination which is mostly defined by western women, but rather that women have different experiences and realities. Moreover Human Rights should respect different culture and traditional practices such as FGM/C. Some theories or perspectives have tried to bridge the gap between this tensions by emphasising that people both have the right to culture and the right to health and to be free from violence. Additionally this balance should be honoured by governments, respecting the rights and wellbeing of its citizens.

One of the most known radical feminists, Catharine MacKinnon describes Feminist Theory as a theory of power. She asserts that “sexuality is gendered as gender is sexualised.”<sup>70</sup> According to her, gender and sex are interlinked by a system of sex inequality although the two are usually distinct between the more social and the more biological.<sup>71</sup> She furthermore discusses the Feminist Theory of knowledge which is connected to: “Feminist critique of power because the male point of view forces itself upon the world as its way of apprehending it.”<sup>72</sup> She further notes that the male standpoint affects all aspects of women’s lives, including her body.<sup>73</sup> According to MacKinnon the male standpoint affects processes and procedure including the law system, which excludes the experiences of women.<sup>74</sup> Moreover she explains how the State condones the male use of power within the private sphere by making the home and the family a personal or a private matter.<sup>75</sup> Often gender roles further give men the role of providing source of income while women are bound to the home in the role of the caregiver. This power relation can give men the chance to subordinate women, in some cases with violence. Violence or oppression is therefore happening in the private sphere that was created by the public or the political sphere,

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<sup>70</sup> C. A. MacKinnon, ‘Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence’, *Signs*, vol. 8, no. 4, 1983, p. 635, JSTOR [online database], accessed 19 April 2018.

<sup>71</sup> *ibid.*

<sup>72</sup> *ibid.*, p. 636.

<sup>73</sup> *ibid.*

<sup>74</sup> *ibid.*, p. 658.

<sup>75</sup> *ibid.*, p. 656.

entrenched by structures created from the male standpoint, making the personal political as argued by MacKinnon.<sup>76</sup>

As some systems, such as the asylum system is still deeply rooted in the public and private dichotomy even within the European Court of Human Rights (ECtHR), it threatens the protection of women who experience or are possible victims of violence within the family like FGM/C. The ECtHR case law has for example ruled FGM/C related cases inadmissible on the grounds that the applicant could receive protection from their family.<sup>77</sup> Even though FGM/C is a tradition that not only concerns the closest family but the community as a whole. When dealing with cases such as FGM/C, western systems can look at it as a private issue of the family but not a societal tradition which discriminates and subordinates women.

Similarly to the ideas of MacKinnon on the male standpoint, Dorothy Smith a feminist sociologist elaborates in her writings on how societies are the creation of men through history as they wrote the texts and rules, which still affect society and the citizens thinking.<sup>78</sup> Therefore Smith argues that “[t]he only way of knowing a socially constructed world is knowing it from within.”<sup>79</sup> The sociologist Michele Dillon further elaborates on Smiths ideas, by claiming that realising how our social location affects the way we see the experiences of those “whose experiences are separate from ours, and when we see those people’s experiences from within their subjectively embodied location.”<sup>80</sup> By having different standpoints consequently means that there is not only one universal male centric standpoint of truth, which is entrenched in ruling texts.<sup>81</sup> According to Dillon, by “beginning with women’s experiences, it would produce transformative knowledge and social equality”<sup>82</sup>. Applying Standpoint Theory when designing asylum policies can be beneficial as emphasis is put on gaining knowledge not only from women’s point of view within structures of a system that is mostly derived from males point of view as has been stressed previously, but also from the standpoint of asylum seekers that come from

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<sup>76</sup> *ibid.*

<sup>77</sup> A. Middelburg & A. Balta, ‘Female Genital Mutilation/Cutting as a Ground for Asylum in Europe’, *International Journal of Refugee Law* [online journal] 2016, Vol. 28, No. 3, p. 445-446, Oxford University Press, Oxford, 2016, <<https://academic.oup.com/ijrl>>, accessed 23 April 2018.

<sup>78</sup> M. Dillon, *Introduction to sociological theory: Theorists, concepts, and their applicability to the twenty-first century*, 2nd edn, John Wiley & sons, Chichester, 2014, p.333.

<sup>79</sup> D. E. Smith, *The Conceptual Practices of Power: A Feminist Sociology of Knowledge*, 4th edn, Northeastern University Press, Boston, 1990, p. 22, cited in M., Dillon, *op.cit.*, p.337.

<sup>80</sup> Dillon, *loc. cit.*

<sup>81</sup> *ibid.*, p. 338.

<sup>82</sup> *ibid.*, p. 344.

different cultures and have different values. The Feminist Sociology Standpoint Theory therefore challenges the male dominance of power, however still taking into account how women's experiences will also challenge other types of dominance such as between the West and developing countries, hereafter the South. The theory can thus be an important perspective when dealing with women's issues within structures that derive from the male standpoint, furthermore when dealing with multiple marginalised women like in the case of asylum seekers that are affected by FGM/C. Taking into consideration this approach would help gain knowledge on the specific needs of this vulnerable group within the asylum system and its policies as asylum systems have been criticised for being too male centric.

Elaborating on other types of dominance such as between the West and South, challenges to the idea that women experience the same subordination have been put forward. Postcolonial Feminism emphasises on the ruling truth or knowledge that derives from colonisation which according to Mohanty is entrenched through "economic and political hierarchies to the production of a particular cultural dis[-]course about what is called the "Third World.""<sup>83</sup> Furthermore, she argues that women from the South are portrayed by western women as victims, as in the case of FGM/C where they have been portrayed as victims of a barbaric custom deriving from patriarchal structures, something that is associated with their culture but not those of the West.<sup>84</sup>

Black activists and women from the South argue that the western feminist point of view regarding the dominant source of oppression deriving from men does not apply to all women as other factors contribute to their oppression, *inter alia* race and class. Therefore women from the South who come from FGM/C practicing countries are facing multiple vulnerabilities and marginalisation, not only oppressed by gender but also other factors, *inter alia*, race and imperialism which is also experienced by men, although taking into account that oppression in large parts derives from patriarchal structures.<sup>85</sup> Discourses on women from the South experiencing different forms of oppression instead of an universal oppression of women linked to the notion of a global sisterhood, a discourse deriving from the

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<sup>83</sup> C. T. Mohanty, 'Under Western Eyes: Feminist Scholarship and Colonial Discourses', *Boundary 2*, vol. 12, no. 3 - vol. 13, no. 1, 1984, p. 333.

<sup>84</sup> *ibid.*, p. 337.

<sup>85</sup> C. McEwan, 'Postcolonialism, Feminism and Development: Intersections and Dilemmas', *Progress in Development Studies*, vol. 1, no. 2, 2001, p. 98.

West, became more visible at UN World conferences on Women such as those held in Mexico City in 1975 and Copenhagen in 1980.<sup>86</sup> Nowadays it can be argued that feminism is moving more away from the global sisterhood idea and taking into consideration the diverse forms of oppressions faced by women.<sup>87</sup> However McEwans argues as Spivak that there is still a need for greater sensitivity to the relationship between power, authority, positionality and knowledge. That is why Postcolonial Feminists according to McEwans “have made [an] important contribution in theorising both power and knowledge and the significance of discourse.”<sup>88</sup>

In relation to the notion that women do not experience the same universal subordination, other theories such as Intersectional Feminism builds on ideas that criticise radical feminism for claiming that women have the same universal experience of VAW. They do not believe in the universal oppression of women but rather that gender is one factor of many, *inter alia*, as race and migration status that affects women’s inequality.<sup>89</sup> In relation to the radical feminist point of view on the universal experience of VAW, Universalism claims a set of universal standards that every culture embraces, *inter alia*, Human Rights. Moreover, that GBV such as FGM/C should be recognised as a human rights violation by all cultures. Similarly to claims of Intersectional Feminists, Cultural Relativists believe in different standards depending on culture, for example although FGM/C is recognised as a human rights violation by universal structures such as the UN that has been influenced by western powers, it does not mean that all cultures look at it as a human rights violation. Furthermore that each culture should have the right to practice their culture and follow their traditions.<sup>90</sup>

Continuing on the argument on FGM/C in relation to asylum and the tension between Universalism and Cultural Relativism, the scholar Leigh A. Trueblood argues that of the fundamental principle of International law is that all States have an obligation towards its citizens.<sup>91</sup> The so-called Universal Human Rights have its foundation in western values, and mostly ignore values such as those who derive from

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<sup>86</sup> *ibid.*, p. 99.

<sup>87</sup> G. C. Spivak, *The postcolonial critic: interviews, strategies, dialogue*. Routledge, London, 1990, cited in C. McEwan, *op. cit.*, p. 105.

<sup>88</sup> *ibid.*, p. 105.

<sup>89</sup> Beard, *loc. cit.*

<sup>90</sup> Balta., *loc. cit.*

<sup>91</sup> L. A. Trueblood, ‘Female Genital Mutilation: A Disussion of International Human Rights Instuments, Culteral Sovereignty and Dominance Theory’, *Denver Journal of International Law and Policy*, 1999, p. 437.

Islamic and African cultures. Taking that into consideration the meaning of Human Rights can vary between cultures.<sup>92</sup> While many FGM/C practicing societies don't consider the practice as a human rights violation, most Western societies including EU MS support the legal grounding against the practice, which has been laid down in number of treaties.<sup>93</sup> However there is also legal support for the practice from the concept of cultural sovereignty which consequently creates tension in the international community when it comes to FGM/C.<sup>94</sup> As argued by Trueblood when discussing the tension between Human rights and Cultural Sovereignty it is important to consider the definition of culture. As previously mentioned the highest prevalence rates of FGM/C persist in African societies.<sup>95</sup> Considering the culture of Africa, collectivity is considered important in most parts and is furthermore enshrined in the African Charter of Human and peoples rights as there is emphasis on collective or group rights.<sup>96</sup> Collectivity is moreover apparent in practices such as FGM/C, which concerns the whole society not just the individual or the closest family. On that note, some supporters of FGM/C consider that culture derives from history and tradition.<sup>97</sup>

Nevertheless Trueblood argues that for the survival of each culture there must be an adaption to change otherwise the culture risks extinction. Additionally, practices such as FGM/C that are not supported by modern values, as it is considered to have negative effects on the health and Human Rights of girls and women, should be abandoned.<sup>98</sup> Although modern values that derive from structures such as International Human Rights mainly come from the West, women from practicing cultures are speaking up against the practice and its negative effects on them. Moreover not only Western societies condemn the practice as the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) that was adopted by the African Union lists it as a harmful practice.<sup>99</sup>

In relation to the former mentioned ideas of Catherine MacKinnon on men's control and domination over women in the sexual sphere which is socially constructed

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<sup>92</sup> *ibid.*, p. 438.

<sup>93</sup> *ibid.*, p. 439.

<sup>94</sup> *ibid.*, p. 440.

<sup>95</sup> *ibid.*, p. 462.

<sup>96</sup> African Commission on Human and Peoples' Rights, 'African Charter on Human and Peoples Rights', *ACHPR* [Website], 27 June 1981, Art. 21.,

<[http://www.achpr.org/files/instruments/achpr/banjul\\_charter.pdf](http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf)>, accessed 23 April 2018.

<sup>97</sup> *ibid.*

<sup>98</sup> *ibid.*

<sup>99</sup> End FGM European Network, 'Maputo Protocol', *End FGM European Network* [website], 26 July 2016, <<http://www.endfgm.eu/resources/international/maputo-protocol/>>, accessed 23 April 2018.



by the power of men, Trueblood argues that in the case of FGM/C both women and especially girls don't have the right to a meaningful choice but rather have "two choices, succumb to the mutilation, or refuse and suffer banishment from her family and from society, with a great chance that she will die."<sup>100</sup> Furthermore Trueblood takes in to consideration the argument of Cultural Relativists of the right to practice the custom each person chooses, however she argues that because the choice is not meaningful in the case of FGM/C it is a violation of women's and girl's "fundamental rights to dignity, liberty, and security."<sup>101</sup> This is also supported by Shell-Duncan and Hernlund where they assert that only when women become equal to men and are empowered to make a choice whether they undergo FGM/C, will it be genuine.<sup>102</sup>

Therefore it is important to both take into consideration the universally known implication of FGM/C regarding health and Human Rights as well as taking into consideration each person's experience of the practice and also the experiences of people close to them.<sup>103</sup> Each person's experience of the implications that come with the practice can vary and also whether they understand it as an act of a violation against their Human Rights. Moreover taking into consideration both factors of Universalism and Cultural Relativism is important in the treatment of those affected by FGM/C that are seeking asylum in the EU, where there is the possibility of tension because of cultural differences between the country of origin and the destination country.<sup>104</sup>

According to Shell-Duncan and Hernlund the definition of culture is that it is diverse and ever changing, but the same could be argued for Human Rights as they change with influence from culture. They therefore assert that pitting Universal concepts such as Human Rights against Cultural Relativist concepts such as respecting cultural traditions like FGM/C are not possible as they intertwine.<sup>105</sup> According to Shell-Duncan and Hernlund, to argue against the notion of the framework of Human Rights being essentialised and static, is not a compelling

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<sup>100</sup> Trueblood, op. cit., p. 463.

<sup>101</sup> *ibid.*, p. 464.

<sup>102</sup> Center for Reproductive Law and Policy, RAINBO, *Female Genital Mutilation: A Guide to Laws and Policies Worldwide*, ed. A. Rahman & N. Toubia, Zed Books, London, 2000, p. 52.

<sup>103</sup> B. Shell-Duncan, & Y. Hernlund, *Transcultural Bodies: Female Genital Cutting in Global Context*, Rutgers University Press, New Brunswick, 2007, p. 3.

<sup>104</sup> *ibid.*

<sup>105</sup> *ibid.*, p. 6

argument as the concept of Human Rights can be traced to the enlightenment idea of the rights of man emerging in Europe in the late eighteenth century. It is therefore a cultural phenomena and has developed with societal changes relating to politics, economics and also influences that come from culture.<sup>106</sup> In other words, Human Rights are the product of cultural changes. However it can be argued that the adoption of Human Rights within International structures can be regarded as disproportionately in favour of western values.

The discussion on the tension between the values of the West and the so called rest when it comes to Human Rights, is further elaborated on by Toubia Nahid, an Egyptian-trained physician who was born in Sudan. In her work she discussed how the West can make more harm than good with an ethnocentric goal of eradicating FGM/C in societies that are structurally inferior. Furthermore she talks about Human Rights in relation to FGM/C including the tension between the rights of parents and the State in protecting its citizens from harmful practices such as FGM/C.<sup>107</sup> Similar ideas have been presented by the Reproductive Law and Policy (RAINBO) who claim that people have the right to enjoy and develop their culture, however when a traditional practice infringes upon health and Fundamental Human Rights of people the government has a duty to protect them from the practice.<sup>108</sup> This further supports the need of balance between Universalism and Relativism or Cultural Relativism. This also brings up the government's duty to protect its citizens while taking into consideration other factor such as culture.

As has been argued Universalism and Cultural Relativism cannot be separated from each other as they intertwine. This fact therefore gives grounds to the use of Transnational Feminist perspective when protecting and accommodating the specific needs of those affected by FGM/C in Asylum systems, as it takes into consideration both universal concepts such Human Rights and institutions such the Asylum system in a globalized context where asylum seekers arrive from different backgrounds and culture and their experiences are taken into account.

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<sup>106</sup> *ibid.*, p. 8.

<sup>107</sup> T. Nahid, *Female Genital Mutilation: A call for Global Action*, Women, Ink., New York, 1993.

<sup>108</sup> Center for Reproductive Law and Policy, RAINBO, *op. cit.*, p. 32 - 38.

### 1.2.2. Transnational Feminism

FGM/C in the asylum context calls for a theory, which deals with gender, history, culture and geography which Transnational Feminism is based on. Transnational Feminism has its foundation in postcolonial-, cultural and feminist studies including critical studies such as Marxism and Post-structuralism which makes it a kind of a 'theoretical umbrella' combining different perspectives which are all relevant when analysing complex issues such as FGM/C in the asylum context. More importantly Transnational Feminism takes into consideration culture in a globalised context, which is important when dealing with a topic such as FGM/C and asylum systems.<sup>109</sup> As argued by Shell-Duncan et al., Universalism and Cultural Relativism are intertwined and cannot be separated. In relation to the former argument, according to Blackwell et al., Transnational Feminism offers a policy framework, which addresses the tension between Cultural Relativism and Universalism as it both focuses on group identity and individual orientation.<sup>110</sup> As discussed earlier, Transnationalism is one of the approaches within Feminist Theory that came about in the so called third wave in a space of changing globalised processes and the emergence of critical voices from marginal groups such as coloured women.<sup>111</sup>

According to the Transnational Feminists Blackwell, Briggs and Chiu one of the goals of Transnational Feminism is to understand power relations cross borders in addition to allowing shared discourses to become transnational, although not erasing differences.<sup>112</sup> Peet and Hartwick further explain power relations in regards to the notion of the French philosopher Jacques Derrida on the deconstruction of the so-called truth or reality that is constructed by those in power. Moreover they explain how Europeans take their ideas and way of thinking as the truth. However post-structural and postmodern critique focuses on how the truth which is taken as universal, is biased as it is historically and regionally bound.<sup>113</sup> This also relates to Post-colonialism as it criticises the ruling truth or knowledge that derives from western domination as was discussed earlier.<sup>114</sup> Therefore International institutions that derive from a western power structure can produce truth that is applied

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<sup>109</sup> Blackwell, Briggs & Chiu, op. cit., p. 10.

<sup>110</sup> *ibid.*, p. 4.

<sup>111</sup> *ibid.*, p. 10.

<sup>112</sup> *ibid.*, p. 18.

<sup>113</sup> Peet, & Hartwick, op. cit., p. 201-202.

<sup>114</sup> *ibid.*, p. 209.

universally, although it can be biased as it often doesn't come from the knowledge of the 'other' or those not from the West. This argument relates to the formally mentioned criticism on how Human Rights derive from western values and ignore the values of other cultures.

According to Blackwell et al. “[f]or feminist theory, the transnational can function as an analytic that helps us see how processes like migration [...] cross international borders.”<sup>115</sup> Related to his statement Jennifer Hyndman a professor and director at the Centre for Refugee Studies criticised the UNHCR on its gender policies. She proposes “[s]trategies to avoid authenticating or fixing categories of difference, on the one hand, and to avoid treating gender and culture as simply variables, on the other, are proposed in the context of emerging Transnational Feminist practices.”<sup>116</sup> Furthermore she discusses how Transnational Feminist practice encourages an on-going discussion with women of different backgrounds to “bridge some of the social, cultural, and political difference” in addition to the ruling discourse that is produced by those in power or from a western male standpoint which tends to put its marks on International structures.<sup>117</sup> Therefore when there are gender-sensitive approaches designed in the West such as in the European Asylum System there needs to be a sensitivity to multiple factors, as argued Hyndman's article it would be beneficial to make improvements in the context of emerging Transnational Feminist practices.

The perspective of Transnational Feminism criticises Feminist Theory for being used in many parts of the world including Europe mainly by western women and men who fail to deal with otherness, which can be considered as a type of relativism.<sup>118</sup> Hyndman further suggests that although policies and application of a system can work in some places it may not have the same outcomes in other places depending on location and different groups of people.<sup>119</sup> To comment further on these arguments, it is important to take into account gender and culture, which will challenge the existing western male structures of power. In addition an existing system should always be challenged as the outcomes might become less beneficial

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<sup>115</sup> Blackwell, Briggs & Chiu, op. cit., p. 2-3.

<sup>116</sup> J. Hyndman, 'Managing Difference: Gender and Culture in Humanitarian Emergencies', *Gender, Place and Culture*, vol. 5, no. 3, 1998, p. 241.

<sup>117</sup> *ibid.*, p. 257.

<sup>118</sup> I. Grewal and C. Kaplan, *Scattered Hegemonies: Postmodernity and Transnational Feminist Practices*, University of Minnesota Press, 1994, p. 2.

<sup>119</sup> Hyndman, op. cit., p. 251.

when situations change rapidly in a transnational world with different flows of people requiring diverse policies or application. That is why it's important to reconsider policies and applications by gaining knowledge from the diverse experiences of the groups of people it will have an impact on. On that note Blackwell et al. argue that Transnational Feminism encourages listening to other stories originated from diverse people and their complicated situations, therefore realising what transnational processes such as migration means for women like those affected by FGM/C who are often marginalised on multiple fronts.<sup>120</sup> As mentioned by Grewal and Kaplan it is important to take into consideration historical background as well as factors such as gender and class in each situation. Moreover, they suggest that feminist movements need constant rethinking and re-evaluation so that their belief system does not become exclusionary.<sup>121</sup> This relates to the Feminist Standpoint Theory in regards to the need to understand women's experience and especially marginalised women to accommodate to their specific needs such as the asylum system that has been criticised for being male centric.

Adding a Transnational Feminist perspective to the provisions of the EU Asylum Policy and to the practices of MS can offer an approach which could protect each individual's Human Rights while accommodating to their specific needs. Blackwell et al. also point out the importance of traditional themes of feminist philosophy such as discrimination and gender-based violence, as they are fundamental to both women of the West and the South.<sup>122</sup> Commenting on a previous statement, gender-based violence applies to all women, however the forms of the violence can be different and the experience or the conception of the violence can vary depending on background factors of each woman such as ethnicity, culture and history in addition to age.

Taking into account the gender-dimension and background factors increases the possibility of improving gender-sensitivity in systems such as the CEAS and consequently could further protect the Human Rights of women and girls and accommodate to their specific needs.

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<sup>120</sup> Blackwell, Briggs & Chiu, op. cit., p. 4.

<sup>121</sup> Grewal, and Kaplan, op. cit., p. 18.

<sup>122</sup> Blackwell, Briggs & Chiu, op. cit., p. 24.

### 1.3 Conceptual Analysis: A gender-sensitive approach to FGM/C

#### 1.3.1. Gender-sensitivity

As the thesis topic is related to FGM/C and the importance of gender-sensitivity in EU Asylum Policy, there needs to be a clear definition and an understanding of what gender-sensitivity entails. Gender has been ignored for a long time in international and regional law and policies. Nowadays, however, mainstreaming gender into policies has gained more popularity internationally as a way to reach gender equality.<sup>123</sup> According to EIGE, gender mainstreaming in short involves the integration of a gender perspective in all aspects of policies to promote equality between the sexes and combat discrimination based on gender.<sup>124</sup> Furthermore it involves “The systematic consideration of the differences between conditions, situations and needs of women and men in all policies.”<sup>125</sup> The European Commission has since 1996 committed to a so-called dual approach for the realisation of gender equality. The approach includes “mainstreaming a gender perspective in all policies, while also implementing specific measures to eliminate, prevent or remedy gender inequalities.”<sup>126</sup>

In regards to refugee and asylum seekers, the European Parliament is thought to have been the first international body to emphasise on the need to interpret the CSR in a gender-sensitive manner, first in a resolution in 1984. This emphasis was further developed by the UNHCR who made gender-sensitive guidelines in regards to the interpretation of the refugee convention.<sup>127</sup> Although some EU MS have adopted gender guidelines, they are not binding and have been proven to be deficient.<sup>128</sup> An instrumental Convention in regards to gender-sensitivity and asylum is the Istanbul Convention adopted by the Council of Europe, in which the provisions are legally binding to those States who ratify it. The Convention emphasises on gender-sensitivity in the interpretation of the Refugee Convention and in regards to the

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<sup>123</sup> European Institute for Gender Equality, ‘What is gender mainstreaming’ *EIGE* [website], 2018, para. 1, <<http://eige.europa.eu/rdc/thesaurus/terms/1218>>, accessed 24 April 2018.

<sup>124</sup> *ibid.*

<sup>125</sup> European Institute for Gender Equality, ‘Gender mainstreaming’ *EIGE* [website], 2018, para. 1, <<http://eige.europa.eu/rdc/thesaurus/terms/1185>>, accessed 8 Mars 2018.

<sup>126</sup> European Institute for Gender Equality, ‘What is gender mainstreaming’, *op. cit.*, The EU approach to gender mainstreaming.

<sup>127</sup> The Committee on Women’s Rights and Gender Equality, *op. cit.*, p. 15.

<sup>128</sup> *ibid.*

treatment of asylum seekers.<sup>129</sup> These gender-sensitive guidelines will be further discussed later on.

In regards to the application of gender-sensitivity in asylum policy, specifically the CEAS, The European Parliament Committee on Women's Rights and Gender Equality (FEMM) criticised the system for not providing gender-sensitive treatment to women asylum seekers, even though there are existing law and policies that should promote gender-sensitivity.<sup>130</sup> Furthermore the End FGM European Network emphasises on the need of gender-sensitive procedure in the case of asylum seekers that are affected by gender-based violence such as FGM/C.<sup>131</sup>

To understand to which extent the EU Asylum Policy is gender-sensitive and how it could improve in theory and in practice, the definition and the understanding of the concept needs to be clear. According to UN Women, gender-sensitivity is part of the “primary objective behind gender mainstreaming”<sup>132</sup> as it promotes ways to “[a]ttempt to redress existing gender inequalities.”<sup>133</sup> Moreover, gender-sensitivity addresses “norms, roles and access to resources.”<sup>134</sup> These elements are important when designing and implementing policies, such as within the EU Asylum System and additionally when dealing with gender-sensitive issues *inter alia* FGM/C. According to EIGE, the definition on gender-sensitivity;

refers to the aim of understanding and taking account of the societal and cultural factors involved in gender-based exclusion and discrimination in the most diverse spheres of public and private life. It focuses mainly on instances of structural disadvantage in the positions and roles of women.<sup>135</sup>

The definition of EIGE is important as it includes the notion of taking into account societal and cultural factors in relation to gender-based exclusion and discrimination. UN Women elaborates further on this notion as they consider it to be essential that gender is thought of in a “broader socio-cultural context, as are other important criteria for socio-cultural analysis including class, race, poverty level, ethnic group,

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<sup>129</sup> *ibid.*

<sup>130</sup> *ibid.*, p. 19.

<sup>131</sup> End FGM European Network, ‘FGM in EU Asylum Directives on Qualification, Procedures and Reception Conditions: End FGM Network Guidelines For Civil Society’, *op. cit.* p. 13.

<sup>132</sup> UN Women, ‘Gender Equality Glossary’, *op. cit.*, Gender-neutral, Gender-sensitive, and Gender transformative.

<sup>133</sup> *ibid.*

<sup>134</sup> *ibid.*

<sup>135</sup> European Institute for Gender Equality, ‘Gender sensitivity’ *EIGE* [website], 2018, para. 1, <<http://eige.europa.eu/rdc/thesaurus/terms/1218>>, accessed 8 Mars 2018.

sexual orientation, age, etc.”<sup>136</sup> This relates to the former discussions on the theoretical analysis on gender and how other socio-cultural factor such as those mentioned above need to be taken into consideration, for with different backgrounds come different experiences and with different experiences come different needs. The public vs. private dichotomy is also important as discussed previously for it still affects how gender-related issues are dealt with, or more to the point not dealt with as they often remain in the private sphere. The focus on the effects of structural disadvantages of women is therefore of the utmost importance.

Gender-sensitivity can thus promote better practices in accommodating the different needs of people and consequently their wellbeing. In addition gender advisors could support those in charge of implementing gender mainstreaming as has been done within the UN system.<sup>137</sup> “Gender advisors promote and support gender-sensitive approaches to policy and program work within a given mission, office, team, etc.”<sup>138</sup> Moreover they may propose strategies for awareness raising, training, monitoring, reporting etc.<sup>139</sup> Having a gender advisor might be beneficial for promoting gender-sensitivity or improve the implementation of gender-sensitivity within the European Asylum system, as it has been criticised for lacking gender-sensitivity in areas such as training of staff, reporting etc., which will be discussed further in the thesis. To have a clearer understanding of why FGM/C is still being practiced in general and furthermore in the EU, the following section will observe a gender-sensitive analysis on the phenomena, taking into consideration a Transnational Feminist perspective.

### **1.3.2. Female Genital Mutilation/Cutting**

To be able to apply a gender-sensitive approach when in contact with females that both might be at risk or have already been subjected to FGM/C, there needs to be a gender-sensitive understanding of the reasons behind the continuation of the tradition. Even though the procedure of FGM/C is known to have many risk factors, the procedure is still practiced. According to the WHO, reasons behind the continuing of the practice do vary, however, it mostly consists of cultural, social and religious

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<sup>136</sup> UN Women, ‘Gender Equality Glossary’, op. cit., Gender.

<sup>137</sup> *ibid.*, Gender advisor.

<sup>138</sup> *ibid.*

<sup>139</sup> *ibid.*



reasons.<sup>140</sup> The UNFPA sort the reasons into categories that include psychosexual, sociological, socio-economic, hygiene and aesthetic reasons.<sup>141</sup> In relations to sociological and cultural reasons, in some cultures the practice is a part of a coming-of-age ritual revolving around in celebrating the girl entering into womanhood, where she receives a status as a responsible member of the society. Being cut is also a sign of femininity within the society and culture the girl is a part of.<sup>142</sup> Occasionally, the coming-of-age ritual is, celebrated with dance and gifts.<sup>143</sup> Myths, such as undergoing FGM/C will enhance fertility also encourage the practice.<sup>144</sup> However if girls don't go through the procedure it can mean stigmatisation and rejection of the community. As Diallo explained she could not run away from FGM/C even though she wanted to as it would mean dishonour for her family.<sup>145</sup> Halimatou Barry, Coordinator for Wallonia Region GAMS in Belgium further explained that talking about the practice of FGM/C in the community is a taboo and by doing so you betray your community since it is considered a secret that only members of the community should be informed on.<sup>146</sup>

These ideas from a feminist perspective are socially constructed by patriarchal power structures, which maintain the subordination of women. As for socio-economic reasons and factors, in many of the societies where the tradition is practiced, men will only marry women that have gone through the procedure. This fact is of substantial importance since this links FGM/C to women's economic and social security, as they are often dependent on the man's income.<sup>147</sup> In some cases the procedure even gives women the right to inherit. Lastly, FGM/C is also a source of income for circumcisers or cutters.<sup>148</sup> Psychosexual reasons given for FGM/C is to ensure and preserve women's virginity, but it is also thought to restrain sexual desire which helps ensuring marital fidelity and a sexual behaviour that is considered deviant.<sup>149</sup> It is additionally thought to enhance sexual pleasure for men.<sup>150</sup> As for hygiene and aesthetic reasons, some even consider that FGM/C makes women more clean and beautiful by removing

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<sup>140</sup> World Health Organization, 'Eliminating female genital mutilation', op. cit., p. 6.

<sup>141</sup> United Nations Population Fund, op. cit., para. 16.

<sup>142</sup> World Health Organization, 'Eliminating female genital mutilation', loc. cit.

<sup>143</sup> Trueblood, op. cit., p. 447.

<sup>144</sup> United Nations Population Fund, loc. cit.

<sup>145</sup> *FGM Too Much Pain - The Voices of Refugee Women: (part 2) What is FGM?*, loc. cit.

<sup>146</sup> *FGM Too Much Pain - The Voices of Refugee Women: (part 3) FGM and Asylum Claims* [video], UNHCR, 8 March 2018, <<https://www.youtube.com/watch?v=hZWCJkLAZdY&t=1s>>, accessed 20 February 2018.

<sup>147</sup> World Health Organization, 'Eliminating female genital mutilation', loc. cit.

<sup>148</sup> United Nations Population Fund, loc. cit.

<sup>149</sup> World Health Organization, 'Eliminating female genital mutilation', loc. cit.

<sup>150</sup> United Nations Population Fund, loc. cit.

parts of the vagina. Surprisingly, even though FGM/C is often associated with religion and is practiced by Christians, Jews and Muslims, none of the holy texts have any mention about FGM/C, the practice even predates both Christianity and Islam.<sup>151</sup>

One of the main reasons for girls undergoing FGM/C in the EU is that some families continue their cultural practice even though they now live in countries where the practice is prohibited.<sup>152</sup> To avoid strict laws in some cases girls travel to other countries where they undergo FGM/C.<sup>153</sup> This further showcases how deeply rooted the tradition is, however many parents do seek asylum to protect their daughters. In addition to them, those who seek asylum on FGM/C related claims can also be women or girls who fear the practice or have already gone through the practice but fear further practices of FGM/C such as defibulation and re-infibulation. In addition to women that have gone through reconstruction surgery and fear of being cut again are also women that subjected to social pressure of becoming cutters themselves. Furthermore, activists, both men and women that are persecuted for their views of the eradication of FGM/C also seek asylum.<sup>154</sup>

After collecting reasons behind the continuing of FGM/C it is clear that the practice has deep roots, upheld by a value system based on religious- or other reasons. However under this value system lies gender inequality, sustained by patriarchal values that derive from the socially constructed power of men over women. Moreover the construction of both femininity and masculinity derives from the dominant power of men, which maintains the subordinated role of women and the domination over women's bodies as previously mentioned by MacKinnon.

## **2. FGM/C as a Human Rights issue**

As of today FGM/C is considered as violation of girl's and women's Human Rights *inter alia* amounting to torture, cruel, inhuman or degrading treatment, discrimination and violation of the right to health and life. As mentioned before, in 1997 UN institutions officially made a stance on FGM/C, supporting its eradication based on

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<sup>151</sup> World Health Organization, 'Eliminating female genital mutilation', loc. cit.

<sup>152</sup> F. Novak-Irons, 'Female genital mutilation: a case for asylum in Europe' in Forced Migration Review ed., *FGM and Asylum in Europe Forced Migration review* [website], Refugee Studies Centre, Oxford University, May 2015, p. 3.  
<<http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/climatechange-disasters/FGM.pdf>>, accessed 20 February 2018.

<sup>153</sup> NHS, 'Female genital mutilation (FGM)', *NHS* [website], 16 June 2016, Where FGM is carried out, <<https://www.nhs.uk/conditions/female-genital-mutilation-fgm/>>, accessed 20 February 2018.

<sup>154</sup> Novak-Irons, loc. cit.

health and human rights related reasons. However taking a stance on this issue has been criticised by Cultural Relativists, in relation to the people's right to practice their culture. On the other hand loud criticisms have been made regarding the cultural explanations of FGM/C as they condone violence against women and girls. As UNFPA puts it "culture is not static, but constantly changing and adapting."<sup>155</sup> From that note evidence do show that support for FGM/C is declining in practicing countries.<sup>156</sup> Since 2007 there has been an increase in responses from international organisations. The 1997 joint statement of UN institutions was updated in 2008, which had wider UN support on the abandonment of FGM/C, representing an approach that was cross-sectorial and human rights based.<sup>157</sup> Few years later an important resolution was passed by the UN General Assembly concerning FGM/C in 2012, banning the practice of FGM/C. The resolution thus put migrants and refugees on the agenda by including them in the call for protection and support of those affected by FGM/C.<sup>158</sup>

## **2.1. Violence Against Women and FGM/C: The case of the Istanbul Convention**

VAW is a rather new phenomena within Human Rights. The first important Convention that addresses discrimination against women is the 1981 the Convention of the Committee on the Elimination of Discrimination against Women (CEDAW).<sup>159</sup> According to the Convention, State Parties should condemn discrimination against women in all its forms that could be interpreted as gender-based violence.<sup>160</sup> In 1990, CEDAW adopted a General Recommendation no. 14, which was "the first UN policy that specifically dealt with FGM."<sup>161</sup> Even though former international treaties and resolutions impacted VAW, it was not until 1992 that gender-based violence was classified as a form of discrimination in the General Recommendation no. 19 by CEDAW. In the recommendation the definition of gender based violence was

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<sup>155</sup> United Nations Population Fund, op. cit., para. 18.

<sup>156</sup> *ibid.*, para. 19.

<sup>157</sup> European Institute for Gender Equality, 'Female genital mutilation in the European Union and Croatia: Report' *EIGE* [website], 2013, p. 34, <<http://eige.europa.eu/rdc/eige-publications/female-genital-mutilation-european-union-report>> accessed 14 May 2018.

<sup>158</sup> *ibid.*, p. 35.

<sup>159</sup> UN General Assembly, 'Convention on the Elimination of All Forms of Discrimination Against Women' *Refworld* [website], 3 September 1981, Art. 2, <<http://www.refworld.org/docid/3ae6b3970.html>>, accessed 30 March 2018, cited in Stop Violence against Women, op. cit., para. 3.

<sup>160</sup> *ibid.*

<sup>161</sup> European Institute for Gender Equality, 'Female genital mutilation in the European Union and Croatia: Report', loc. cit.

categorised as “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”<sup>162</sup> In General comments on Art. 2(f), 5 and 10(c), FGM/C is brought up as a form of gender-based violence which “help to maintain women in subordinate roles.”<sup>163</sup> General comments on Art. 12 state that FGM/C is considered a traditional practice performed in some States which have negative effects of women’s and children’s health.<sup>164</sup> In Art. 16 (and Art. 5), from the comments made by CEDAW regarding FGM/C, States that are party to the convention “should take measures to overcome such practices and should take account of the Committee’s recommendation on female circumcision (recommendation No. 14) in reporting on health issues.”<sup>165</sup>

As mention before during the 1993 Human Rights Conference in Vienna FGM/C was officially considered as VAW falling within International Human Rights law.<sup>166</sup> In the 1995 Beijing Declaration and Platform for Action a global commitment was made to achieve “equality, development and peace for women worldwide.”<sup>167</sup> Furthermore FGM/C was defined as VAW, which has serious risks for women and girls, moreover in Art. 29 and 93 FGM/C is considered to be a harmful practice that affects the rights of the girl child, putting emphasis on both the gender and child-specific elements of the tradition. Most importantly governments are encouraged to promote awareness to change attitudes and practices like FGM/C, furthermore by making it punishable by law.<sup>168</sup>

For the monitoring of the compliance of States parties to the CEDAW convention, the General Assembly adopted the Optional Protocol to the convention. The Optional Protocol created two procedures; communications procedure and inquiry procedures. The communication procedure enables women or groups of women to claim their rights concerning violations of CEDAW after exhausting

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<sup>162</sup>UN Committee on the Elimination of Discrimination Against Women (CEDAW), ‘CEDAW General Recommendation No. 19: Violence against women’ *Refworld* [website], 1992, para. 6, <<http://www.refworld.org/docid/52d920c54.html>>, accessed 5 March.

<sup>163</sup> *ibid.*, para. 11.

<sup>164</sup> *ibid.*, para. 20.

<sup>165</sup> *ibid.*, para. 24(l).

<sup>166</sup> UN General Assembly, ‘Vienna Declaration and Programme of Action’, *loc. cit.*

<sup>167</sup> End FGM European Network, ‘Beijing Declaration and platform for action’, *End FGM European Network* [website], March 2016, para. 1, <<http://www.endfgm.eu/resources/international/beijing-declaration-and-platform-for-action/>>, accessed 5 March 2018.

<sup>168</sup> *ibid.*

domestic recourses. Inquiry procedures are based on the Committees investigations of either grave or systematic violations of women's rights.<sup>169</sup>

Three important regional Conventions on VAW have been established, putting more emphasis on regions taking actions to combat and eliminate VAW such FGM/C. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women also called the Convention of Belém Do Pará added to the existing definition on gender-based violence, which can be perpetrated by State or its agents.<sup>170</sup> Although not specifically mentioning asylum or FGM/C, Art. 9 states that MS should “take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons.”<sup>171</sup> Africa has with two legal instruments improved gender equality and elimination of FGM/C. The 1986 African Charter on Human and Peoples' Rights declares that “States shall eliminate discrimination against women and protect the rights of women and children enshrined in international declarations and conventions.”<sup>172</sup>

The definition of VAW is further strengthened in the 2003 Maputo Protocol, which added an economic dimension to the definition of VAW and that it can occur in time of peace and war.<sup>173</sup> This definition is important, as reasons behind the continuing of FGM/C can also be economical in nature.

FGM/C is listed in Art. 5 as a harmful practice, calling for support services *inter alia* “health services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting.”<sup>174</sup> These services are important as they offer support in multiple areas, which are relevant to the complexity of FGM/C. An emphasis is also put on awareness raising and the prohibition of the practice, as well as the protection of those who are in risk of

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<sup>169</sup> *ibid.* Art. 8(1), cited in Stop Violence against Women, *op. cit.*, para. 3.

<sup>170</sup> Organisation of American States, ‘Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém Do Pará)’, *Organisation of American States* [website], 9 June 1994, Art. 2(c), <<https://www.oas.org/en/CIM/docs/Belem-do-Para%5BEN%5D.pdf>>, accessed 5 March 2018.

<sup>171</sup> *ibid.*, Art. 9.

<sup>172</sup> End FGM European Network, ‘The African Charter on Human and peoples' rights’, *End FGM European Network* [website], March 2016, para. 1, <<http://www.endfgm.eu/resources/international/the-african-charter-on-human-and-peoples-rights/>>, accessed 5 March 2018.

<sup>173</sup> African Commission on Human and Peoples' Rights, ‘Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (The Maputo Protocol)’, *African Commission on Human and Peoples' Rights* [website], 11 July 2003, Art. 1(j), <[http://www.achpr.org/files/instruments/women-protocol/achpr\\_instr\\_proto\\_women\\_eng.pdf](http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf)>, accessed 5 March 2018.

<sup>174</sup> *ibid.*, Art. 5.

undergoing FGM/C or other harmful practices or violence.<sup>175</sup> In Art. 21 of the African Charter on the Rights and Welfare of the Child, the harmful practice of FGM/C is indirectly addressed as it concerns the elimination of harmful social and cultural practices, especially on the grounds of gender.<sup>176</sup>

One of the most instrumental conventions regarding VAW is the Istanbul Convention, adopted by the Council of Europe which sets out to protect and prevent all gender-based violence in addition to the prosecution and elimination of VAW, including domestic violence. More importantly addressing the structural nature of gender-based violence in line with what has been discussed. The convention furthermore promotes gender equality, which includes empowering women. However as of today only 19 out of the 28 EU MS have ratified the convention.<sup>177</sup>

The convention adds an important dimension to the definition of VAW, taking into consideration that violence can happen in the public and private life. The convention defines VAW as;

“violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;<sup>178</sup>

As has been discussed, FGM/C is often coerced or done without the consent of the victim and affects women physically, sexually, psychological and economically both in public and private life. Art. 4(1) further addresses that women should have the right to live without violence both in the private sphere and the public sphere as discussed earlier, which is relevant to FGM/C as it affects women in the both spheres. Furthermore States should promote and protect these rights with legal measures in

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<sup>175</sup> *ibid.*

<sup>176</sup> End FGM European Network, ‘African Charter on the Rights and Welfare of the Child’, *End FGM European Network* [website], March 2016, para. 1, <<http://www.endfgm.eu/resources/international/african-charter-on-the-rights-and-welfare-of-the-child/>>, accessed 5 March 2018.

<sup>177</sup> Council of Europe, ‘Chart of signatures and ratifications of Treaty 210: Council of Europe Convention on preventing and combating violence against women and domestic violence’ *Council of Europe* [website], February 2018, <<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>>, accessed 7 July 2018.

<sup>178</sup> Council of Europe, ‘Council of Europe Convention on preventing and combating violence against women and domestic violence (The Istanbul Convention)’, *Refworld* [website], 20 December 1993, Art. 3, <<http://www.refworld.org/docid/4ddb74f72.html>>, accessed 5 March.

addition to other relevant measures.<sup>179</sup> Art. 38 focuses specifically on FGM/C as a form of VAW, stating that any act of FGM/C should be criminalised including making women and girls undergo FGM/C.<sup>180</sup>

In relation to the protection and treatment of asylum seekers that are affected by FGM/C the Istanbul Convention is of the utmost importance as it puts on the agenda with Art. 4 the protection of the rights of victims without discrimination of “migrant or refugee status, or other status”<sup>181</sup> also taking into concern factors such as gender, race, religion or political/other opinion.<sup>182</sup> This is very important when dealing with female asylum seekers that are affected by FGM/C, since they are usually marginalised on multiple fronts. Art. 60 focuses specifically on gender-based asylum applications which is important when it concerns female asylum seekers that are affected by violence such as FGM/C. The reason being that they need protection and their specific needs should also be accommodated to avoid re-traumatisation and secure their welfare. Art. 61 focuses on Non-refoulement where State Parties should take measures not returning women to a country where their life or health might be at serious risk. These relevant articles will be further addressed in the context of EU Asylum Policy.

As there is lack of data on FGM/C, Art. 11 is relevant as it requires States to collect disaggregated relevant statistical data and support research in the field of all forms of violence, which includes FGM/C.<sup>183</sup> To strengthen the effectiveness of the Convention, specific monitoring mechanisms ensure that the provisions are being followed.<sup>184</sup> The monitoring body of the Istanbul convention is the Group of Experts on Action against VAW and Domestic Violence (GREVIO), which is comprised of ten experts in the “field of human rights, gender equality, violence against women and/or assistance to and protection of victims.”<sup>185</sup> GREVIO’s activities include evaluation and inquiring procedures. Recently the monitoring body published four reports, which assess the compliance of a MS both in legislation and in practice, in accordance to the provisions put forward in the convention. GREVIO can therefore

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<sup>179</sup> *ibid.*, Art. 4(1).

<sup>180</sup> *ibid.*, Art. 38.

<sup>181</sup> *ibid.*, Art. 4(3).

<sup>182</sup> *ibid.*

<sup>183</sup> *ibid.*, Art. 11.

<sup>184</sup> *ibid.*, Art. 1.

<sup>185</sup> GREVIO, ‘GREVIO’s (Baseline) Evaluation Report: Denmark’, *Council of Europe* [website], 24 November 2017, p. 5, <<https://rm.coe.int/grevio-first-baseline-report-on-denmark/16807688ae>>, accessed 27 April 2018.

act as a gender standard setting agent as was discussed in the chapter on gender-sensitivity. GREVIO's reports will be discussed in more detail in a separate chapter, where provisions in relation to FGM/C and asylum will be analysed.<sup>186</sup>

## 2.2. Human Rights Instruments – FGM/C and Asylum

As earlier noted FGM/C is now defined as VAW and a human rights violation, violating a number of Human Rights enshrined in International and Regional Conventions as well as Treaties. There are few main instruments which set out to directly or indirectly protect the Human Rights of those affected by FGM/C that are relevant when it comes to the right of life as the procedure can result in death. This principle is enshrined in Art. 3 in the 1948 Universal Declaration of Human Rights (UDHR) stating “*Everyone has the right to life, liberty and security of person.*”<sup>187</sup> Furthermore the same rights are protected in Art. 6 of the 1966 International Covenant on Civil and Political Rights (ICCPR), Art. 6 of The UN Convention on the Rights of the Child (CRC), as FGM/C is child-specific violence or persecution and Art. 2 of The European Convention on Human rights (ECHR).<sup>188</sup> The practice is also relevant to *the right to highest attainable standards of health* as the practice can have severe consequences related to *inter alia* physical and psycho-sexual problems, this principle is enshrined in Art. 12 of the International Covenant on Economic, Social and Cultural Rights and Art. 24 of the CRC.<sup>189</sup> The practice also *constitutes torture, cruel, inhuman and degrading treatment*, enshrined in Art. 2 of the 1984 UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or

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<sup>186</sup> *ibid.*

<sup>187</sup> UN General Assembly, ‘Universal Declaration of Human Rights’ *Refworld* [website], 10 December 1948, Art. 3, <<http://www.refworld.org/docid/3ae6b3712c.html>>, accessed 5 March 2018, cited in Stop Violence against Women, ‘UN Treaties on Violence Against Women’, Stop Violence Against Women [website], March 2016, para. 2,

<[http://www.stopvaw.org/un\\_treaties\\_on\\_violence\\_against\\_women#\\_ftn4](http://www.stopvaw.org/un_treaties_on_violence_against_women#_ftn4)>, accessed 5 March 2018.

<sup>188</sup> UN General Assembly, ‘International Covenant on Civil and Political Rights’, *Refworld* [website], 16 December 1966, Art. 6, <<http://www.refworld.org/docid/3ae6b3aa0.html>>, accessed 5 March 2018, cited in Stop Violence against Women, loc. cit.; UN General Assembly, ‘Convention on the Rights of the Child (CRC)’, *Refworld* [website], 2 September 1990, Art. 6,

<<http://www.refworld.org/docid/3ae6b38f0.html>>, accessed 30 March 2018.; Council of Europe, ‘European Convention for the Protection of Human Rights (ECHR)’, *Refworld* [website], 4 November 1950, Art. 2, <<http://www.refworld.org/docid/3ae6b3b04.html>>, accessed 5 March 2018, cited in Stop Violence against Women, loc. cit.

<sup>189</sup> UN General Assembly, ‘International Covenant on Economic, Social and Cultural Rights’, *Refworld* [website], 16 December 1966, Art. 12, <<http://www.refworld.org/docid/3b00f47924.html>>, accessed 5 March 2018, cited in Stop Violence against Women, loc. cit.; UN General Assembly, ‘(CRC)’, op. cit., Art. 24.



Punishment (CAT) and Art. 3 of the ECHR.<sup>190</sup> Also The Charter of Fundamental Rights of the European Union (CFREU) contains similar rights as those of ICCPR such as right to life and to be free from torture and inhumane and degrading treatment or punishment'.<sup>191</sup> According to the UN Committee Against Torture, any type of torture is prohibited including torture based on discrimination. States are responsible for torture if imposed by public officials in addition to the “failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation and trafficking.”<sup>192</sup> In some cases FGM/C has been medicalised and performed in public hospitals, nevertheless it is still considered torture or ill-treatment under the CAT. Furthermore when FGM/C is being performed in private clinics without the State interfering, the State is also accountable.<sup>193</sup> FGM/C also falls under *the right to protection from physical and mental violence*, which can be found in Art. 19 of the CRC that specifically spells out the protection of children against the practices of FGM/C, being relevant to the child-specific tradition. In addition to the 1993 Declaration on the Elimination of Violence Against Women (DEVAW), where Art. 2 includes FGM/C as VAW, which can be perpetrated by the family, the general community or condoned by the State.<sup>194</sup> This is a relevant provision as the practice of FGM/C is usually perpetrated by the family and the general community. Moreover when the State does not take action to protect girls and women from FGM/C they are condoning the violence.

In regards to FGM/C strictly in the asylum context, the 1951 UN Convention Relating to the Status of Refugees (CSR) is important for the protection of those at

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<sup>190</sup> UN General Assembly, ‘Convention Against Torture and Other Cruel or Degrading Treatment or Punishment (CAT)’, *Refworld* [website], 10 December 1984, Art. 2, <<http://www.refworld.org/docid/3ae6b3a94.html>>, accessed 30 March 2018. Council of Europe, ‘European Convention for the Protection of Human Rights’, op. cit., Art. 3, cited in Stop Violence against Women, loc. cit.

<sup>191</sup> End FGM European Network, ‘The EU Charter of Fundamental Rights’, *End FGM European Network* [website], July 2016, para. 1, <<http://www.endfgm.eu/resources/eu/eu-charter-of-fundamental-rights/>>, accessed 5 March 2018.

<sup>192</sup> UN Committee Against Torture, ‘General Comment No. 2: Implementation of Article 2 by States Parties’, *Refworld* [website], 24 January 2008, para. 18, <<http://www.refworld.org/docid/47ac78ce2.html>>, accessed 5 March 2018 cited in Stop Violence against Women, op. cit., para. 7.

<sup>193</sup> M. Nowak, ‘Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Report of the special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment’, *Refworld* [website], 15 January 2008, p. 18, <<http://www.refworld.org/docid/47c2c5452.html>>, accessed 5 March 2018.

<sup>194</sup> UN General Assembly, ‘Declaration on the Elimination of Violence against Women’, *Refworld* [website], 20 December 1993, Art. 2, <<http://www.refworld.org/docid/3b00f25d2c.html>>, accessed 5 March.

risk of FGM/C. As FGM/C can be considered an act of persecution Art. 1 A (2) of the CSR applies to asylum seekers at risk of being subjected to FGM/C, or having been exposed to it already. According to the Refugee Convention, to be recognised as a refugee which includes receiving legal protection in addition to material assistance,<sup>195</sup> he has to have a;

Well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.<sup>196</sup>

The 1951 Convention seeks to protect persons that seek asylum from persecution in other countries as stated in Art. 14 of the 1948 Universal Declaration of Human Rights. The 1951 convention was limited to persons fleeing before 1 January 1951 in relation to the second World War, that however changed with the 1967 protocol where those limitations were removed.<sup>197</sup> An important element of the convention is the non-refoulement of a refugee to a place where there is a threat of that person's life or freedom which is enshrined in Art. 33 (1) of the Convention. It is especially of great significance as it requires MS without reservation, to not send back a refugee where his life will be threatened or his freedom.<sup>198</sup> The principle of non-refoulement is also enshrined in art 3 of the CAT, Art. 3 of the ECHR and Art. 61 of the Istanbul Convention.<sup>199</sup>

However the convention has been criticised for not including how an application for asylum is dealt with in addition to the conditions of asylum seekers before the application is determined.<sup>200</sup> These factors are especially important for those who are vulnerable, like those affected by FGM/C as they face multiple barriers on their journey to obtaining an asylum status. Furthermore the convention is criticised for the lack of a gender-dimension. Gender is not mentioned except when there is use of words such as 'him' which the UN Women 'Report on the legal rights

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<sup>195</sup> The UN Refugee Agency, 'What is a refugee?', *UNHCR* [website], 2017, para. 4, <<https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>>, accessed 10 March 2018.

<sup>196</sup> UN General Assembly, 'Convention Relating to the Status of Refugees', *Refworld* [website], 28 July 1951, Art. 1A (2), <<http://www.refworld.org/docid/3be01b964.html>>, accessed 10 March 2018.

<sup>197</sup> United Nations High Commissioner for Refugees, 'Convention and protocol relating to the status of refugees', *UNHCR* [website] 2011, p. 4, <file:///Users/elinborgko/Pictures/3b66c2aa10.pdf>, accessed 1 April 2018.

<sup>198</sup> UN General Assembly, 'CRC', op. cit., Art. 33 cited in European Institute for Gender Equality, 'Female genital mutilation in the European Union and Croatia: Report', op. cit., p. 34.

<sup>199</sup> Council of Europe, 'CAT', op. cit., Art. 3.; Council of Europe, 'ECHR', op. cit., Art. 3.; Istanbul Convention Art. 61.

<sup>200</sup> Europe and Central Asia Regional Office of UN Women, op. cit., p. 39.

of women and girls asylum seeker in the European Union’ further elaborates on as being a interpretation on refugees from a male experience.<sup>201</sup>

As earlier discussed, deeply rooted patriarchal structures affect the ruling discourse and the way we think. It can often be difficult for those applying for asylum on the grounds of sexual or gender-based persecution as it is not specifically mentioned as a form of persecution in all national legislations of the EU MS.<sup>202</sup> Therefore it’s important to apply gender-sensitivity when interpreting the convention, so that the experiences of women are taken into consideration and moreover their different needs, depending on background factors as has been mentioned in relation to the Transnational Feminist perspective. On that note the UNHCR has a supervisory role and has interpretative guidelines in place which were adopted in 2009, clarifying that FGM/C can be considered as a form of a persecution under the 1951 convention, although non-binding.<sup>203</sup> The UNHCR has also guidelines and handbooks which likewise include gender, something that is missing from the Refugee Convention. Moreover gender-based violence such as FGM/C has a special “Guidance on Refugee Claims relating to female Genital Mutilation.”<sup>204</sup> In regards to children, the UNHCR guidelines on child asylum claims that FGM/C can be a form of persecution, which is child-specific.<sup>205</sup>

The importance of gender-related dimensions in regards to asylum status was further emphasised in a General Recommendation no. 32 by CEDAW in 2014, which adds a gender dimension to the CSR.<sup>206</sup> The recommendation includes that States should interpret the refugee grounds for persecution stated in the Refugee Convention with a gender perspective. Furthermore, they recommend States to incorporate other grounds for persecution such as gender to legislation and policies on a national level in relation to asylum seekers and refugees.<sup>207</sup> In addition States should “ensure that

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<sup>201</sup> *ibid.*, p. 10.

<sup>202</sup> UN Women, ‘Infographics: Women and Girl Asylum Seekers in the European Union’, *UN Women* [website] 28 June 2017, para. 1, <<http://eca.unwomen.org/en/digital-library/multimedia/2017/07/infographics-women-and-girl-asylum-seekers-in-the-eu>> accessed 23 March 2018.

<sup>203</sup> *ibid.*

<sup>204</sup> *ibid.*, p. 11.

<sup>205</sup> End FGM European Network, ‘FGM in EU Asylum Directives on Qualification, Procedures and Reception Conditions: End FGM Network Guidelines For Civil Society’, *op. cit.*, p. 8.

<sup>206</sup> Europe and Central Asia Regional Office of UN Women, *op. cit.* p. 12.

<sup>207</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), ‘General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women’, *Refworld* [website], 5 November 2014, para. 38, <<http://www.refworld.org/docid/54620fb54.html>>, accessed 5 March.

gender equality and non-discrimination obligations are upheld by States Parties to the Convention in respect of women asylum seekers and refugees throughout the displacement cycle, with a focus on asylum processes.’<sup>208</sup>

During the recent UN Summit for Refugees and Migrants in 2016, heads of States adopted the New York Declaration for Refugees and Migrants, which includes responding to the influx of refugees and migrants ‘‘mainstream a gender perspective, promote gender equality and the empowerment of all women and girls, and fully respect and protect the human rights of women and girls’’.<sup>209</sup> In addition to combatting sexual and gender-based violence and providing health care services which includes sexual and reproductive rights.<sup>210</sup> Additionally, States should commit to ‘‘taking into consideration different needs, vulnerabilities and capacities of women, girls, boys and men.’’<sup>211</sup> This commitment is important as those affected by FGM/C have different needs as they are faced with multiple vulnerabilities and marginalisations. What is even more important is not only focusing on their vulnerabilities but also their capacities which can be achieved by listening to their voices, which relates to the perspective of Transnational Feminism. After review, existing instruments, declarations and treaties on fundamental rights offer protection to those affected by FGM/C. However in recent years there has been more focus on VAW and GBV as a human rights violations that enhances protection on an issue that is sustained by gender based power relations.

## **Part II Policy Framework: Checking Against Reality**

As has been reviewed there are numerous conventions and treaties that can offer protection to those who have been subjected to gender-based violence such FGM/C. Likewise as has been mentioned all EU MS consider FGM/C as a crime, while 10 out

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<sup>208</sup> *ibid.* para 3.

<sup>209</sup> United Nations General Assembly, New York Declaration for Refugees and Migrants, 13 September 2016 cited in Europe and Central Asia Regional Office of UN Women, ‘Report on the legal rights of women and girl asylum seekers in the European Union’, *UN Women* [website], March 2017, p. 7, <[http://www2.unwomen.org/-/media/field%20office%20eca/attachments/publications/2017/women%20and%20girls%20access%20to%20asylum%20in%20the%20european%20union\\_for%20web.pdf?la=en&vs=1139](http://www2.unwomen.org/-/media/field%20office%20eca/attachments/publications/2017/women%20and%20girls%20access%20to%20asylum%20in%20the%20european%20union_for%20web.pdf?la=en&vs=1139)>, accessed 30 March 2018.

<sup>210</sup> UN General Assembly, ‘New York Declaration for Refugees and Migrants’, *Refworld* [website], 3 October 2016, para. 31, <<http://www.refworld.org/docid/57ceb74a4.html>>, accessed 30 March 2018.

<sup>211</sup> *ibid.*

of 28 MS have specific criminal law provision on FGM/C.<sup>212</sup> The existing legal and policy framework that EU MS are bound by; includes CEDAW and the EU acquis which both contain rights and obligations that can enhance the protection and accommodation of specific needs of asylum seekers that are affected by FGM/C.<sup>213</sup> The EU acquis are “EU regulations, decisions, directives and judgements of the EU courts.”<sup>214</sup>

The EU in recent years has put increasing effort into tackling FGM/C, with action in the areas, amongst them being prevention, prosecution, protection, knowledge and external actions.<sup>215</sup> An important directive was presented in 2012; The Victims Directive of the European Parliament and the Council which contains minimum standards on rights, support and protections of victims including those of FGM/C.<sup>216</sup> In 2013 a “communication from the commission to the European Parliament and the Council towards the elimination of genital mutilation”<sup>217</sup> was published. In addition, a joint staff document was published in 2015 on “Gender Equality and Women's Empowerment: Transforming the Lives of Girls and Women through EU External Relations 2016-2020.”<sup>218</sup> Furthermore, a joint statement by the European Commission was issued in Brussels on the 5<sup>th</sup> of February 2018 on the International Day of Zero tolerance for Female Genital Mutilation. The statement includes that the Commission is working on the prevention of FGM/C by “training professionals, such as judges, asylum officers or doctors who are in contact with girls

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<sup>212</sup> European Commission, ‘European Commission - Fact Sheet: Questions and Answers about Female Genital Mutilation/Cutting (FGM/C)’, 5 February 2018, para. 2, <[http://europa.eu/rapid/press-release\\_MEMO-18-602\\_en.htm](http://europa.eu/rapid/press-release_MEMO-18-602_en.htm)>, accessed 20 March 2018; European Institution for Gender Equality, ‘Current situation of female genital mutilation in Sweden’, *EIGE* [website], 29 May 2013, p. 2 <[file:///Users/elinborgko/Downloads/current\\_situation\\_and\\_trends\\_of\\_female\\_genital\\_mutilation\\_in\\_sweden\\_en%20\(7\).pdf](file:///Users/elinborgko/Downloads/current_situation_and_trends_of_female_genital_mutilation_in_sweden_en%20(7).pdf)> accessed 30 May 2018.

<sup>213</sup> European Commission, ‘Acquis’, *European Commission* [website], 6 December 2016, para. 4, <[https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/acquis\\_en](https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/acquis_en)>, accessed 15 May 2018.

<sup>214</sup> Europe and Central Asia Regional Office of UN Women, loc. cit.

<sup>215</sup> European Commission, ‘European Commission - Fact Sheet: Questions and Answers about Female Genital Mutilation/Cutting (FGM/C)’, loc. cit.

<sup>216</sup> End FGM European Network, ‘Victims’ Rights Directive’, *End FGM European Network* [website], July 2016, para. 1, <<http://www.endfgm.eu/resources/eu/victims-rights-directive/>>, accessed 5 March 2018.

<sup>217</sup> European Commission, ‘Communication from the Commission to the European Parliament and the Council towards the elimination of female genital mutilation’, *Eur-Lex* [website], 2013, para. 1, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2013:0833:FIN>>, accessed 5 March 2018.

<sup>218</sup> High Representative of the Union for Foreign Affairs And Security Policy, ‘Joint Staff Working Document: Gender Equality and Women’s Empowerment: Transforming the Lives of Girls and Women through EU External Relations 2016-2020’, *European Commission* [website], 22 September 2015, para. 2, <[https://ec.europa.eu/europeaid/joint-staff-working-document-gender-equality-and-womens-empowerment-transforming-lives-girls-and\\_en](https://ec.europa.eu/europeaid/joint-staff-working-document-gender-equality-and-womens-empowerment-transforming-lives-girls-and_en)>, accessed 5 March 2018.

at risk.’’<sup>219</sup> Amongst their work is facilitating the use of practical tools on web platforms for professionals.<sup>220</sup> Moreover the Commission is committed to implement the 2030 Agenda for Sustainable Development, that includes FGM/C in relation to the elimination of gender inequality and harmful practices.<sup>221</sup>

The EU has been involved in projects and awareness raising campaigns on FGM/C. Web-based training on FGM/C, such as, United to END FGM for professionals for example asylum officers and doctors, to, *inter alia*, enhance gender- and culturally sensitive support and protection to those affected by FGM/C. The training also has the aim of raising awareness by enhancing knowledge on the practice and furthermore avoid stigmatisation in media, as it affects women and the willingness to disclose what has happened to them, as will be further discussed.<sup>222</sup>

In regards to asylum, policies and practices, a careful examination shows that specific needs are dealt with differently in each MS. This can potentially affect how interviews are conducted and if the applicant will receive international protection.<sup>223</sup> When it comes to international protection, the directives of the CEAS are considered the most important instrument of the EU Asylum Policy as it harmonises protection and reception standards of the MS and have enhanced the protection of vulnerable asylum seekers including those affected by FGM/C.<sup>224</sup> Before analysing the CEAS in more detail there will be a contextualisation of EU Asylum Policy.

### 3. EU Asylum Policy Framework

The EU Asylum Policy includes revised directives of the CEAS, which are meant to operate in a gender-sensitive manner and should be beneficial to asylum seekers affected by FGM/C. Hower ‘gender-sensitivity’ is only mentioned in regards to examination procedures to ensure gender equality between asylum seekers and

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<sup>219</sup> European Commission, ‘Joint Statement on the International Day of Zero Tolerance for Female Genital Mutilation’, *European Commission* [website], 5 February 2018, para. 4, <[http://europa.eu/rapid/press-release\\_STATEMENT-18-601\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-18-601_en.htm)>, accessed 15 May 2018.

<sup>220</sup> *ibid.*

<sup>221</sup> *ibid.*

<sup>222</sup> United to End Female Genital Mutilation, ‘Welcome to United to End FGM (UEFGM)’, *European Commission* [website], 2018, <<https://uefgm.org/>>, accessed 5 March 2018.

<sup>223</sup> Directorate-General for Internal Policies - Policy Department C: Citizens’ Rights and Constitutional Affairs, ‘Reception of Female Refugees and asylum seekers in the EU Case study Belgium’, *European Parliament* [website], 2016, p. 6, <[http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/556946/IPOL\\_IDA\(2016\)556946\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/556946/IPOL_IDA(2016)556946_EN.pdf)>, accessed 15 May 2018.

<sup>224</sup> End FGM European Network, ‘FGM in EU Asylum Directives on Qualification, Procedures and Reception Conditions: End FGM Network Guidelines For Civil Society’, *op. cit.*, p. 6.

FGM/C as a ground for persecution or in regards to definitions of a vulnerable person. This will be further elaborated on. As has been mentioned the diverse law, policies and practices in each MS, which come from a system that lacks gender-sensitivity and are influenced by a deeply rooted dominant male perspective, creates gaps in the system especially in the protection of women. As EU MS are bound to implement the CEAS directive in their national law, with some exceptions, there will be a gender-sensitive analysis of existing provisions that could benefit those affected by FGM/C. Furthermore, existing gender-sensitive standards of the CEAS will be compared with those of the Istanbul Convention. Finally, the existing policies will be checked against reality, by analysing gender-sensitive practices of MS within their asylum system specifically in regards to FGM/C.

### **3.1. Contextualisation of EU Asylum Policy**

The EU Asylum Policy has gone through many changes in the last decades, having received an ever increasing number of asylum seekers and refugees, especially in the last years reaching its peaks in 2015 and 2016.<sup>225</sup> Resulting from “ongoing conflicts, regional instability and human rights violations, including gender-based violence and rape as a weapon of war.”<sup>226</sup> This influx of asylum seekers and refugees has created a strain on the EU asylum system affecting certain MS more than others, which has affected policy changes.<sup>227</sup> The main debate has been between respecting the Human Rights of people seeking international protection and the right of States to protect their community, including their citizen’s safety and security. The so-called crisis caused by the influx of migrant and asylum seekers has in many cases resulted in States putting more emphasis on the protection of their citizens rather than protecting the Human Rights of the migrant and asylum seeking population.

Although the CEAS is supposed to find the balance of the two, there have been shortcomings in respect for Human Rights of asylum seekers and migrants in

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<sup>225</sup> Eurostat, ‘Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded)’, *Eurostat (European Commission)* [website] 12 March 2018, para. 5, <<http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>> accessed 22 March 2018.

<sup>226</sup> Committee on Women’s Rights and Gender Equality, op. cit., p. 4.

<sup>227</sup> European Commission, ‘Communication from the Commission to the European Parliament and the Council towards a reform of the Common European Asylum System and enhancing legal avenues to Europe’, *European Parliament* [website], 6 April 2016, p. 2, <[https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160406/towards\\_a\\_reform\\_of\\_the\\_common\\_european\\_asylum\\_system\\_and\\_enhancing\\_legal\\_avenues\\_to\\_europe\\_-\\_20160406\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160406/towards_a_reform_of_the_common_european_asylum_system_and_enhancing_legal_avenues_to_europe_-_20160406_en.pdf)>, accessed 17 February 2018.

some cases.<sup>228</sup> These shortcomings have even more affected a gendered aspect of asylum as the lack of gender-sensitivity in EU Asylum Policy disproportionately affects women asylum seekers and refugees which have been described as a ‘vulnerable’ group of people as they are affected by gender-based violence both on their journeys to Europe and after they arrive in a MS, being more vulnerable and marginalised than their male counterparts, especially those women and girls who have been affected by FGM/C.<sup>229</sup>

Policy changes in the EU Asylum Policy have mostly ignored gender-sensitivity, which according to FEMM has been seen through the lenses of male experience and therefore ignoring the experiences of women, which consequently creates gaps in the system especially in the protection of female asylum seekers.<sup>230</sup> As discussed in the theoretical part of the thesis according to those adhering to Feminist Theory the standpoint of male experience is entrenched into the structures of society which can affect policy decisions within systems such as the EU Asylum System by ignoring or not taking into account the experiences and the needs of women. By incorporating the Transnational Feminist perspective the difference between women’s experiences depending on factors such as culture, religion and location can also be ignored, resulting in female asylum seekers such as those affected by FGM/C being marginalised on multiple levels in the system. To understand the shortcomings of the CEAS in relation to gender-sensitivity, particularly in regards to female asylum seekers affected by FGM/C, there will be a short review on the developments of the EU Asylum Policy.

Before the creation of the CEAS, each MS would adopt the CSR to its national asylum system, which was supported in Art. 63 of the Treaty Establishing the European Community (TEC).<sup>231</sup> Although a legal framework was in place in regards to asylum, with open borders and freedom of movement within the EU, a common

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<sup>228</sup> M. Claudio & A. Taylor, ‘The Common European Asylum System and human rights: enhancing protection in times of emergencies’ *Asser Institute Centre for International & European Law* [website] July 2014, p. 11, <[http://www.asser.nl/media/2500/cleer14-7\\_web.pdf](http://www.asser.nl/media/2500/cleer14-7_web.pdf)> accessed 6 April 2018.

<sup>229</sup> Committee on Women’s Rights and Gender Equality, op. cit., p. 5.

<sup>230</sup> *ibid.*, p. 15.

<sup>231</sup> European Asylum Support Office, ‘An Introduction to the Common European Asylum System for Courts and Tribunals: A Judicial Analysis’, *European Asylum Support Office* [website], August 2016, p. 14, <<https://www.easo.europa.eu/sites/default/files/public/BZ0216138ENN.PDF>>, accessed 5 April 2018.



asylum system was needed.<sup>232</sup> The issue of secondary movement of asylum seekers within the EU was addressed in the 1990 Dublin Regulation, making the EU MS responsible to examine asylum applications lodged in a MS, which supports the notion of similar treatment of asylum applicants and refugees in all MS.<sup>233</sup> After the Maastricht Treaty entered into force in 1993 and the Treaty of Amsterdam in 1999 supporting cooperation and a common European system the grounds for the creation of a CEAS were established, which was then formed later the same year. The system was supposed to be implemented with a wider scope of the 1951 Refugee Convention and its 1967 protocol.<sup>234</sup> The CEAS was thus meant to be an asylum system that included the responsibilities of MS regarding a common minimum standard in regards to examinations of applications, procedures, reception conditions and rules concerning recognition and content regarding refugee status.<sup>235</sup>

Between 1999 and 2005 legislations were made to unify the common minimum standards and improve financial solidarity with the European Refugee Fund.<sup>236</sup> Regulations such as The ‘Eurodac Regulation’, regulating fingerprints database and a second ‘Dublin Regulation’ were established. In addition three other important directives were added: ‘The Reception Conditions Directive’ (2003), ‘The Qualification Directive’ (2004) and ‘The Asylum Procedures Directive’ (2006).<sup>237</sup>

After the first phase a 2007 Green Paper gave a large public consultation, the responses from the paper and evaluation on the CEAS and it’s first phase implementations gave the basis to the European Commission’s Policy Plan on Asylum. In the plan three pillars were put forward for the development of the CEAS that were the basis for the second phase of implementation, which were to bring greater harmonisation when it comes to standards of protection.<sup>238</sup> With a legal basis provided by Art. 78 from the 2007 Treaty of the functioning of the European Union (TFEU) a recast was made of the CEAS, which were completed in 2013. The recast

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<sup>232</sup> European Commission, ‘A Common European Asylum System’, *European Commission* [website], 2014, p. 3, <[https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/ceas-fact-sheets/ceas\\_factsheet\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/ceas-fact-sheets/ceas_factsheet_en.pdf)>, accessed 5 April 2018.

<sup>233</sup> European Asylum Support Office, ‘An Introduction to the Common European Asylum System for Courts and Tribunals: A Judicial Analysis’, op. cit. p. 13

<sup>234</sup> *ibid.* p. 13-14.

<sup>235</sup> *ibid.*

<sup>236</sup> European Commission, ‘A Common European Asylum System’, loc. cit.

<sup>237</sup> European Asylum Support Office, ‘An Introduction to the Common European Asylum System for Courts and Tribunals: A Judicial Analysis’, op. cit., p. 15.

<sup>238</sup> European Commission, ‘Migration and home affairs: Common European Asylum System’ *European Commission* [website], 2018, The EU as an area of protection, <[https://ec.europa.eu/home-affairs/what-we-do/policies/asylum\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en)>, accessed 9 April 2018.

was meant to amend the existing implementation put forward in the first phase excluding the Temporary Protection Directive.<sup>239</sup> The legal basis of CEAS consists of primary law of the TFEU and the EU Charter in addition to secondary legislation. Both the recast of the Dublin Regulation and Eurodac Regulations constitute as EU regulations while the others are directives which need to be transposed into national law.<sup>240</sup> The CEAS, its directives and rules are binding for all MS except Denmark, Ireland and the UK.<sup>241</sup>

The establishment of the European Asylum Support Office (EASO), which is an agency of the EU was meant to improve the implementation of the CEAS by providing practical cooperation and aid MS in fulfilling their obligations, especially for people in need of protection.<sup>242</sup> The agency has been instrumental concerning the enhancement of gender-sensitivity in MS implementations. Among other things, the agency should provide training made available to members of courts and tribunals in EU MS.<sup>243</sup> They are also developing training on gender in addition to applying gender mainstreaming to its curriculum. In 2016 the EASO presented a workshop on FGM/C in relation to asylum, which involved speakers from practicing countries such as Somalia, Nigeria and Sudan. Furthermore EASO initiated conferences and workshops on Country of Origin Information (COI) and FGM/C that were targeting caseworkers, judges and other organisations.<sup>244</sup> Moreover they developed tools to identify and support vulnerable asylum seekers.<sup>245</sup>

In 2016 a Communication was published from the Commission to the European Parliament and the Council towards reforming the Common European Asylum System and enhancing legal avenues towards Europe with the goal of improving the CEAS, which appears to be ill designed or badly implemented, thus contributing to migration flows that are uncontrolled. Hoping to achieve a fairer

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<sup>239</sup> European Asylum Support Office, 'An Introduction to the Common European Asylum System for Courts and Tribunals: A Judicial Analysis', op. cit., p. 16.

<sup>240</sup> *ibid.*, p. 17.

<sup>241</sup> European Asylum Support Office, 'An Introduction to the Common European Asylum System for Courts and Tribunals: A Judicial Analysis', op. cit., p. 19.

<sup>242</sup> *ibid.*, p. 3.

<sup>243</sup> *ibid.*

<sup>244</sup> European Asylum Support Office, 'Annual Report on the Situation of Asylum in the European Union 2016', *European Asylum Support Office* [website], 2017, p. 127,

<<https://www.easo.europa.eu/sites/default/files/Annual-Report-2016.pdf>>, accessed 1 May 2018.

<sup>245</sup> *ibid.*, p. 132.

system with safer and controlled ways towards the EU for third country nationals.<sup>246</sup> The reform does emphasise on greater harmonisation and further taking into account specific needs of vulnerable persons. However, no specific emphasis is put on gender-based violence and gender-sensitivity. According to UN Women the UNHCR and the Istanbul Convention guidelines on recognising gender-based violence such as FGM/C as a form of persecution in accordance to the Refugee Convention are not fully taken into account.<sup>247</sup> It is important to analyse the current directives of the CEAS which MS are legally bound to, with the exception of the three MS mentioned before, to have a better idea of the level of gender-sensitive provisions.

### **3.2. The CEAS and the Istanbul Convention: A gender-sensitive comparative analysis on FGM/C.**

There are already International and Regional Instruments in place that could benefit asylum seekers affected by FGM/C. The EU designed a Common European Asylum system to ensure that asylum seekers are treated fairly in all MS.<sup>248</sup> The system was then improved upon with the second-generation laws to harmonise the asylum processes; including protection and reception standards, ensuring that asylum seekers are treated in a fair and dignifying manner in every EU MS.<sup>249</sup> The three main legislations in the second generation laws of the CEAS, especially when it comes to protection of vulnerable groups like those affected by FGM/C are: “The revised Qualification Directive”, “The revised Asylum Procedures Directive” and “The revised Reception Conditions Directive.”

The directives take into consideration gender-based violence, such as FGM/C and emphasises that it constitutes as a form of persecution and should therefore be considered as a ground for an asylum claim. Additionally, procedures are to be made more gender-sensitive, especially when it comes to vulnerable groups in addition to the proper training of asylum authorities in the implementations of these gender-sensitive procedures. The directives present a high potential in terms of improving the treatment of asylum seekers, such as those affected by FGM/C. Nevertheless, it is the

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<sup>246</sup> European Commission, ‘Communication from the Commission to the European Parliament and the Council towards a reform of the Common European Asylum System and enhancing legal avenues to Europe’, loc. cit.

<sup>247</sup> *ibid.*, p. 50.

<sup>248</sup> European Commission, ‘A Common European Asylum System’, loc. cit.

<sup>249</sup> *ibid.*

MS legal obligation to transpose these directives into their national law. The Qualification Directive was to be implemented into national law by December 2013, the Reception Directive by July 2015 and Procedure Directive by July 2015 with few provisions being implemented by July in 2018. However, the European Commission had to initiate infringement procedure against EU MS that have not implemented the directives.<sup>250</sup> In 2015 Letter of Formal Notice were sent to Greece and Malta, among other sixteen MS who haven't "communicated the necessary transposition measures"<sup>251</sup> concerning the revised Asylum Procedures directive, the same can be said about the Reception Conditions Directive where the additional states are seventeen.<sup>252</sup>

Even though EU MS do implement the directives of the CEAS, their implementations in practice often varies in many respects, as will be further analysed through data on the practices of some MS. As the Istanbul Convention, especially Art. 60 and 61 is thought to enhance existing provisions of the CEAS there will be a gender-sensitive comparison on the provisions applying a Transnational Feminist perspective.

### *The Revised Qualification Directive*

The Qualification Directive lays down groundwork for the granting of international protection.<sup>253</sup> Relevant to FGM/C related cases Art. 9 of the Qualification Directive states that persecution can take the form of sexual violence and be gender and age specific, within the meaning of Art. 1A (2) of the CSR.<sup>254</sup> Moreover Art. 10(d) of the directive states that gender related aspects could be considered when defining a social group.<sup>255</sup> Although FGM/C is not specifically mentioned as a form of persecution in the preamble of the directive it is stated that a social group may be defined from the

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<sup>250</sup> End FGM European Network, 'FGM in EU Asylum Directives on Qualification, Procedures and Reception Conditions: End FGM Network Guidelines For Civil Society', op. cit., p. 6.

<sup>251</sup> European Commission, 'European Commission – Press release: Implementing the Common European Asylum System: Commission escalates 8 infringement proceedings', 'Annual Report on the Situation of Asylum in the European Union 2016', *European Commission* [website], 10 December 2015, para. 3, <[http://europa.eu/rapid/press-release\\_IP-15-6276\\_EN.htm](http://europa.eu/rapid/press-release_IP-15-6276_EN.htm)>, accessed 9 July 2018.

<sup>252</sup> *ibid.*

<sup>253</sup> European Commission, 'A Common European Asylum System', op. cit., p 6.

<sup>254</sup> European Parliament & European Union Council, 'Directive 2011/95/EU' *Eur-Lex* [website], 13 December 2011, Recital 9, <<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011L0095>>, accessed 5 March 2018.

<sup>255</sup> *ibid.*, Art. 10.

persons' gender as issues can arise from it such as customs like genital mutilation.<sup>256</sup> Furthermore in Art. 4 (3) c of the recast directive it states that in relation to the assessment of applications of international protection there should be an evaluation according to each individual's position or circumstances, such as factors relating to "background, gender and age",<sup>257</sup> that have resulted in or could result in acts that can be considered as a form of persecution or serious harm, which is relevant to those affected by FGM/C.<sup>258</sup> MS should assess elements that are significant for asylum applications, with the cooperation of applicants.<sup>259</sup> The provision is relevant in regards to FGM/C related asylum claims where it is important to look at *inter alia* medical, gender, socio-cultural and religious factors, supported by a Transnational Feminist perspective. These factors can relate to COI, medical reports, providing a same sex interpreter etc.

Subsidiary protection should be considered in the case of asylum seekers that are minors and those who have been subjected to torture or serious forms of sexual violence which both can apply to those who have gone through FGM/C.<sup>260</sup> The above mentioned provisions are partly enshrined in Art. 60 of the Istanbul Convention which focuses specifically on gender-based asylum application. Art. 60(1) states that gender-based violence, which includes FGM/C can be recognised as a form of persecution within Art. 1A (2) of the Refugee Convention where it is defined as a form of serious harm where either complementary or subsidiary protection may be appointed.<sup>261</sup> Art. 60(2) states that "parties shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds."<sup>262</sup> Moreover if persecution or serious harm is feared, a refugee status should be granted.<sup>263</sup> While in the Qualification Directive there is more focus on in when gender could be considered as a social group,<sup>264</sup> the Istanbul Convention stresses the interpretation to every Convention ground, as those

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<sup>256</sup> *ibid.*, Recital 30.

<sup>257</sup> *ibid.*, Art. 4, (3) c.

<sup>258</sup> *ibid.*

<sup>259</sup> *ibid.*, Art. 4, (1).

<sup>260</sup> *ibid.*, Art. 20 (3).

<sup>261</sup> *ibid.*, Art. 60(1).

<sup>262</sup> *ibid.*, Art. 60(2).

<sup>263</sup> *ibid.*

<sup>264</sup> *ibid.*, Art. 10 (3).

opposing the practice could fall within the grounds of political opinion and when the practice is linked with religion on grounds of religious beliefs.<sup>265</sup>

From a Transnational Feminist perspective culture and background matters as to understand the complexity of each individual, not only by taking into account gender on it's own. Taking into consideration the applicants' culture and background to understand the practice, the reasons behind it and how it relates to age will enable decision makers to understand how the practice affects women and girls. It is important when assessing an application to think about what would happen to a woman or a girl if she is sent back to her country of origin. If sent back there can be a risk of them being subject to FGM/C without their consent or being pressured by the members of the society as the tradition is deeply rooted in their culture. If a woman has not been cut, she will most likely be discriminated against, as she is not considered a suitable wife and therefore not a valid member of the society. This is an important factor as in many societies women are reliant on their husband for monetary support.

There should also be an understanding that performing FGM/C on a girl or a woman concerns the whole community not just the closest family. If a custom such as FGM/C is so deeply rooted in the community or the country, persons can find themselves unable to avoid it and fearing the fact that the country will not protect them from the practice which concurs with Art. 1A (2) of the Refugee Convention. According to UNHCR even though a country has established laws that prohibits the practice, if it is not effectively followed, or is condoned or tolerated in the country it can still be considered a form of persecution.<sup>266</sup> This discussions bring the topic to the principle of non-refoulment. As previously mentioned, MS are bound by the principle of non-refoulment through the CEAS which consists of primary law of the TFEU and the EU Charter.<sup>267</sup> Furthermore, the principle is enshrined in the Refugee Convention and further supported by the UNHCR Guidelines on Gender-Related Persecution, in addition to conventions such as the CPT. Art. 61 of the Istanbul Convention further emphasises the importance of the principle of non-refoulment in relation to women who are victims of violence such as FGM/C and that State Parties should take “the

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<sup>265</sup> End FGM European Network, 'FGM in EU Asylum Directives on Qualification, Procedures and Reception Conditions: End FGM Network Guidelines For Civil Society', op. cit., p. 14.

<sup>266</sup> United Nations High Commissioner for Refugees, 'Guidance note on the refugee claims relating to female genital mutilation', *Refworld* [website], May 2009, p. 11, <<http://www.refworld.org/pdfid/4a0c28492.pdf>>, accessed 14 April 2018.

<sup>267</sup> European Commission, 'A Common European Asylum System', loc. cit.

necessary legislative or other measures to respect the principle of non-refoulement in accordance with existing obligations under international law.’<sup>268</sup> Moreover victims of violence should not be returned to a country where their life could be at risk or ‘‘might be subjected to torture or inhuman or degrading treatment or punishment.’’<sup>269</sup>

It has to be noted that in some cases women and girls that are affected by FGM/C are not always aware that they are victims or possible victims of the practice and therefore do not share information about it. Reasons for not sharing information on the practice can occur because of lack of understanding of the asylum procedure in addition to the distrust of the authority that stems from cultural taboo on the practice. In some cases they have been informed misguided information from smugglers or other persons.<sup>270</sup>

To avoid women and girls not disclosing information about FGM/C it is important to train the asylum authorities especially to recognise possible victims, but the whole community should also be familiar about the practice of FGM/C with a gender-sensitive approach where factors such as gender, age and culture are considered. It is also important to look at a historical context and the power relations, not just between genders, but also between geographical areas as has been discussed by scholars from the school of Transnational Feminism. So when asylum seekers affected by FGM/C feel that there is an understanding of the practice in the society and by the asylum authorities it could encourage them to share information about what they have gone through in relation to the practice which moreover can strengthen their application for asylum.

In line with the fact that FGM/C can be considered as a child-specific form of persecution the Directive stresses that asylum authorities have to ensure the best interests of the child and raise the issue if a girl is at risk or has been subjected to FGM/C. Moreover, this has to be considered especially if said girl comes from a place with high prevalence rates of FGM/C.<sup>271</sup> In relation to the best interest of the child the Directive obliges MS to ensure the right to family unity. This is especially important in the case of a girl who has been given the status of a refugee for the fear of FGM/C, but not her parents, as discussed above. In this case, parents should be given a

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<sup>268</sup> The Istanbul Convention, op. cit., Art., 61 (1).

<sup>269</sup> *ibid.*, Art., 61 (2).

<sup>270</sup> End FGM European Network, ‘FGM in EU Asylum Directives on Qualification, Procedures and Reception Conditions: End FGM Network Guidelines For Civil Society’, op. cit., p. 8-9.

<sup>271</sup> *ibid.*, p. 9.

derivative refugee status for the reason of it being in the best interest of the child.<sup>272</sup> This is supported in under unit 5.1.1. on the ‘*processing claims based on the right to family unity of the UNHCR procedural standards for refugee status determination*’, ‘‘individuals who obtain derivative refugee status enjoy the same rights and entitlements as other recognized refugees.’’<sup>273</sup>

Art. 11 (3) of the Qualification Directive states that the cessation of a refugee status should not be applied to asylum seekers that provide valid reasons of previous persecution as reasons for refusing protection in their home country.<sup>274</sup> The article can apply to those who are affected by FGM/C as it is considered a continuous form of harm and not just harm that happens one time.<sup>275</sup> As explained in the chapter on FGM/C, after going through the procedure of FGM/C girls and women often have lifelong problems, both physical and mental which also affect their social lives. Even if the law has changed in their country, the practice is often still deeply rooted in the community culture and if a girl returns, she still risks being subjected to FGM/C and in other cases undergoing defibulation or re-infibulation as explained. For all of the provisions mention above and for the totality of the Directive to be properly implemented there needs to be necessarily trained staff that are bound to confidentiality as stated in Art. 37.<sup>276</sup> Although respecting the non disclosure of a person’s identity, cases of FGM/C should be registered to gain more knowledge on the prevalence of the practice in the asylum context as there is lack of information on this issue.

#### *The revised Procedures Directive*

The Asylum Procedures Directive lays down rules for the processing of asylum claims.<sup>277</sup> The Directive sets out relevant procedures for FGM/C related cases, including Art. 24 which identifies vulnerable asylum seekers such as those affected by *inter alia* torture or serious forms of violences, including sexual violence and are in

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<sup>272</sup> *ibid.*

<sup>273</sup> United Nations High Commissioner for Refugees, ‘UNIT 5: Processing Claims Based on the Right to Family Unity’, *UNHCR* [website], n.d., p. 1, <<http://www.unhcr.org/43170ff81e.pdf>>, accessed 10 July 2018.

<sup>274</sup> European Parliament & European Union Council, ‘Directive 2011/95/EU’, Art. 11 (3).

<sup>275</sup> End FGM European Network, ‘FGM in EU Asylum Directives on Qualification, Procedures and Reception Conditions: End FGM Network Guidelines For Civil Society’, *loc. cit.*

<sup>276</sup> European Parliament & European Union Council, ‘Directive 2011/95/EU’, Art. 37.

<sup>277</sup> European Commission, ‘A Common European Asylum System’, *op. cit.*, p. 4.



need of special procedural guarantees.<sup>278</sup> Special guarantees are also provided in Art. 25 for unaccompanied minors which is in some cases relevant to FGM/C related cases.<sup>279</sup> Furthermore Art. 15 (3) lays out provisions in regards those conducting asylum interviews where consideration factors *inter alia* cultural origin, gender and vulnerability are of utmost importance. Interviews are to be child and gender-sensitive with the possibility of individuals being interviewed on their own with same sex interviewer and interpreter.<sup>280</sup> Taking into consideration the Transnational Feminist perspective, there should also be an option to ask for an interpreter from the same culture as there could be more understanding and trust between them. These provisions are important as many FGM/C victims or those at risk find it difficult to speak of their experience in front of family members or in front of male staff.<sup>281</sup>

Art. 10 (3) sets provisions on examination procedures that should be conducted in a gender-sensitive way and those examining asylum application should receive updated information on issues that are gender and child related, which FGM/C falls under, from relevant sources such as UNHCR and COI from EASO.<sup>282</sup> However although EASO has some gender-sensitive COI the number of countries are limited.<sup>283</sup> From a Transnational Feminist perspective it is important to look at gender and how other factors *inter alia* culture and age affect the different experiences of women. Even though a country is considered safe, that might not be the case for certain groups *inter alia* those subjected to FGM/C as it is deeply rooted in the community as discussed earlier. According to the Network, some countries don't apply gender-sensitivity when analysing countries for the COI. Furthermore credibility assessment varies between countries. Consequentially this affects those who's human right's violations are gender specific such as FGM/C. Lack and discrepancy of gender-sensitive COI can thus have negative impacts on the decision making process in asylum cases such as those related to FGM/C.<sup>284</sup> Therefore Art.

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<sup>278</sup> European Parliament & European Union Council, 'Directive 2013/32/EU', *Eur-Lex* [website], 26 June 2013, Art. 24, <<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013L0032>>, accessed 5 March 2018.

<sup>279</sup> *ibid.*, Art. 25.

<sup>280</sup> *ibid.*, Art. 15 (3).

<sup>281</sup> End FGM European Network, 'FGM in EU Asylum Directives on Qualification, Procedures and Reception Conditions: End FGM Network Guidelines For Civil Society', *op. cit.*, p. 10.

<sup>282</sup> European Parliament & European Union Council, 'Directive 2013/32/EU', Art. 10 (3).

<sup>283</sup> FGM European Network, 'Input by civil society to the EASO Annual Report 2017', *European Asylum Support Office* [website], 2017, p. 45, <<https://www.easo.europa.eu/sites/default/files/End-fgm-european-network.pdf>>, accessed 5 March 2018.

<sup>284</sup> *ibid.*

10d is important as it states there should be the possibility for those examining applications to “seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues” which can all be relevant in the case of FGM/C<sup>285</sup> According to Art. 4 (3) the determining authority should also be properly trained, taking into account training such as the EASO offers.<sup>286</sup>

These provisions are important as mentioned earlier since majority of claims relating to gender such FGM/C are rejected on the basis of lack of credibility. When it comes to women’s claims it often relies on oral testimony and credibility assessments, where the harm they have suffered or are at risk of, often takes place in the private sphere, therefore there needs to be an understanding of their experience.<sup>287</sup> As cited by Debora Singer from Asylum Aid in the United Kingdom, women face more additional hurdles in credibility assessments since women tend to have more claims that were suffered in the private sphere rather than men.<sup>288</sup>

In order to provide appropriate services to vulnerable asylum seekers, such as those who have been through FGM/C or are at risk, the Directive “requires member state to identify groups with specific procedural needs, due to their age, gender or harm they suffered.”<sup>289</sup> Art. 18 also emphasises that in the case of the applicant’s refusal to undergo medical examination, it should not negatively affect his request for international protection.<sup>290</sup> Medical and psychological examinations can not only be beneficial to their wellbeing but also provide proof of credibility in relation to the assessment of their claim for international protection.<sup>291</sup> The Asylum Procedure Directive emphasises the importance of providing applicants with legal and procedural information for free. However, MS choose how they provide this information, whether it is from NGOs or the State. Additionally there are no clear provision on who is responsible for these services and how it can be obtained.<sup>292</sup> The

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<sup>285</sup> European Parliament & European Union Council, ‘Directive 2013/32/EU’, Art. 10 (3).

<sup>286</sup> *ibid.*, Art. 4 (3).

<sup>287</sup> European Asylum Support Office, ‘Annual Report on the Situation of Asylum in the European Union 2016’, *op. cit.*, p. 17.

<sup>288</sup> *ibid.*, p. 10.

<sup>289</sup> End FGM European Network, ‘FGM in EU Asylum Directives on Qualification, Procedures and Reception Conditions: End FGM Network Guidelines For Civil Society’, *loc. cit.*

<sup>290</sup> European Parliament & European Union Council, ‘Directive 2013/32/EU’, Art. 18 cited in End FGM European Network, ‘FGM in EU Asylum Directives on Qualification, Procedures and Reception Conditions: End FGM Network Guidelines For Civil Society’, *loc. cit.*

<sup>291</sup> *ibid.*

<sup>292</sup> *ibid.*, *op. cit.*, p. 12.

Network emphasise the need for “authorities provide clear and detailed information to parents on the process of claiming asylum specific to children.”<sup>293</sup> This is especially important in the case of FGM/C which is usually performed on girls.

### *The Revised Reception Directive*

The Reception Conditions Directive deals with the access to reception conditions of those seeking asylum while they wait for their claim to be examined.<sup>294</sup> Provisions of Art. 21, 18 (3) and (4) set out in the Reception Directive includes taking into consideration vulnerable people *inter alia* those subjected to sexual violence, such as unaccompanied minors, persons subjected to torture or sexual violence including FGM/C.<sup>295</sup> However there have been criticisms regarding fragmentation or inconsistency of the concepts of vulnerability and special/specific needs in regards to the terminology and categories between EU MS legal orders. Furthermore, the lack of efficiency of the identification of vulnerability consequently affects the asylum procedure and its adaptation to individual needs.<sup>296</sup> One of the reasons for the lack of efficiency of identification of vulnerability is that in many cases those at risk of FGM/C will not seem vulnerable unless they are identified. The identification is not done in an efficient time manner, there is also a lack of obligation, as MS are not obligated to include procedure of identification into their national law.<sup>297</sup>

EASO does have tools for identification of specific needs, however there are no specific questions for those who have invisible needs like those at risk of FGM/C.<sup>298</sup> Early detection is important to respond to their specific needs, such as accommodation and health care among other procedural needs as has been discussed earlier.<sup>299</sup> Early detection can also support dialog and prevention of practices such as FGM/C with the family. Art. 18 (3)(4) state that both age and gender-specific factors

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<sup>293</sup> End FGM European Network, ‘FGM in EU Asylum Directives on Qualification, Procedures and Reception Conditions: End FGM Network Guidelines For Civil Society’, loc. cit.

<sup>294</sup> European Commission, ‘A Common European Asylum System’, op. cit., p. 5.

<sup>295</sup> European Parliament & European Union Council, ‘Directive 2013/33/EU’, *Eur-Lex* [website], 26 June 2013, Art. 21 <<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013L0033>>, accessed 5 March 2018.

<sup>296</sup> M. Mouzourakis, K. Pollet and R. Fierens at ECRE, ‘The Concept of Vulnerability in European Asylum Procedures’ *Asylum in Europe* [website], 31 August 2017, p. 20, <[http://www.asylumineurope.org/sites/default/files/shadow-reports/aida\\_vulnerability\\_in\\_asylum\\_procedures.pdf](http://www.asylumineurope.org/sites/default/files/shadow-reports/aida_vulnerability_in_asylum_procedures.pdf)>, accessed 12 March 2018.

<sup>297</sup> End FGM European Network, ‘FGM in EU Asylum Directives on Qualification, Procedures and Reception Conditions: End FGM Network Guidelines For Civil Society’, op. cit., p. 12.

<sup>298</sup> *ibid.*

<sup>299</sup> *ibid.*

should be considered within asylum premises and accommodation centres in addition to taking measure to prevent GBV within these facilities.<sup>300</sup> These measures help avoid re-traumatisation by for example placing women with the opposite sex or young children with adults.<sup>301</sup> As discussed earlier, when girls or women are affected by FGM/C issues can arise for reasons related to gender or culture being around men. According to FEMM women are considered particularly vulnerable throughout their journey as asylum seekers and frequently experience gender-based violence.<sup>302</sup>

Situations can even become more problematic if a girl who has been subjected to FGM/C is raped. An example is the case of a girl who was raped in a refugee camp, as described by Hyndman. Her mother subsequently wanted her to be re-infibulated by UNHCR staff rather than a traditional cutter as she thought it was safer. These kind of incidents can cause tension between the cultural and human rights aspect and thinking about the wellbeing of the girl.<sup>303</sup> According to Art. 18 (7), staff working in the facilities, organisations as well as other authorities should receive training on the specific needs of both men and women.<sup>304</sup> For instance the term gender has been influenced by patriarchal structures which has created uneven power relation between men and women, as an example women get disproportionately affected by violence, where the perpetrator is usually a man. Therefore a same sex accommodation could decrease the changes of women being subjected to violence. Furthermore those who have been affected by FGM/C, which is a gender specific violence, may need assistance from a gynecologist among other specialists. In these instances, gender also needs to be thought of from *inter alia* socio-cultural aspects as proposed by scholars from the school of Transnational Feminism, for women experiences are different from their male counterparts, and so are their needs.

Art. 23 emphasises on the best interest of the child taking into account family reunification and providing minors with rehabilitation services that have been subjected to any form of abuse.<sup>305</sup> Art. 11 provides provisions on detention of vulnerable persons and of those with special reception needs. The provisions are relevant to FGM/C as they restrict the detention of vulnerable persons, including

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<sup>300</sup> European Parliament & European Union Council, 'Directive 2013/33/EU', Art. 21 & 18 (3) (4).

<sup>301</sup> End FGM European Network, 'FGM in EU Asylum Directives on Qualification, Procedures and Reception Conditions: End FGM Network Guidelines For Civil Society', loc. cit.

<sup>302</sup> Committee on Women's Rights and Gender Equality, loc. cit.

<sup>303</sup> Hyndman, op. cit., p. 54.

<sup>304</sup> European Parliament & European Union Council, 'Directive 2013/33/EU', Art. 18 (7).

<sup>305</sup> *ibid.*, Art. 24.

minors. Detaining unaccompanied children should be avoided. In regards to vulnerable persons the Directive also emphasises on regular monitoring and adequate support including in regards to health and communication to *inter alia* lawyers and family members.<sup>306</sup> In Art. 25 on victims of torture and violence, it is stated that they should receive appropriate treatment, both physical and psychological or care.<sup>307</sup> It is however unclear what type of care they are referring to. Nevertheless as Diallo discussed, there is a great need for girls at risk to talk to someone and having access to a person who listens to them. Thus, there is also an equivalent need for social workers to be trained, in order for them to be more sensitive in this respect.<sup>308</sup>

There is a clear need for gender-sensitivity, not only concerning physical health care and psychological health care but also moral support; listening to the experiences and needs of each woman in context to her culture and asylum status among other factors. The above mentioned provisions are both included in the Procedure and Reception Directives but are also partly enshrined in Art. 60 (3) of the Istanbul Convention, where it states that gender-sensitive asylum claims should be ensured. State Parties should also take all necessary measures, including legal measures to develop gender-sensitive reception procedures among other support services for asylum seekers. In addition, gender guidelines should be established as well as “gender-sensitive asylum procedures, including refugee status determination and application for international protection.”<sup>309</sup>

The provisions of the Istanbul Convention particularly no. 60 and 61 are already mostly enshrined in the CEAS Directives that also have additional procedure in regards to qualification, asylum procedure and reception procedures. However most lack gender-sensitivity and clear obligation. While there is a lack of comprehensive gender-sensitive procedures in the Directives, in the Istanbul Convention, there is a specific focus on gender-sensitivity in regards to protection and prevention, with more specific obligations of gender-sensitive provisions expected from States. Presenting clear definitions on gender and gender-based violence including on FGM/C, which brings knowledge regarding the structural nature of

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<sup>306</sup> *ibid.*, Art. 11.

<sup>307</sup> *ibid.*, Art. 25 (1) cited in End FGM European Network, ‘FGM in EU Asylum Directives on Qualification, Procedures and Reception Conditions: End FGM Network Guidelines For Civil Society’, *op. cit.*, p. 13.

<sup>308</sup> *FGM Too Much Pain - The Voices of Refugee Women: The need for an age and gender sensitive reception system (part 5)* [video], *loc. cit.*

<sup>309</sup> The Istanbul Convention, *op. cit.*, Art. 60(3).

gender-based violence and taking into consideration factors such as race, religion and refugee status is important. However it is stressed that no culture or tradition such as FGM/C can be excused, as it is categorised as VAW. Furthermore the Convention promotes the involvement of a gender-based understanding of violence and focusing on Human Rights of the victim.

The most important element of the Istanbul Convention in regards to the enhancement of existing gender-sensitive provisions present in the CEAS is the monitoring mechanism of GREVIO. The monitoring mechanism is instrumental since there have been criticisms in regards to the lack of the implementation of provisions, especially concerning gender-sensitivity into national law and furthermore into practice.

#### **4. The Key Role of the Istanbul Convention: Between high standards and low performance?**

As has been reviewed in former chapters there are in place International and Regional gender-sensitive instruments that can benefit asylum seekers affected by FGM/C, specifically the three former mentioned CEAS Directives, enhanced by the Istanbul Convention. However the EU Asylum Policy has been criticised for its lack of gender-sensitivity and the discrepancy between policy and practice, as it disproportionately affects female asylum seekers. Ingibjorg Gisladdottir, UN Women Regional Director for Europe and Central Asia, Representative to Turkey, explains how less than third of asylum applicants in EU MS are women, although the majority of those who attempted to reach Europe in 2016 were women and children. She points out that this fact suggests that women “face more challenges in presenting a full case, have less access to gender-appropriate information and services, and are being restricted by cultural norms.”<sup>310</sup> One of those challenges are the additional hurdles women face in credibility assessments, according to the CREDO project, which is partially funded by the European Refugee Fund who analysed the practices of credibility assessments, concluding that the approaches vary greatly between MS.<sup>311</sup>

The UNHCR and the Council of Europe have emphasised on the need for gender-sensitivity when it comes to application procedures and reception

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<sup>310</sup> Europe and Central Asia Regional Office of UN Women, op. cit. p. 6.

<sup>311</sup> *ibid.*, p. 36.

conditions.<sup>312</sup> Similar criticisms have been expressed by FEMM and its rapporteur Mary Honeyball in a motion for a European Parliament Resolution on the situation of women refugees and asylum seekers in the EU in 2016, which was then adopted by the European Parliament, FEMM criticised the lack of gender-sensitivity and emphasised the need to improve special measures that could accommodate to the specific needs of those affected by a gender-specific violence such as FGM/C.<sup>313</sup> These measures include that those affected by FGM/C should be appointed the status of a refugee on the grounds of persecution. FEMM also expressed concerns that many caseworkers don't have adequate knowledge on FGM/C and that MS should implement procedures which help authorities within the asylum system to support and help those who are affected by FGM/C.<sup>314</sup> They encourage a more coordinated training for those working in the reception of asylum seekers affected by FGM/C and all of the professionals they encounter.<sup>315</sup> The committee thus calls for a more comprehensive gender guideline, which includes factors in relation to gender such as cultural and social factors,<sup>316</sup> which relates to former discussions on the Transnational Feminist perspective.

According to the End FGM European Network, when it comes to asylum seekers affected by FGM/C, there is lack of data and knowledge in regards to the complexity of FGM/C and the prevalence of the phenomenon in Europe. The lack of data also intertwines with the inconsistency and in many cases the absences of the documentation of specific groups of people with special needs like asylum seekers affected by FGM/C.<sup>317</sup> As there is lack of comprehensive data on FGM/C in relation to Asylum practices, four main databases will be analysed to weigh up against what the others are lacking. There will be an analysis on data from EIGE; which includes reports and guides on FGM/C, The European Union Fundamental Agency hereafter FRA; which has a thematic focus on gender-based violence in the migration and asylum context,<sup>318</sup> The European Parliament; which focuses on gender related asylum

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<sup>312</sup> Directorate-General for Internal Policies - Policy Department C: Citizens, loc. cit.

<sup>313</sup> Committee on Women's Rights and Gender Equality, op. Cit, p. 15.

<sup>314</sup> *ibid.*, p. 10.

<sup>315</sup> *ibid.*, p. 17-18.

<sup>316</sup> *ibid.*, p. 8.

<sup>317</sup> End FGM European Network, 'FGM in Europe', loc. cit.

<sup>318</sup> European Union Fundamental Agency, 'Regular overviews of migration-related fundamental rights concerns - 2016', *European Union Fundamental Agency* [website], 2016, Reporting and data collection, <<http://fra.europa.eu/en/theme/asylum-migration-borders/overviews/2016>>, accessed 27 May 2018.

claims in Europe, a comparative analysis of law, policies and practice focusing on women in nine EU MS<sup>319</sup> and the 2017 country reports of the Asylum Information Database (AIDA). An additional chapter will be dedicated to a case study on the practices of a receiving and a frontline country, as they can face a disproportionate burden depending on influx of asylum seekers. Furthermore new evidence from the GREVIO Country reports on FGM/C and gender-sensitive practices will be analysed.

#### **4.1. Empirical Evidence: An overview of EU Member States practices**

EIGE has been conducting studies on the prevalence of FGM/C and the latest report will be published in 2018, however the data is only provided by few countries even though EIGE has a common methodological framework that EU MS could use to estimate the risk of FGM/C in the EU.<sup>320</sup> According to the European Commission, it is estimated that at least 500 000 women and girls have undergone FGM/C in the EU.<sup>321</sup> This means that some migrants and asylum seekers continue practicing FGM/C after settling in EU MS. As number of those at risk of FGM/C are seeking asylum or their families, it is important to gain knowledge through data of those who seek asylum from practicing countries, which furthermore gives possibility for preventive measures.

The last comprehensive report made by UNHCR on FGM/C and asylum in the EU used data from 2013, which was then updated in 2014. In the report they estimated that 25 000 girls and women from practicing countries seek asylum in the EU each year and around 62% of them had already been affected by FGM/C.<sup>322</sup> Furthermore, the End FGM European Network reports that each year 180 000 girls and women are at risk of undergoing FGM/C in Europe.<sup>323</sup> These girls and women mostly hail from “Somalia, Eritrea, Nigeria, Iraq, Guinea, Egypt, Ethiopia, Mali and

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<sup>319</sup> European Parliament, ‘Gender related asylum claims in Europe A comparative analysis of law, policies and practice focusing on women in nine EU Member States’, *European Parliament* [website], 2012, p. 1, <[http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/femm/dv/asylum\\_claims\\_/asylum\\_claims\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/femm/dv/asylum_claims_/asylum_claims_en.pdf)>, accessed 25 May 2018.

<sup>320</sup> European Institute for Gender Equality, ‘Female Genital Mutilation’ *EIGE* [website], 2018, para. 7, <<http://eige.europa.eu/it/node/268>>, accessed 20 March 2018.

<sup>321</sup> European Commission, ‘European Commission - Fact Sheet: Questions and Answers about Female Genital Mutilation/Cutting (FGM/C)’, op. cit. para. 1.

<sup>322</sup> The UN Refugee Agency, ‘Too Much Pain; Female Genital Mutilation & Asylum in the European Union – A Statistical update (March 2014)’, op. cit., p. 2-3.

<sup>323</sup> End FGM European Network, ‘FGM in Europe’, loc. cit.



Côte d'Ivoire.’’<sup>324</sup> The UNHCR report showed that these applicants mostly applied for asylum in “Germany, Sweden, the Netherlands, Italy, France, the UK and Belgium.’’<sup>325</sup> Table 1 illustrates the presence of FGM/C in relation to grounds for asylum and gender-sensitive procedure/practices in asylum policy and practices of MS. Moreover whether they have transposed the revised CEAS directives into their national law.

Countries	FGM/C: Grounds for asylum	Gender- sensitive procedure/practices	Transposition of the revised CEAS Directives
France	X		X
Italy	X		X
Sweden			X - Not the Reception Conditions Directive
Belgium	X		X
Slovenia			X
Austria			X
Croatia	X		X
Greece			X - Partial transposition on the Reception Condition Directive
Germany			X
UK			Not relevant
Cyprus	X		X
Hungary		X	X
Bulgaria		X	X
Spain		X	X
Romania	X		X
Malta		X	X
Ireland		X	Not relevant
The Netherlands			X
Poland			X
Portugal	X		X

X: Adopted all three Directives: RQD, RPD and RRD.

Source: Asylum Information Database, Country Reports, 2017.<sup>326</sup>

From all the available EU country reports (2017) from AIDA, which were twenty in total, only five country reports referred to gender-sensitivity, and mainly in relation to interviews and the right to a same sex interviewer and interpreter. Only seven referred to FGM/C mainly in relation to grounds for asylum, identification of vulnerability and when taking into consideration special reception conditions, which are in line with provisions put forward in the CEAS Directives. From the twenty EU countries all

<sup>324</sup> The UN Refugee Agency, ‘Too Much Pain; Female Genital Mutilation & Asylum in the European Union – A Statistical update (March 2014)’, loc. cit.

<sup>325</sup> *ibid.*

<sup>326</sup> Asylum Information Database, ‘Country Reports’, *Asylum Information Database* [website], 2017, <<https://www.asylumineurope.org/reports>>, accessed 6 July 2018.

have transposed the three revised Directives, with the exception of Greece who has only partially transposed it, furthermore, Sweden has not transposed the revised Reception Conditions Directive, this will be further elaborated on in the case study. As has been mentioned the UK and Ireland are not required to transpose the CEAS Directives.

### *Reporting and data collection*

It is important to have accurate FGM/C prevalence data and figures when planning services and training, especially in relation to the allocation of resources in an effective manner according to EIGE.<sup>327</sup> Furthermore the Istanbul Convention requires MS to collect disaggregated data of all forms of violence.<sup>328</sup> According to EIGE's Study map on the current situation and trends of FGM/C, very few MS are putting resources to measure the prevalence of FGM/C.<sup>329</sup> Asylum records related to FGM/C are also lacking in this respect. According to EIGE's report on Estimation of girls at risk of female genital mutilation in the European Union, 2015, only Luxembourg has been reported to have a registration system that monitors FGM/C asylum applications. Since 2012, Denmark, France, Germany, Greece, Ireland, Romania, Spain, Belgium, Cyprus, Italy and Luxembourg have received asylum applications that are related to FGM/C, however only the latter four have registered the numbers, see table 2.<sup>330</sup>

**Table 2. FGM/C-related asylum applications received/granted**

Country	FGM-related asylum applications received	FGM-related asylum applications granted
Belgium	1044	402
Greece	10	6 <sup>3</sup>
Italy	Not known	4
Cyprus	Not known	2
Luxembourg	5	5

Source: EIGE, Report: Estimation of girls at risk of female genital mutilation in the European Union, 2015.<sup>331</sup>

<sup>327</sup> European Institute for Gender Equality, 'Female genital mutilation in the European Union and Croatia: Report', op. cit., p. 14.

<sup>328</sup> The Istanbul Convention, op. cit., Art. 11.

<sup>329</sup> European Institute for Gender Equality, 'Female genital mutilation in the European Union and Croatia: Report', op. cit., p. 14.

<sup>330</sup> European Institution for Gender Equality, 'Estimation of girls at risk of female genital mutilation in the European Union: Report', *EIGE* [website], 2015, p. 20. <<http://eige.europa.eu/rdc/eige-publications/estimation-girls-risk-female-genital-mutilation-european-union-report>> accessed 30 May 2018.

<sup>331</sup> *ibid.*, Table 2.

The data shows that there is lack of documentation when it comes to cases of FGM/C. Among most EU States there is lack of data on what grounds asylum was requested and furthermore whether it was denied or accepted. Half of the EU MS have no records in this respect.<sup>332</sup> Furthermore, those who do have records often have restricted access. Consequently, there is lack of information on international protection claims related to FGM/C. However Belgium, France, Italy and Luxemburg have some tools to collect these types of data mainly through regional commissions, while Belgium monitors also application based on the fear of FGM/C.<sup>333</sup>

According to FRA in 2016 none of the EU MS provide statistics on VAW and women or girls who are in need of international protection. There is lack of systematic recording and centralised data collection systems. It is also suspected that authorities are not willing to share information. However some reception centers collect information for their personal data such as in Croatia and Austria.<sup>334</sup>

There is also apparent reluctance when it comes to reporting GBV, which is suspected to be based on the impact it can have on asylum claims or on the perpetrators,<sup>335</sup> which is relevant in FGM/C cases as it is usually performed by close relatives and is an issue not discussed openly in the community.

#### *The granting of Asylum on FGM/C grounds*

According to EIGE in the case of FGM/C or the fear of FGM/C, CEAS International protection Directives can be used as they are binding for EU MS, excluding Denmark, Ireland and the UK. However only Hungary, Portugal and Spain have in their national legislation specific provisions in relation to FGM/C and international protection.<sup>336</sup> According to EIGE, two types of protections are important when it comes to FGM/C: “child protection and international or asylum protection”,<sup>337</sup>. Therefore, international or asylum protection plays a big role in both preventing and protecting those who have been subjected to or are at risk of FGM/C. According to EIGE, fourteen out of

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<sup>332</sup> European Institute for Gender Equality, ‘Female genital mutilation in the European Union and Croatia: Report’, op. cit., p. 28.

<sup>333</sup> *ibid.*

<sup>334</sup> European Union Fundamental Agency, ‘Thematic focus: Gender-based violence’, *European Union Fundamental Agency* [website], 2016, Reporting and data collection, <<http://fra.europa.eu/en/theme/asylum-migration-borders/overviews/focus-gender-based-violence>>, accessed 25 May 2018.

<sup>335</sup> *ibid.*

<sup>336</sup> European Institution for Gender Equality, ‘Current situation of female genital mutilation in Sweden’, loc. cit.

<sup>337</sup> *ibid.*, p. 90.

twenty eight MS have granted asylum on FGM/C grounds.<sup>338</sup> A family that applies for international protection fearing their child would be at risk of undergoing FGM/C in their country of origin it is not always certain that family unity is guaranteed under these circumstances. In France for instance, parents don't fulfil the criteria to claim asylum if their child is at risk of being subjected to FGM/C. However family unity in relation to the best interests of the child should be respected, enshrined both in International Human Rights and EU Asylum Policy.<sup>339</sup>

Both in Belgium and France girls who are appointed subsidiary protection on the grounds of being at risk of undergoing FGM/C depending on an yearly medical examination to prove they have not undergone the procedure. In interviews conducted with women asylum seekers in France presented in the 2012 European Parliament report, some women reported that having to prove they have not been cut felt like an act of aggression or a cultural shock.<sup>340</sup> Even though the intent might be to protect these girls, this could be described as discrimination or victimisation since a particular group of girls who are already vulnerable are having to prove they have not undergone FGM/C. Applying gender-sensitivity, taking into consideration the Transnational Feminist perspective would give decision makers the tools to understand how such policies affects girls and women taking into account *inter alia* culture, power relations between gender and South and West.

In regards to the principle of Non-refoulement, many States, including Germany, Hungary, Slovenia and Greece include gender-based violence as a possible obstacle to return a person.<sup>341</sup> As discussed earlier all MS are bound by the principle of non-refoulement which is enshrined in the CSR and further supported by the UNHCR Guidelines on Gender-Related Persecution, in addition to conventions such as the CPT. Moreover the principle of non-refoulement is enshrined in the Istanbul Convention in Art. 61 where it applies to victims of gender-based violence, including FGM/C.<sup>342</sup>

### *Identification, interviews and training*

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<sup>338</sup> *ibid.*

<sup>339</sup> F. Novak-Irons, *op. cit.*, p.5.

<sup>340</sup> European Parliament, 'Gender related asylum claims in Europe A comparative analysis of law, policies and practice focusing on women in nine EU Member States', *op. cit.* p. 75.

<sup>341</sup> European Union Fundamental Agency, 'Thematic focus: Gender-based violence', Protection and prevention of gender-based violence.

<sup>342</sup> *ibid.*

For women to have the possibility of obtaining international protection, those who are vulnerable such as women that are at risk or have been subjected to FGM/C need to be identified. This will allow both the raising of awareness, increasing efforts and the calling of relevant provisions or special measures to be applied or provided. These provisions are included in the Revised Procedures Directive art. 24 and 25. Art. 15(3) lays out provisions in regards to those conducting asylum interviews, taking into consideration gender-sensitive aspects such as culture, gender and same sex interviewers that conduct the interview. Furthermore, it is present in the Reception Condition Directive as well as Art. 21, 18 (3) and (4). These provisions are then further enhanced with Art. 60 of the Istanbul Convention. Both the asylum procedure Directive and the Reception Condition Directive emphasise on the importance of identifying vulnerable persons and their needs. This provision is important especially for girls at risk of FGM/C as it is a very hidden problem.

According to FRA, nearly half of the MS reviewed have or are developing mechanisms for identifying and dealing with those who have been subjected to gender-based violence.<sup>343</sup> Mechanisms vary between countries where some design their own identification mechanisms while others use questions from EASO. However these guidelines don't have specific questions for those at risk of FGM/C.<sup>344</sup> In some countries, trained social workers are in charge of identifying survivors of gender-based violence while in others NGOs and volunteers do the identification. According to FRA, only Bulgaria and Sweden have specific procedures to identify and respond to children that have been subjected to GBV.<sup>345</sup>

Child specific procedures for GBV are very important when it comes to FGM/C as in most cases the practice is performed when girls are young. Hungary, Bulgaria, Ireland and Spain have in place gender-sensitive interviews, with the possibility to request a same sex interviewer or an interpreter, thus setting some rules in regards to interviewing techniques. However there is lack of gender-sensitive interpretation and mechanisms on how to conduct an interview. Moreover asylum seekers usually have to ask for these services, as it is not offered beforehand.<sup>346</sup> FRA

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<sup>343</sup> *ibid.*

<sup>344</sup> *ibid.*

<sup>345</sup> European Union Fundamental Agency, 'Thematic focus: Gender-based violence', Protection and prevention of gender-based violence.

<sup>346</sup> Asylum Information Database, 'Country Reports', *Asylum Information Database* [website], 2017, Hungary p. 24, <<https://www.asylumineurope.org/reports>>, accessed 6 July 2018.; *ibid.*, Bulgaria p. 20-21.; *ibid.*, Ireland p. 76.; *ibid.*, Spain p. 35.

reports that in most cases MS try to provide female lawyers and translators for women in cases of gender-based violence, such as in Austria, Croatia and Sweden. Nevertheless there are challenges when it comes to the availability of translators and lawyers and therefore it is not always possible to provide female lawyers and translators.<sup>347</sup> According to the AIDA reports France, Italy, Belgium, Cyprus, Croatia and Portugal include FGM/C when describing vulnerable persons. In most countries those who are defined as a vulnerable person should be taken into consideration in regards to special reception conditions or procedures.<sup>348</sup>

The Revised Procedure Directive art 4(3) emphasises on the training of staff where tools such as EASO can be used. The Revised Reception Directive 18(7) also emphasises on the proper training of staff working with those who have suffered gender-based violence and identification, enhancing existing provisions with Art. 60 of the Istanbul Convention. However, European law does not provide compulsory training for officials, judges and legal representative that are gender-specific. And it has still not been implemented, despite the fact that according to the 2012 report, good practices were detected in Belgium, Malta and the United Kingdom where there is compulsory training for first instance decision makers.<sup>349</sup> In other cases, training on gender-specific matters is either not provided or not systematic. For instance, FRA reports in the cases where training is provided it's through ad hoc initiative. In Italy, Croatia, Hungary, Slovenia and Sweden there is no training specifically for recognising and dealing with GBV, although in Sweden there is some initiative from NGOs providing trainings on GBV in certain Centres. However training on GBV is provided for staff in reception centres in Bulgaria and Greece, also in Austria and Germany although only in some centres.<sup>350</sup>

Belgium has shown good gender-sensitive practice in regards to gender-sensitivity and specifically regarding FGM/C cases both in regards to training and identification. In Belgium asylum officers at the first instance have training on gender perspective in procedures and specific training on FGM/C where they are provided with “information on relevant cultural, medical and social aspects that need to be

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<sup>347</sup> European Union Fundamental Agency, ‘Thematic focus: Gender-based violence’, Medical and legal support services.

<sup>348</sup> Asylum Information Database, *op. cit.*, France p. 57.; *ibid.*, Italy p. 51.; *ibid.*, Belgium p. 44.; *ibid.*, Cyprus p. 72.; *ibid.*, Croatia p. 74.; *ibid.*, Portugal p. 82.

<sup>349</sup> *ibid.*, p. 108.

<sup>350</sup> *ibid.*

taken into account during interviews and when assessing this type of claim.’<sup>351</sup> There is a specialised gender unit comprised of fifteen officials, using EASO training module when interviewing vulnerable groups such as those who apply for asylum concerning FGM/C.<sup>352</sup> Local authority cooperates with the organisations Intact and GAMS who have specialised in FGM/C. Processes are set up in the reception centres to detect FGM/C early and provide those who have been subjected to it, or are at a risk, with ‘social, psychological and medical support, and for the protection of girls who are at risk.’<sup>353</sup>

Additionally Belgium’s 2010-2014 National Action Plan on domestic violence includes training interpreters on FGM/C.<sup>354</sup> These initiatives could be explained by pressure from civil action such as GAMS, which is an NGO working to abolish FGM/C and is a co-founder of the END FGM European Network.<sup>355</sup> Belgium does implement existing gender-sensitive provisions presented in the CEAS and the Istanbul convention, including not only a gender perspective in the training of its officers but also cultural aspects. Taking into account the different experiences of women not only considering gender on its own, but other factors such as culture and social aspects, which also intertwine with gender responders will better accommodate to their needs, further supporting a Transnational Feminist perspective.

### *Reception conditions, information and support services*

The Revised Reception Directive has provisions in regards to reception and accommodation facilities, enhanced by Art. 60 (3) of the Istanbul Convention, under which parties must provide gender-sensitive reception conditions, support services and asylum procedures.<sup>356</sup> The Revised Reception Condition Directive Art. 11 entails a provision on the detention of vulnerable persons and of applicants with special reception needs. Female asylum seekers should thus be separated from men in accommodation facilities and it should be avoided to detain children especially in the case of unaccompanied children.<sup>357</sup> Moreover, they should have access to, and a clear

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<sup>351</sup> European Parliament, ‘Gender related asylum claims in Europe A comparative analysis of law, policies and practice focusing on women in nine EU Member States’, op. cit. p. 106.

<sup>352</sup> Asylum Information Database, op. cit., Belgium p. 47.

<sup>353</sup> *ibid.*, p. 79.

<sup>354</sup> *ibid.*, p. 106.

<sup>355</sup> GAMS, ‘Who are we’ GAMS [website], 2016, para. 1, <<http://gams.be/en/who-are-we/>>, accessed 27 May 2018.

<sup>356</sup> The Istanbul Convention, op. cit., Art. 60(3).

<sup>357</sup> European Parliament & European Union Council, ‘Directive 2013/33/EU’, Art. 11.

path of communication with lawyers etc. These provisions should be upheld especially in relation to women and girls who are affected by FGM/C as it enhances their protection. In several MS separate accommodation facilities are to be offered to vulnerable women, as for example in Austria. Austria, Greece, Germany, Italy, Hungary and Sweden are also referring victims of gender-based violence to shelters that are specialised women's shelters. However, it often depends on whether asylum seekers ask for a separate accommodation or not.<sup>358</sup> In few MS there are more comprehensive measures in place to respond to cases of gender-based violence, however according to FRA there is lack of binding and uniform standards of reception facilities especially when addressing women's safety.<sup>359</sup>

FRA reports that a major weakness in all MS is the ‘‘Provision of information on what gender-based violence is, how to report violence and where to seek help.’’<sup>360</sup> FRA has identified gaps when it comes to preventive measures of gender-based violence in Italy, Sweden and Slovenia. There are some preventive measures concerning violence in Austria such as workshops,<sup>361</sup> however there is no mention of FGM/C specifically. Some initiatives have nevertheless been identified in Hungary, Austria and Germany.<sup>362</sup> Some NGOs provide prevention work, however the principal mechanism of MS for preventing gender-based violence is separate accommodation,<sup>363</sup> which can hinder further traumatising of other forms of gender-based violence. Yet when preventing FGM/C there is more need for knowledge.

According to Art. 25(1) of the Revised Reception Directive, MS are obligated to ensure that persons who have been subjected to torture and serious acts, which FGM/C could fall under, receive appropriate treatment for the damage that has been caused, which includes medical and psychological care, further supported in the Victims' Rights Directive.<sup>364</sup>

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<sup>358</sup> European Union Fundamental Agency, ‘Thematic focus: Gender-based violence’, Identification, Protection and prevention of gender-based violence.

<sup>359</sup> European Union Fundamental Agency, ‘Thematic focus: Gender-based violence’, Protection and prevention of gender-based violence.

<sup>360</sup> European Union Fundamental Agency, ‘Thematic focus: Gender-based violence’, Reporting and data collection.

<sup>361</sup> European Union Fundamental Agency, ‘Thematic focus: Gender-based violence’, Protection and prevention of gender-based violence.

<sup>362</sup> *ibid.*

<sup>363</sup> European Union Fundamental Agency, ‘Thematic focus: Gender-based violence’, Protection and prevention of gender-based violence.

<sup>364</sup> European Parliament & European Union Council, ‘Directive 2013/33/EU’, Art. 25(1).



Services available in MS “range from awareness raising among communities and the general public to advocacy initiatives, translation services, cultural mediation, and inter-agency referrals for women and girls affected by FGM.”<sup>365</sup> The services are mainly provided by health providers and Civil Society Organisations (CSO), including training of professionals on FGM/C, however the training is inconsistent and underfunded. Most MS try to ensure gender balance of health professionals working at reception centres, but in general there is a lack of gender balance among health professionals according to FRA.<sup>366</sup> Not many MS provide specialised health services for those who have been subjected to FGM/C, although more focus has been on offering a multi-disciplinary service, which includes translations and are often free of charge. A large focus is put on gynaecology services. “As a result, psychological care, psychosexual support and counselling by professionals skilled in post-traumatic stress disorder are often lacking.”<sup>367</sup> These services are very relevant to cases of FGM/C as it affects women in various aspect *inter alia* psychologically, sexually and some suffer from post-traumatic stress. The report also comments on the issue of accessibility of specialised health services for those who have been subjected to FGM/C, which is often hard to reach for those living in rural areas.<sup>368</sup>

In many MS, the access to health care is the same as for other nationals, but there can be barriers in regards to the access to services. There is lack of information about what services are available, moreover there can be a language barrier, as reported in countries such as Germany and Bulgaria.<sup>369</sup> Good practices have been identified in Belgium, where in 2011 a leaflet meant for asylum seekers was created on women, girls and asylum in Belgium which includes information about asylum procedures and issues relating to health, and gender equality, also violence such as FGM/C.<sup>370</sup> However it has been reported by NGOs that the distribution of the leaflet is not systematic.<sup>371</sup>

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<sup>365</sup> European Institute for Gender Equality, ‘Female genital mutilation in the European Union and Croatia: Report’, loc. cit.

<sup>366</sup> European Union Fundamental Agency, ‘Thematic focus: Gender-based violence’, Medical and legal support services.

<sup>367</sup> *ibid.*

<sup>368</sup> *ibid.*

<sup>369</sup> European Union Fundamental Agency, ‘Thematic focus: Gender-based violence’, Protection and prevention of gender-based violence.

<sup>370</sup> Asylum Information Database, op. cit., Belgium, p. 57.

<sup>371</sup> Council of Europe – Amnesty International, ‘The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence’ *End FGM European Network* [website], November 2014, p 32,

## 4.2. Case study on receiving and a frontline country: Sweden and Italy

Analysing a receiving and a frontline country can help give a picture of different practices depending on different environments, as they are facing a disproportionate burden in regards to the influx of asylum seekers based on geographical location within Europe. Furthermore, both Sweden and Italy are among those countries who have the highest numbers of applicants arriving from FGM/C practicing countries according to UNHCR data.<sup>372</sup>

Both Italy and Sweden have ratified relevant international Convention who condemn and offer protective mechanism. That includes UDHR, CEDAW, CAT, CRC, ECHR, CFREU in addition to the Istanbul Convention.<sup>373</sup> While Italy has transposed all three revised Directives of CEAS, Sweden has not done so with the Revised Reception Conditions Directive “as the Swedish reception system is deemed in line with recast standards.”<sup>374</sup> In regards to protection mechanisms, both MS grant asylum on FGM/C grounds. According to EIGE data on Sweden, until 2002, 39 women have been granted asylum based on FGM/C. However, it is suspected that a high number of cases have not been recorded, as FGM/C cases are normally not registered. Asylum based claims in Italy are not specifically recorded, although seven court appeals mentioning FGM/C were found, out of which three got accepted.<sup>375</sup>

In both countries, staff in the asylum system is not offered specific training on how to deal with gender-based violence. Nevertheless there are some initiatives from NGOs and a national representation of UNHCR. Italy has no specific identification mechanism for vulnerable asylum seekers, while Sweden has specific identification mechanisms for unaccompanied children, although it's not provided in law.<sup>376</sup> The Swedish Law on the Reception of Asylum Seekers, which is deemed to be in line with

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<[http://www.endfgm.eu/editor/files/2016/01/IstanbulConventionFGMguide\\_FINAL\\_ENGLISH.pdf](http://www.endfgm.eu/editor/files/2016/01/IstanbulConventionFGMguide_FINAL_ENGLISH.pdf)>, accessed 6 June 2018.

<sup>372</sup> The UN Refugee Agency, ‘Too Much Pain; Female Genital Mutilation & Asylum in the European Union – A Statistical update (March 2014)’ op. cit., p. 2.

<sup>373</sup> European Institution for Gender Equality, ‘Current situation of female genital mutilation in Sweden’, op. cit., p. 1.; European Institution for Gender Equality, ‘Current situation of female genital mutilation in Sweden’, loc. cit.

<sup>374</sup> Asylum Information Database, op. cit., Sweden p. 84.

<sup>374</sup> European Institution for Gender Equality, ‘Current situation of female genital mutilation in Sweden’, loc. cit. (p.1)

<sup>375</sup> European Institution for Gender Equality, ‘Current situation of female genital mutilation in Sweden’, op. cit. p. 3.

<sup>376</sup> Asylum Information Database, op. cit., Italy p. 51.; *ibid.*, Sweden p. 34.

the Revised Reception Directive, only briefly mentions a provision for the needs of vulnerable groups, however these groups are not defined as set out in the Directive.

The Migration Agency in Sweden among other CSOs have suggested that there needs to be specific mechanisms on identification of vulnerable groups, yet the government considers it unnecessary.<sup>377</sup> For these reasons, when vulnerable groups are ill defined, consequently they will not be identified and provided with special procedures accommodating to their needs. Moreover both MS have some type of gender-sensitive interviews, such as having the option of bringing a social worker or doctors to interview. Furthermore medical reports are taken into consideration in credibility assessments. In the case of the Swedish asylum procedures, they do in principle take any evidence for the support of asylum claims, nevertheless there are no institutionalised procedures on medical examination and therefore as has been criticised although the provision is implemented into national law there is discrepancy between policy and practice.<sup>378</sup> According to FRA, in Sweden a health screening which is voluntary includes medical examination and dialogue about current health and previous history of health. Questions about country of origin and family background can be asked. This dialogue is very important to gain further understanding for example why a woman has injuries on her genitals, supporting her case and special needs. Furthermore, referrals can be made to other health services such as to psychologists if there is need of it.<sup>379</sup> This can also be a good platform for prevention of the practice by sharing knowledge.

Findings from focus group discussions organised in Sweden published by EIGE's report on 'Estimation of girls at risk of female genital mutilation in the European Union', where both men and women participants from FGM/C showed that knowledge about the consequences of FGM/C related to health and psychological problems coming from people with high social ranking or specialists in health and care will have more impact. Even though it is important to make, for example, parents aware of the law, which can be one determinant against FGM/C, most participants agreed that knowledge was the best determinant for the continuation of the practice.<sup>380</sup>

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<sup>377</sup> Asylum Information Database, op. cit. Sweden p. 34.

<sup>378</sup> *ibid.*, Sweden p. 40.

<sup>379</sup> European Union Fundamental Agency, 'Thematic focus: Gender-based violence', Medical and legal support services.

<sup>380</sup> European Institution for Gender Equality, 'Estimation of girls at risk of female genital mutilation in the European Union: Report', p. 75.

When it comes to support services, there are some services that can benefit those affected by FGM/C. In both countries there are special procedures for vulnerable asylum seekers, especially unaccompanied minors. However they are more affective when NGO's are involved, especially if identified early. There is often discrepancy in practice, for reasons such as appointing legal guardians to unaccompanied children when provisions are not applied in practice.<sup>381</sup>

Italy is in a worse position compared to Sweden when it comes to so-called hotspots, as it's hard to provide preventive measure in cases of gender-based violence, such as providing separate spaces for men and women.<sup>382</sup> In regards to reception conditions both countries offer specialised women's shelters, and some gender-sensitive measures are present in policies. Yet there are discrepancies between policy and practice.<sup>383</sup>

Good practises in regards to support services promoting rehabilitation of women that have been subjected to FGM/C and empowerment have been detected in Sweden. Initiative such the Desert Flower Foundations which is opening centres in Europe, including Sweden, offering holistic services; including reconstructive surgery that can be beneficial to those who have been affected by FGM/C.<sup>384</sup> Hannes Sigurjonsson, a plastic surgeon at the Karolinska University Hospital and Malin Jordal, a researcher in International Health discuss reconstructive treatment for those who have suffered FGM/C in a newly published article. Reconstructive surgery is meant to both improve the function and aesthetics of women's genitals. The surgeries include: "reconstruction of the clitoris and labia, defibulation, and removal of cysts neuromas, and scar tissue."<sup>385</sup> As has been discussed, FGM/C can affect women in many ways, among other things their physical, psychological and sexual health. Additionally, women who have been subjected to FGM/C living in Sweden are mostly migrants who have also suffer additional trauma, therefore experts in the field

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<sup>381</sup> Asylum Information Database, 'Country Report: Sweden', op. cit., p. 60.; Asylum Information Database, 'Country Report: Italy', op. cit., p. 55.

<sup>382</sup> European Union Fundamental Agency, 'Thematic focus: Gender-based violence', Protection and prevention of gender-based violence.

<sup>383</sup> Asylum Information Database, 'Country Report: Italy', op. cit., p. 75.; European Union Fundamental Agency, 'Thematic focus: Gender-based violence', Protection and prevention of gender-based violence.

<sup>384</sup> Desert Flower Foundation, 'Desert Flower Centers', *Desert Flower Foundation* [website], 2018, <<http://www.desertflowerfoundation.org/en/desert-flower-center.html>> accessed 20 May 2018.

<sup>385</sup> H. Sigurjonsson & M. Jordal, 'Addressing Female Genital Mutilation/Cutting (FGM/C) in the Era of Clitoral Reconstruction: Plastic Surgery', *Current Sexual Health Reports* [online journal], vol. 10, no. 2, 27 April 2018, Introduction, <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5937872/>> accessed 20 May 2018.

recommend the use of multidisciplinary approach involving experts from different fields. “The goal of the multidisciplinary treatment is often to improve psychosexual well-being, treat psychological and sexological comorbidities, and empower women to make an informed decision on treatment choices.”<sup>386</sup> Unlike when FGM/C is performed the girl is not truly making an informed decision as discussed in the theoretical and conceptual framework chapter. This treatment should be offered to asylum seekers that are known to have undergone FGM/C, or at least they should be informed about the possibility of services like this as it can improve physical, sexual and psychological wellbeing as well as empowering women.

The author contacted Dr. Sigurjonsson to gain knowledge on whether asylum seekers in Sweden who have been subjected to FGM/C receive information on services like the one described above. According to Dr. Sigurjonsson, he has no knowledge of asylum seekers coming from FGM/C practicing countries that receive special information on services such as those who offer opening surgeries or defibulation etc. Furthermore he asserts that Asylum seekers are often in a worse position when it comes to information, for reasons such as a language barrier and the lack of support systems. Additionally, when it comes to migrants, there is lack of or even absence of education on FGM/C and resources for issues related to the practice.<sup>387</sup>

Even though there are some beneficial services, there are no special procedural guarantees for vulnerable persons in both MS. Furthermore specialised training and services are rather provided by non-state actors such as NGOs.<sup>388</sup> Even though, there are some differences between the practices of Sweden, a receiving country and Italy a frontline country, such as a lack of preventive measures in the hot-spots in Italy, they are both lacking gender-sensitivity practices in relation to FGM/C. In both countries, there are discrepancies between policy and practice. In the AIDA reports, only in the report on Italy is genital mutilation mentioned when defining vulnerable people.

The lack of information on gender-sensitive practices, especially in relation to FGM/C stems from lack of data as has been discussed. The reasons behind the lack of data suggested by the information collected for this thesis stems from lack of

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<sup>386</sup> Sigurjonsson & Jordal, *op. cit.*, Multidisciplinary Approach.

<sup>387</sup> H. Sigurjonsson, email interview with author, 17 May 2018.

<sup>388</sup> End FGM European Network, ‘FGM in EU Asylum Directives on Qualification, Procedures and Reception Conditions: End FGM Network Guidelines For Civil Society’, *op. cit.*, p. 12.

knowledge on FGM/C and also political will which furthermore stems from a deeply rooted way of thinking from male experience as discussed in the chapter on Feminist Theory. Evidence from GREVIO reports will give a clearer picture of gender-sensitive practice as the analysis builds on the Istanbul Convention, which focuses on gender-sensitivity in relation to asylum and specific forms of gender-based violence such as FGM/C.

#### **4.3. Evidence from GREVIO reports on FGM/C and Gender-sensitive practices**

Like mentioned before GREVIO has recently released four ‘Evaluation Reports’ on legislative, and other measures which give effect to the provisions of the Istanbul Convention, in September and November 2017 on Denmark, Austria, Albania, and Monaco. The Convention includes provision that can enhance the gender-sensitivity of the provisions presented in EU Asylum Policy, especially the CEAS Directives regarding FGM/C related cases. These reports provide new important empirical data on the issue and inform policy analysis set standards. Although only Denmark and Austria are EU MS, analysing also Albania and Monaco might give some picture of differences between EU and non-EU MS.

The focus of the analysis will be on the Istanbul convention relevant articles. Art. 38 will be reviewed regarding the criminalisation of the practice. The main focus will however be on Art. 60 and 61 which focus on FGM/C in the asylum context. Art. 60 focuses specifically on gender-based asylum claims and Art. 61 focuses on non-refoulement, also taking into consideration provisions related to data and support services. These articles are analysed in each of the four country reports.<sup>389</sup>

GREVIO states that the goal of the Istanbul convention in the area of migration and asylum is to “not turn a blind eye to the realities of women living in abusive relationships or subjected to sexual violence and exploitation and other forms of gender-based violence.”<sup>390</sup> Furthermore asylum procedures should be gender-sensitive,<sup>391</sup> giving women the chance to disclose their stories in full *inter alia* giving women the chance of having a separate asylum interview with same sex interviewer and interpreter. Moreover grounds for persecution should have a gender-sensitive

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<sup>389</sup> GREVIO, ‘GREVIO’s (Baseline) Evaluation Report: Denmark’, loc. cit.

<sup>390</sup> *ibid.* p. 56.

<sup>391</sup> *ibid.*

interpretation.<sup>392</sup> Continuing from the former argument GREVIO states that it “can only be achieved if, in turn, reception procedures and support services for asylum-seekers are sensitive to the needs of women victims or at risk of violence (Art. 60).”<sup>393</sup>

In relation to Art. 38, both Denmark and Austria have criminalised FGM/C. However, improvements can be made when it comes to implementation, efficiency and victim satisfaction. Furthermore it could be given more political and legislative attention.<sup>394</sup> While the non-EU countries Albania and Monaco do have legal instruments that criminalise the performing of FGM/C, which relates to Art. 38a, both countries are missing provisions of intends b and c which describes the coercing, procuring or inciting someone to undergo FGM/C as an offence.<sup>395</sup>

Regarding Art. 60 on the granting of asylum on FGM/C grounds, Denmark does according to GREVIO in principle take into consideration persecution and violence that are considered gender-specific in asylum interviews. However there is no notion of gender-based violence being recognised as form of persecution under Art. 1A (2) of the Refugee convention. Further obstacles were detected in the disclosure of experiences in relation to gender-based violence that could support their application.<sup>396</sup>

In Austria there are no specific efforts put forward to give women a chance to discuss her experience, which can involve gender-based persecution.<sup>397</sup> It is unlikely that women are interviewed separately, most of the time families are interviewed together with the man lodging the claim.<sup>398</sup> This represents a power imbalance and thus does not give the woman a chance to express her experience if there is a case of GBV. According to UN Women around thirty five per cent of women have experienced violence from an intimate partner in their lifetime, some studies even

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<sup>392</sup> *ibid.*

<sup>393</sup> *ibid.*

<sup>394</sup> GREVIO, ‘GREVIO’s (Baseline) Evaluation Report: Denmark’ *op. cit.*, p. 24.; GREVIO, ‘GREVIO’s (Baseline) Evaluation Report: Austria’, *Council of Europe* [website], 27 September 2017, p. 7, <<https://rm.coe.int/grevio-report-austria-1st-evaluation/1680759619>>, accessed 27 April 2018.

<sup>395</sup> GREVIO, ‘GREVIO’s (Baseline) Evaluation Report: Albania’, *Council of Europe* [website], 24 November 2017, p. 49, <<https://rm.coe.int/grevio-first-baseline-report-on-albania/16807688a7>>, accessed 27 April 2018; GREVIO, ‘GREVIO’s (Baseline) Evaluation Report: Monaco’, *Council of Europe* [website], 27 September 2017, p. 31, <<https://rm.coe.int/grevio-report-monaco/168074fd6b>>, accessed 27 April 2018

<sup>396</sup> GREVIO, ‘GREVIO’s (Baseline) Evaluation Report: Denmark’, *op. cit.*, p. 57-58.

<sup>397</sup> GREVIO, ‘GREVIO’s (Baseline) Evaluation Report: Austria’, *op. cit.*, p. 51.

<sup>398</sup> *ibid.*

estimate the number being higher or up to seventy per cent.<sup>399</sup> Therefore, statistically speaking, it gives reason to interview women separately to enable them to disclose their experience if there is a case of GBV. As was discussed in the theoretical and conceptual framework chapter, it is important to listen to the experiences of women from their standpoint, pointed out by those who adhere to the perspective of Feminist Standpoint Theory and Transnational Feminism, among others.

GREVIO emphasises that both countries provide persons involved in the asylum process that are well trained in regards to questions build on gender-based violence or persecution. Moreover questions on FGM/C should be systematically incorporated in interviews which include gender and cultural related aspects,<sup>400</sup> which is important as this focus is missing from the CEAS Directives. In relation to the tension between Universalism and Cultural Relativism, GREVIO points out in the Austrian report that practitioners have raised the issue of “what is clearly recognised as violence against women in Austrian society might not be so acknowledged in the cultures from which many of these women asylum-seekers come.”<sup>401</sup> Furthermore there are difficulties that involve language barriers, cultural differences and the difficulties in addressing psychological needs of these applicants. There is a lack of recognising cultural differences and overcome them. However some understanding on this issue comes from NGOs when it comes to the adaption of cultural understanding in women’s asylum claims.<sup>402</sup> Transnational Feminist perspectives can help understand different aspects of a complicated phenomena such as FGM/C.

Denmark does offer female case workers<sup>403</sup> and interpreters, however like in Austria there is a lack of female interpreters and often they are not adequately qualified.<sup>404</sup> GREVIO points out that women can be reluctant to disclose their experiences of violence such as FGM/C when they are in the presence of a male interpreter from a similar culture or religion.<sup>405</sup> She might feel uncomfortable to talk about FGM/C in front of a man, especially if he comes from a culture where

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<sup>399</sup> UN Women, ‘Facts and figures: Ending violence against women’, *UN Women* [website] August 2017, para. 1. <<http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>> accessed 10 July 2018.

<sup>400</sup> *ibid.*; GREVIO, ‘GREVIO’s (Baseline) Evaluation Report: Denmark’, *op. cit.*, p. 58.

<sup>401</sup> *ibid.* p. 51.

<sup>402</sup> *ibid.*

<sup>403</sup> GREVIO, ‘GREVIO’s (Baseline) Evaluation Report: Denmark’, *op. cit.*, p. 28.

<sup>404</sup> GREVIO, ‘GREVIO’s (Baseline) Evaluation Report: Denmark’ *op. cit.*, p. 57; GREVIO, ‘GREVIO’s (Baseline) Evaluation Report: Austria’, *loc. cit.*

<sup>405</sup> *ibid.*; GREVIO, ‘GREVIO’s (Baseline) Evaluation Report: Denmark’, *op. cit.*, p. 58.



discussing FGM/C is considered a taboo and a betrayal of the community, as was discussed in the chapter on FGM/C.<sup>406</sup>

In Austria there is a gap when it comes to identifying women who are at risk of gender-based persecution while in Denmark staff in charge of reception have training on domestic violence which can help identify women in need of support. Nevertheless, FGM/C is not particularly mentioned.<sup>407</sup> In Austria, special accommodations exist for unaccompanied minors and single women where psychological and social counselling is led by female staff.<sup>408</sup> In both Austria and Denmark, there is lack of information regarding the asylum procedures, including the relevance of documents such as medical reports for asylum interviews, and the right to request female interpreters etc. which can impact positively the outcomes of asylum status applications. Moreover, information on support services *inter alia* medical- and psychological care are lacking.<sup>409</sup> The information obtained by GREVIO suggests that NGOs are, to some extent, filling these gaps.<sup>410</sup> Relating to the referral of those affected by gender-based violence such as FGM/C to specialised services, both in Denmark and Austria the states lack obligations in providing these referrals. In Austria, the few services that are available are lacking financial and political support. GREVIO also points out the overemphasis on support allocated to domestic violence services.<sup>411</sup> In Denmark most services for those who have been subjected to FGM/C are bound to hospital services, where there is lack of other services such as psycho-social and trauma care and also services promoting empowerment, which was also reported in Austria.<sup>412</sup> In Austria where there are some counselling and support services for those affected by gender-based violence, they are provided by NGOs who cooperate to a certain extent with the government. Co-operations with governments, which are legally based and seem to be more successful usually do not have support services to those subjected to violence such as FGM/C. In both countries when it comes to specialised services there are barriers that can relate, *inter alia*, to language or lack of support systems. Furthermore, the services can be harder to reach for women living outside of big cities. Thus although some services are offered in one

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<sup>406</sup> *ibid.*

<sup>407</sup> *ibid.*, p. 57; GREVIO, 'GREVIO's (Baseline) Evaluation Report: Austria', *loc. cit.*

<sup>408</sup> GREVIO, 'GREVIO's (Baseline) Evaluation Report: Austria', *op. cit.*, p. 50.

<sup>409</sup> 'GREVIO's (Baseline) Evaluation Report: Denmark', *loc. cit.*

<sup>410</sup> J. Nelles, Istanbul Convention Secretariat, interview 15 June 2018.

<sup>411</sup> 'GREVIO's (Baseline) Evaluation Report: Denmark', *op. cit.* p. 16.

<sup>412</sup> *ibid.*, *op. cit.*, p. 33-34.; 'GREVIO's (Baseline) Evaluation Report: Austria', *op. cit.*, p. 50.

asylum centre, that is not the case for all asylum centres.<sup>413</sup> Therefore even though services can be found that can benefit those affected by FGM/C, the main problem is the lack in quality in regards to gender-sensitivity and responding to specific needs, moreover in regards to consistency, having services available or access to information on these services in every asylum centre.

In the report on Denmark the principle of non-refoulment (Art. 61) was raised, in relation to a recent review on residence permits of Somali citizens that were issued a few years ago which has led to the expulsion of families which include women and girls that face risk of undergoing FGM/C up on return in Somalia. As mentioned before Somalia has one of the highest prevalence rates when it comes to FGM/C.<sup>414</sup> The principle of non-refoulment is not raised in the Austrian report. If an article is not raised according to Nelles, Istanbul Convention Secretariat, it is usually because GREVIO did not consider its implementation to give rise to particular issues or because of insufficient information was collected during the evaluation procedure.<sup>415</sup> In both EU countries there is a lack of data collection and researches. GREVIO encourages the State Parties to adopt a data collection system that records asylum claims and outcomes, based on gender-related persecution and conduct prevalence researches on gender-based violence such as FGM/C.<sup>416</sup>

In regards to Art. 60 and 61 to the non-EU MS, in Albania, for example, there are no practices where gender-specific violence could be recognised as a persecution. Furthermore, there is lack of identification, training and gender-sensitive procedures with FGM/C not specifically mentioned in relation to asylum.<sup>417</sup> There are no specific gender-sensitive procedures in Monaco although there is willingness to implement them. In both countries there is no mention of non-refoulement (Art. 61).<sup>418</sup>

There seems to be more gender-sensitive measures present in the two EU MS compared to the Non-EU MS. Focusing on the two EU countries, Denmark and Austria, even though there have been improvements made in law and policy, still there are gaps in gender-sensitive implementation when it comes to cases of FGM/C.

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<sup>413</sup> 'GREVIO's (Baseline) Evaluation Report: Denmark', loc. cit.; 'GREVIO's (Baseline) Evaluation Report: Austria', op. cit., p. 17.

<sup>414</sup> GREVIO, 'GREVIO's (Baseline) Evaluation Report: Denmark', op. cit., p. 58.

<sup>415</sup> Nelles, loc. cit.

<sup>416</sup> GREVIO, 'GREVIO's (Baseline) Evaluation Report: Austria', op. cit., p. 55.; 'GREVIO's (Baseline) Evaluation Report: Denmark', op. cit., p. 63.

<sup>417</sup> GREVIO, 'GREVIO's (Baseline) Evaluation Report: Albania', op. cit., p. 64.

<sup>418</sup> GREVIO, 'GREVIO's (Baseline) Evaluation Report: Monaco', loc. cit.

GREVIO's country reports are instrumental, as they point out where there is room for improvements. According to Nelles the monitoring mechanism gives a good picture of the practice among State Parties to the Convention: "nobody else looks so closely."<sup>419</sup> Furthermore as other reports on gender-sensitive practices in the context of asylum lack information on FGM/C, these reports constitute an important source of data. Moreover the reports take into consideration the complexity of FGM/C and the specific needs that are required when taking into account gender and cultural aspects, supporting the perspective of Transnational Feminism.

### **5. Towards a gender-sensitive approach**

On the basis of the analysis of the existing gender-sensitive provisions and recommendations from professionals and female asylum seekers who have been subjected to or at risk of FGM/C, empirical evidence suggests that there are processes that are instrumental to enhancing the chance of a positive outcome with regards to asylum claims, which can help ensure the wellbeing and further rehabilitation and empowerment of girls and women. Interviews taken by the author, in addition to those conducted by the UNHCR, from which this work has benefitted enormously, offered useful insights, informed various policy practices and provided accounts of personal experiences/stories. In that way, they contributed to cover the debate and frame the discourse along the lines of a human rights based approach in a more gender-sensitive way.

Building knowledge on the complicated aspect of FGM/C by conceptualising the phenomena with lenses, such as Transnational Feminism, that takes into consideration factors such as gender, culture and history, understanding the experiences of women and their needs can be enhanced. Furthermore staff involved in asylum, *inter alia* decision makers, interviewers, interpreters, medical and reception staff that are trained with the relevant knowledge to deal with specific cases such as FGM/C, can provide appropriate assistance to girls and women that have been subjected to or are at risk of FGM/C. Trained staff is in a position to make a better use of tools, such as specialised questioners for detecting girls subjected to or those at risk of the practice. Asylum policy that has clear definitions of vulnerability, further enhances the possibility of those affected by FGM/C of being detected.

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<sup>419</sup> Nelles, loc. cit.

When identified, reception conditions and special asylum procedures such as those provided by CEAS Directives can be arranged or asylum seekers can be provided with information accordingly. Procedures include medical and psychological examination, access to same sex and/or culture interviewer, interpreter and other staff can be of great support to asylum claims.

Offering same sex or child sensitive accommodation would enhance protection and avoid re-traumatisation. Awareness raising campaigns on FGM/C, could lead to prevention by informing girls, women and their families both on harmful consequences and the countries relevant legal framework. Moreover providing information on specialised services that are multidisciplinary and offer both rehabilitation and empowerment, *inter alia* reconstructive surgeries and psycho-sexual counselling can further enhance women and girl's wellbeing.

When conducting interviews and assessing asylum claims, taking into consideration both child and cultural specific aspects and updated COI information suggests to enhance the level of protection. Assessing FGM/C related claims as an act of persecution within 1A (2) of CSR enhances gender-sensitive and a human rights approach. As the practice is child specific it is important to respect family unity for reasons of the best interest of the child. Registering data on FGM/C related asylum claims adds to the existing knowledge on the phenomena, which consequently can improve policy and practice. Awareness raising in the community is of paramount importance, as it can contribute to getting rid of taboos, making women more comfortable to disclose their experience of FGM/C and integrate into the community. Monitoring mechanisms such as GREVIO keeps Member States on their toes in upholding their commitments to gender-sensitive practices, the involvement of NGOs and the Civil Society is also instrumental.

By applying a gender-sensitive and human rights based approach throughout the Asylum system suggests to both enhance protection and wellbeing.

## **Conclusion**

NGOs, UN agencies/treaty bodies/entities and the European Parliament FEMM Committee have criticised EU Asylum Policy for the lack of gender-sensitivity, which disproportionately affects women witnessing multiple vulnerabilities and marginalisation, especially those who have been subjected to or are at risk of FGM/C

as there is also lack of data and knowledge on the phenomena. This situation is problematic from a human rights perspective, not only because it fails to address and redress women's rights, but mainly because it neglects women as agents of change.

When FGM/C is addressed in the asylum context, policies informed by Transnational Feminist Theory can be used to enable *inter alia* decision makers or practitioners in asylum processes to better accommodate to the needs of those affected by the practice and allocate them with relevant protection, for there is a more comprehensive understanding on FGM/C in the asylum context, addressing factors such as gender, history, culture and geography in addition to power relations between genders and cross culture or between the West and the South.

FGM/C used to be a cultural tradition of no concern to those outside practicing countries. However, it is considered by a number of Conventions and Treaties to violate numerous Human Rights: *inter alia* amounting to torture, cruel, inhuman or degrading treatment, discrimination, VAW, GBV and a violation of the right to health and life.

In addition to Conventions and Treaties that offer protection mechanisms in regard to FGM/C, the CEAS has three main directives that offer provisions that are meant to protect vulnerable asylum seekers, including those affected by FGM/C. They are especially important as EU MS are obligated to transpose them into their national law. The Directives offer minimum standards of protection to those affected by FGM/C, taking into account gender-based persecutions, including the practice as a possible ground for asylum. Those who have been subjected to FGM/C are defined as a vulnerable group in the RRD, which offers provisions on gender-sensitive reception procedures provided by adequately trained staff. Asylum procedure for vulnerable people can be beneficial to those affected by FGM/C. However, the Directives lack clear definitions and obligations when it comes to gender-sensitive provisions relating to the specific needs of vulnerable people such as those affected by FGM/C as it leaves room for wide interpretation.

While the existing legal and policy framework provides some level of protection and gender-sensitive provisions, the Istanbul Convention sets high standards by adopting gender-sensitive procedures throughout the asylum process by having clear obligations that expects States to develop gender-sensitive procedures, taking all necessary measures to do so, in addition to legal measures. Additionally the

Istanbul Convention stresses the need to develop asylum- and reception procedures, including other support services.

The Convention is important in bringing together the aspect of FGM/C as VAW as a Human Rights violation while promoting gender-sensitive measures built on the conceptualisation of VAW supporting the perspective of Transnational Feminism. More specifically it brings about more knowledge on different experiences and understanding on VAW, and the complicated forms of violence, such as FGM/C, as it can affect women in many ways such as; physically, sexually, psychologically and economically both in public and private spheres.

Another significant provision of the Convention requires MS to collect disaggregated data of all forms of violence including FGM/C, this provision contributes to the gap of knowledge on the issue. Furthermore providing an opportunity for an enhanced gender-sensitive approach in regards to training of staff and procedure on identifying both those who have been subjected to or are at risk of FGM/C. Consequently relevant asylum procedures can be provided and support services, enhancing protection and wellbeing of women and girls.

When it comes to MS practices, according to the thesis data, some countries are well advanced in regards to offering gender-sensitive procedures throughout the asylum process, offering multidisciplinary services to those affected by FGM/C while other countries have minimum gender-sensitive standards. In general, the availability of services varies and even more for specific gender-based violence such as FGM/C. Moreover the lack of funding and political support for these services, further hinders policy development and efficiency. Positive initiatives from specialised NGOs are to some extent filling those gaps by providing specialised training and services.

The data GREVIO provides has a significant value as it adds to the gap of knowledge in this area, additionally it offers the possibility for State Parties to improve their practices, taking into consideration GREVIO's comments. Moreover the country reports offers the potential for other States to benefit from cross learning by adopting good practices from State Parties to the Convention. The author hopes for a further analysis on future GREVIO country reports, which will be instrumental to the existing knowledge on the issue and hopefully enhance the protection and wellbeing of women and girls affected by FGM/C.

The major challenge lies within discrepancy between policy and practice when it comes to gender-sensitive measures among EU MS. Mechanisms such as GREVIO

and its country reports can be instrumental on various grounds. First of all, it sets high standards. Secondly, it checks policy norms against realities. In that way, State Parties in the framework of a constructive dialogue and a cross learning process, have the major milestones and objectives of their roadmaps.

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