



# **Gender-Based Persecution and the (inadequate) use of the Concept of Gender**

A textual analysis of the construction of women's gender-based asylum claims in the Swedish asylum determination system

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## Declaration form

The work I have submitted is my own effort. I certify that all the material in the Dissertation which is not my own work, has been identified and acknowledged. No materials are included for which a degree has been previously conferred upon me.

Signed: *Lovisa Johansson*

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## Abstract

Asylum determination has, historically, not been sensitive to women's gender-based claims. Rather, male experiences and governmental persecution have been held as preferences in asylum determination. There have been international calls to assess gender-based claims in relation to a social constructivist approach towards gender, in order to eradicate the misinterpretations of women's asylum claims. This dissertation analyses the constructions of women's gender-based asylum claims, and further, examines whether or not verdicts of such claims have been sensitive to the gendered aspects involved.

The data used are verdicts from a Swedish Migration Court. Both qualitative and quantitative content analysis has been used as method. Social constructivism has been the main theoretical approach for analysing the construction of women's gender-based asylum claims.

The major findings of the analysis are that even though women's claims are largely gender-based, gender is rarely used as a perspective for understanding the claims. Instead, they are often constructed as either being private matters that are not severe enough as to constitute a need for international protection; being random criminal acts without a particular goal and thus disconnected from a protection ground; or as lacking credibility when deviating from notions and understandings of the cultural context related to the claim. Furthermore, claims of violence/harm due to transgression of social mores are often constructed as something that could be averted by the asylum seeker, if she only followed the norms set. Thus, the political agency of transgressing such mores was overlooked. Lastly, the construction and use of gender is to a great extent equated with women, as biologically different to men. In this sense, the socially constructed and gendered power relations and ideological expectations placed on men and women are disregarded. The conclusion is that there is a great need for assessing gender-based asylum claims with a gender sensitive approach in order to eradicate widespread misunderstandings based on notions of gender and culture.

**Keywords:** Gender-Based Persecution, Sweden, Asylum Determination, Social Constructions, Gender, Women Asylum Seekers

## List of Abbreviations

FGM: Female Genital Mutilation

MB: Migration Board (Migrationsverket)

MC: Migration Court (Migrationsdomstolen)

RP: Residence Permit (Uppehållstillstånd)

SMC: Supreme Migration Court (Migrationsöverdomstolen)

UDHR: Universal Declaration on Human Rights

UN: United Nations

UNHCR: United Nations High Commissioner for Refugees *or* the United Nations Refugee Agency

## Table of Contents

|   |    |
|---|----|
| 1. Introduction   | 8  |
| 1.1 Aim and research questions  | 9  |
| 1.2 Key terms   | 10 |
| 1.3 Outlining of the dissertation   | 11 |
| 2. Literature Review  | 13 |
| 2.1 The social construction of refugees   | 13 |
| 2.2 Issues faced by women in asylum determination                                   | 14 |
| 2.2.1 The private/public distinction  | 15 |
| 2.3 New law and policies, new possibilities? The debate about the concept of gender | 17 |
| 2.3.1 The refugee definition  | 17 |
| 2.3.2 Gender guidelines   | 19 |
| 2.4 Concluding discussion   | 20 |
| 3. Theoretical Perspectives and Concepts  | 21 |
| 3.1 Social constructionism  | 21 |
| 3.1.1 Dichotomies   | 23 |
| 3.1.2 The concept of gender   | 23 |
| 3.2 The concepts of power/knowledge and deconstructivism                            | 24 |
| 4. Methodology  | 27 |
| 4.1 Data collection   | 27 |
| 4.1.1 Outlining of the verdicts   | 27 |
| 4.1.2 The scope   | 28 |
| 4.2 Analysis of the data collected  | 29 |
| 4.2.1 Quantitative content analysis   | 30 |
| 4.2.2 Qualitative content analysis  | 31 |

|       |  |    |
|-------|--|----|
| 4.3   | Limitations of the research  | 32 |
| 4.4   | Ethical considerations   | 33 |
| 5.    | Protection for women asylum seekers  | 34 |
| 6.    | Gender-Based Claims in Numbers   | 36 |
| 6.1   | The verdicts   | 36 |
| 6.2   | Discussion   | 39 |
| 7.    | Constructions of Gender-Based Claims and the Concept of Gender               | 40 |
| 7.1   | The construction of women's gender-based asylum claims                       | 40 |
| 7.1.1 | The lack of credibility – deviations from notions of the practice of culture | 40 |
| 7.1.2 | The construction of the violence/harm feared                                 | 42 |
| 7.2   | The (inadequate) use of the concept of gender                                | 50 |
| 7.2.1 | Protection grounds and the (inadequate) use of the concept of gender         | 50 |
| 8.    | Conclusion   | 55 |
| 9.    | Recommendations  | 58 |
| 10.   | Bibliography   | 59 |
|       | Appendix 1   | 65 |
|       | Appendix 2   | 66 |

# 1. Introduction

“Everyone has the right to seek and to enjoy in other countries asylum from persecution” (UN 1948, article 14 a).

This statement comes from the United Nations Universal Declaration on Human Rights (UDHR). It has been argued that most rights stated in the UDHR have later been articulated and incorporated into international conventions, but this has not been the case with the right to asylum (Bhabha 1996). The 1951 Convention relating to the Status of Refugees (hereafter Refugee Convention) does not state that individuals have the right to asylum, but merely that states shall refrain from sending back individuals to persecuting states (ibid.). Furthermore, what constitutes persecution was later defined in the Refugee Convention, which states that a refugee is a person who has 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” (UN 1951, chapter 1, article 1A(2)) (emphasis added)

As becomes clear in this definition, there are only certain grounds that constitute persecution, and although the Refugee Convention is to be administered without discrimination, the ability to address women's fear of persecution in practice has been the target of considerable critique (see among others Spijkerboer 2000, Crawley 2001, Kelley 2002, Bhabha 1993, 1996). It has been argued that the Refugee Convention has been interpreted in such a way so as to treat *governmental persecution* and *organised political activity* preferentially as main causes for gaining refugee status, while other possible reasons for persecution are being excluded – which has often been to the detriment of women (Bexelius 2008, Bhabha 1993, UNHCR 2002a). Even though men and boys who have been forcibly displaced face protection problems, forcibly displaced women and girls face protection problems which are related to their gender and cultural position (UNHCR 2008).



Crawley (2001) argues that even where women's reasons for seeking asylum are similar to those of men, they are often assessed differently. However, in many cases, women's experiences are significantly different from those of men, and are interconnected with their gender. Examples of such gender-based experiences and claims include: women who are subjected to violence because of transgressing social mores, women who are persecuted by members of their family/community, and women who are subjected to (sexual) violence because of their own or their relative's political activity. Furthermore, the political activity of women may look different from those of men since they are often activities performed in the private sphere: passing messages, hiding people, and providing medical care, food and clothes (ibid.).

It has been argued that there is a great need to assess women's gender-based experiences and claims from a social constructivist approach to gender as a way of understanding gendered roles and the unequal relationship between men and women (see among others, UNHCR 2002a, Bhabha 1996, Spijkerboer 2000, 2005, LaViolette 2007, Crawley 2000, 2001, Oxford 2005, Freedman 2007). Such a gender sensitive approach would facilitate an understanding of the claims in relation to gendered power structures where women are inferior to men and ideological expectations placed on the respective genders. It would also avoid possible misunderstandings about the claims and their contexts (Bexelius 2008).

## 1.1 Aim and research questions

Sweden has been rather forthcoming in regards to recognising and handling women's gender-based claims. The country has adopted national gender guidelines (Migrationsverket 2012a), as well as incorporated 'gender' as a protection ground to their refugee definition (Aliens Act 2005). The question is then whether decisions of women's gender-based claims are being taken in line with a gender sensitive approach, as outlined above.

### *Aim*

The aim of this dissertation is to analyse the constructions of women's gender-based asylum claims.

Furthermore, the aim is to examine whether or not the verdicts of such claims have been sensitive to the gendered aspects involved in gender-based experiences.

### *Research Questions*

How are women's gender-based claims constructed by decision makers?

- To what extent has a gender sensitive approach been taken towards gender-based experiences and claims? How often is gender explicitly discussed in relation to the gender-based claims?
- In verdicts where gender-based claims are not discussed in relation to a gender sensitive approach, how are such claims constructed and assessed?
- In verdicts where the gendered aspects have been taken into consideration, how is gender constructed?

## 1.2 Key terms

**Asylum seeker:** the term refers to a person, outside the country of origin, seeking refuge in another country (Goodman & Speer (2007)). A *refugee* is, in Sweden, and in the context of this dissertation, an individual granted a residence permit (RP) (uppehållstillstånd) on any of the protection grounds as outlined in the Aliens Act (2005). However, an asylum seeker might be granted RP on other grounds, which will be referred to as *subsidiary protection* (1 and 2), and lastly on grounds of *exceptionally distressing circumstances* (Aliens Act 2005). A further explanation of the different grounds will be given in Chapter 5. However, in the literature review there will be a deviation from this definition, since literature on the topic often uses the terms refugees and asylum seekers interchangeably. There are different reasons for this, for example that the terms are used in different ways within different countries legislation.

**Gender:** the concept of gender is central in the present dissertation and it refers to the social constructions of relations of power between men and women, and how such relations of power have

implications on men's and women's status, roles and responsibilities. Gender shall be seen as culturally and socially constructed, and geographically and historically specific, and so it will inevitably change over time and through space (Butler 1990). Thus, a gender sensitive approach towards gender-based experiences refers to the understanding of such experiences in relation to gendered power structures and ideological expectations placed on men and women (Bexelius 2008). The concept of gender will be explained and problematised further in Chapter 3.

**Gender-based persecution:** gender-based persecution refers to the gendered experiences of an asylum seeker. The concept can be divided up into 'gender-related persecution' and 'gender-specific persecution', where the former refers to the gendered ground or reason for persecution, whereas the latter is defined as the method of persecution and relates to the prerequisite of 'serious harm' suffered (Crawley 2001). In short, a woman persecuted as a woman (e.g. subjected to sexual violence) does not have to be persecuted because of her gender but for other reasons (e.g. political activity); a woman might be persecuted with non- gender-specific methods but because of transgressing gendered social mores; and lastly, a woman might be persecuted *because* she is a woman and *as* a woman (e.g. female genital mutilation).

**Violence within the family:** The term violence within the family will, in the context of this dissertation, refer to the violence inflicted on a person by a member of their extended family. This type of violence is almost always gendered, and is foremost directed towards women and girls. The term does not only include the violence inflicted on a woman by her husband, but also violence inflicted on a girl by a father, uncle and so on (Crawley 2001).

### 1.3 Outlining of the dissertation

The following chapter provides a discussion of previous research in the area, and is followed by a chapter outlining the theoretical perspectives and concepts used as analytical framework when analysing the data collected. After this section, the methodological considerations will be explained, followed by an explanation of gender guidelines and legal grounds against which women's asylum claims are being assessed. Following this legal background, the next two chapters provide an

analysis of the data. The first chapter takes on a quantitative approach, and the second provides a more in-depth qualitative analysis of the verdicts. Lastly, conclusions and recommendations are provided.

## 2. Literature Review

This literature review aims to provide an academic context to the topic of this dissertation. There is a lack of published academic research about assessments of gender-based claims in a Swedish context, leading to my belief that there is a great need of such research. Furthermore, most international research in the area dates back to the 1990s, thus changes and progress made regarding jurisprudence and policies has not been studied. Even so, the research presented in this chapter does provide a background against which the findings of my own research can be compared in order to determine whether progress has been done in Swedish asylum determination.

### 2.1 The social construction of refugees

“[R]efugees are consigned to their body. That is, they are rendered speechless and without agency, a physical entity, or rather a physical *mass* within which individuality is subsumed” (Rajaram 2002:251).

The citation above aims at highlighting the depoliticised and generalised depiction of refugees, which is obscuring diversity of refugee experiences (Rajaram 2002). The constructions of refugees are being made by decision makers, and other actors engaged in asylum law and policy, and it has been argued that the refugee stands powerless in this process (Barsky 1994, Spijkerboer 2000). Such powerlessness is maintained in the asylum determination process and stems from the refugee's lack of economic resources, lack of information and knowledge about the system in which their cases are involved, and through the lack of institutional power (Spijkerboer 2000).

It has been argued that gender-based experiences are always assessed by decision makers in relation to racial, cultural and gendered notions of the applicant (Razack 1995, Spijkerboer 2000, 2005, Bhabha 1996). Spijkerboer (2000) argues that it is favourable for a refugee woman, in the context of asylum determination, to be constructed as being a defenceless woman who has been subdued by 'Oriental males', since such a construction seems to conform with the decision makers notions of culture and gender. However, as the author argues, such a construction might also maintain racist

myths which will work against her once she gets her residence permit. Thus to be constructed as 'culturally other', and seeking refuge due to dysfunctional and patriarchal states seems to be a key criteria for women asylum seekers being granted residence permit. Even so, Bhabha (1996) makes the construction of the asylum seekers even more complex when stating that assessments of asylum claims are made not only with regard to the specific culture/country of origin, but also whether they can be seen as persecutory acts within that specific culture/country. Thus similar claims might be assessed differently depending on the origin of the asylum seeker (ibid.).

The need of asylum seekers to conform to decision makers' notions of gender and ethnicity, is clear through the way in which asylum seekers and their claims are constructed in asylum determination (Barsky 1994, Razack 1995, Spijkerboer 2000, 2005, Goodman & Speer 2007). For instance, research has argued that women often have trouble with claiming a need for protection due to their political activities, because their activities are often dismissed as not being (in a 'Western' sense) sufficiently extensive as to result in persecution, or that they are dismissed because they are falling outside the notion of what is deemed as political agency within a specific culture (Spijkerboer 2000, 2005, Bhabha 1996, Anker 2001, Bexelius 2008, Oxford 2005, Crawley 2000). According to Barsky (1994), asylum seekers do try to conform to such notions. He argues that if they do not show such conformity, then they will be rendered incomprehensible as refugees, and will not be deemed credible. However, it could be argued that the ability of conforming to notions of gender and culture would require an understanding of what specific notions to conform with. In which case, it seems that the asylum seeker do possess some power of agency within the asylum determination, as opposed to the more or less complete powerlessness as was stressed by Spijkerboer above.

## 2.2 Issues faced by women in asylum determination

As the introduction to this dissertation indicates, women face difficulties proving that they need refugee protection, which can be seen as deriving from the partial interpretation of the Refugee Convention from a male norm, which sees governmental persecution and organised political activity as main causes for persecution (Bexelius 2008, Bhabha 1993, Spijkerboer 2000). The

reason behind such an interpretation seems to be that even though refugee law is supposed to be gender neutral, it is interacting in practice with domestic law, but also even more importantly, with social structures, which are gendered (Crawley 2000). The assessments of gender-based experiences has been rather criticised because of the lack of a social constructivist approach towards such experiences in asylum determination (LaViolette 2007, Crawley 2000, 2001, Oxford 2005, Bhabha 1996, Spijkerboer 2000, 2005, Freedman 2007). Such an approach is said to facilitate an understanding of the experiences as situated within a context of power relations between women and men, as well as an understanding of how ideological expectations creates roles and boundaries for individuals based on their gender (Crawley 2000, 2001, LaViolette 2007, Bexelius 2008).

### 2.2.1 The private/public distinction

The making of the gendered violence private, as opposed to public, has been argued as being one of the biggest issues faced by refugee law (Macklin 1995, Anker 2001, 2002, Spijkerboer 2000, 2005, Crawley 2000, 2001). The fundamental problem of assessing such claims that are constructed as belonging within the private sphere is the non-state actor question (Anker 2001). Even though there is no prerequisite for persecution to be committed by a state actor, the non-state actor question highlights the question of whether the state has *potential* to protect (ibid.). However, the potential of state protection can also be questioned. Macklin (1995) argues that the widespread violence within the private sphere is being sustained through the inaction and inattention of states, while the violence becomes tacitly condoned as a systematic practice. Furthermore, Bhabha (1996) argues that the culturalist approach of constructing certain seemingly private and quotidian social norms, such as dress codes and restrictions on personal relationships, is connected to every sovereign state's notion of 'human dignity'. Thus, in this sense breaking such 'private' norms is not seen as persecution but, rather, as part of the human dignity of a state and shall therefore be respected (ibid.). Thus, it can be argued that gendered experiences occurring in the private sphere are not only overlooked by the state of origin of an asylum seeker, but might also sometimes be dismissed as an 'expression of culture' in asylum determination.

The distinction between the public and the private is highly maintained in regards to gendered

violence and, maybe, especially when it comes to violence within the family. As Copelon (1994) argues, domestic violence is not perceived as being sufficiently severe when compared to other types of violence experienced in the public sphere. In a situation where a woman is experiencing domestic violence, her claims are often dismissed as irrelevant, even though she is not able to seek governmental protection (Copelon 1994, Freedman 2007). Spijkerboer (2000) argues that what is constructed as persecution derives from the idea of *public* and *conscious* acts resulting in *governmental punitive* measures. In his study, women's experiences were most often constructed as private, irrespective of whether the persecutor was a family member or even a state official, and were not considered to constitute persecution.

### *Sexual violence*

Sexual violence and rape have often not been regarded as being forms of torture or of being connected to a protection ground in the meaning of the Refugee Convention, but have instead been argued to be private matters, and have at times been perceived as 'personal' and resulting from private feelings of 'desire' and 'lust' (Freedman 2007, Spijkerboer 2000, 2005, MacKinnon 1990). It is argued that the reason for this is that the prerequisites for torture are constructed as being state sanctioned and framed as political, and thus not as private (MacKinnon 1990). Where the violence is gendered and sexual, it is constructed as private (*ibid.*). Spijkerboer (2005) argues that sexual violence is often argued as being directed towards a woman's body, even in such cases with a clear political motive. Other 'conventional' forms of torture are seen as being directed towards the individual's mind, while sexual violence has often been considered as being an act of male lust, directed towards a random woman and as lacking a clear motive or purpose (*ibid.*).

Furthermore, sexual violence is often normalised and considered a universal relation between women and men, while asylum claims on such grounds might not be taken seriously (Freedman 2007). Such reasoning indicates that if too many people are subjected to the violence, if it is too general, then it is not of interest within an asylum context (Oxford 2005, Bhabha 1996).

One of the fundamental differences between experiences in the public versus the private sphere



seems, therefore, to be the connection to a conscious act versus the act that is constructed as being bodily and random, which leads us into the next section. Is there a need for deconstructing women's experiences and reconstructing them within the public sphere in order to gain recognition?

### *Is deconstructing the experiences the solution? Making the private public*

It could be argued that the recent debate about sexual violence in war has proven the ability of moving the so called 'private' sexual violence, into the public arena. When constructing the sexual violence as a 'weapon in war' it is defined as used as a tactic in deconstructing the community of the victim and the culture it consists of – in other words, as a means of demonstrating one culture's dominance over another (Reid-Cunningham 2008). Canning (2010) argues that the sexual violence is used in a strategic way of humiliating and diminishes the dignity of the community.

The core of the debate is, in other words, that the sexual violence experienced by women is directed towards the larger community and certainly towards the men of the community. The violence is therefore constructed as serving a higher purpose, and not 'only' being directed towards one single woman. Thus, it seems that gendered claims do get recognition when moved from the private to the public sphere. However, the question is whether the violence is even constructed as being gendered when moved from one sphere to another. Furthermore, it seems that violence against women as constructed in the private sphere is seen as too general as to attract international attention, whereas the violence against women in the public sphere is seen as to serve a higher purpose when it is argued that such violence is directed towards the community.

## 2.3 New law and policies, new possibilities? The debate about the concept of gender

### 2.3.1 The refugee definition

In assuring equal treatment and assessment of asylum seekers' claims and experiences, there were, in the 1980s and early 1990s calls for adding 'gender' as an additional ground to the Refugee Convention (Crawley 2000, Bhabha 1993, Razack 1995). Bhabha (1993) admits that many gender-

based claims could fit under the existing protection grounds, however, she argues that not all gender-based claims can be reduced to such grounds so there might be a need for adding gender as a protection ground.

Lately, such a stand has been abandoned and the light has mainly been directed towards how the Refugee Convention has been interpreted. Haines (2003, cited in Zamacona Aguirre 2008) argues, alongside other authors, that adding an additional ground to the Refugee Convention would not solve the real problem. The problem, he adds, lies in the decision-makers' failure to refrain from partially interpreting the definition from a framework of male norms and experience. Crawley (2000) argues, however, that the reason for dismissing women's experiences does not lie only in privileging male experiences. It can be also found in the general failure of recognising economic and social rights within refugee law, in favour of civil and political rights and the individual's deprivation thereof – even though social and economic rights are often times violated of political reasons (ibid.). Yet another stance towards the issue is presented by Oxford (2005:20), who argues that opening up the refugee definition for discussion to add gender in a time when anti-immigrant forces are strong, could lead to restricting other parts, such as what is meant by well-founded fear or restricting the notion of persecution to only include governmental persecutory acts, which has become the case in Germany (ibid.).

In other words, it could be argued that discussing the definition of refugee could lead to more harm than good. Still, Sweden has incorporated gender into their refugee definition (Aliens Act 2005). Even though neither the focus, nor the scope, of this dissertation is of such size as to enable an examination of the actual impact of the changes made in the Swedish asylum legislation and policy, there seems to be a need for research examining the practice in countries where gender has, in fact, been added as a protection ground to the refugee definition. The importance of such research is not only of concern in a Swedish context, but also for the development of refugee policy on an international level.

### 2.3.2 Gender guidelines

Scholars have stressed their preference for gender guidelines to be used within the asylum determination over making changes to the refugee definition (Crawley 2000, LaViolette 2007). Some countries have issued national guidelines for gender-related experiences in order to eradicate the problem of partial interpretation of the refugee definition (Freedman 2007). However, the issuing of gender guidelines has brought a discussion to the fore of what should be understood by the concept of gender and the presumed distinction between gender and sex. The following discussion has highly influenced the way in which gender is being used within the present dissertation.

Oxford (2005) uses the concept of 'gender synonymy' when criticising how the concept of gender has been used within asylum determination, meaning that only women's experiences are seen to constitute gender-based persecution. The author states further that *“men seeking asylum are assumed to never experience gendered harm, women, conversely, are worthy of asylum only in terms of narratives of exotic practices”* (2005:30). In such a way, cultural essentialism is seen as to be inevitably connected to gender, and that violence and violations against women can formerly be understood in relation to culturally static practices (ibid.). This clearly is a critique of how the use of the concept of gender within asylum determination has had a negative impact on both men and women's asylum claims, as well as to sustain the differences between men and women.

Canada was the first country to adopt gender guidelines, and as such, has provided invaluable expertise. Canada has also put pressure on other countries to follow their lead (Freedman, 2007). However, as a study by LaViolette (2007) shows, there is still some work to be done. She argues that even though the guidelines seem to have made a difference for female applicants, there are still difficulties for other groups claiming gender-based persecution, such as lesbians, gay men and other sexual minorities. The reason for this, she argues, is that gender has foremost been equated with biological sex and further with women as a group, resulting in the intrinsic definition of the concept of gender being lost. LaViolette argues that the concept of gender in the guidelines has to be revised in accordance with a social constructivist perspective in order to eradicate the risk of gender-based

experiences put forward by men, homosexuals and other sexual minorities falling outside the notion of gender. However, even though the author states that women are most exposed to gender-based persecution, she claims that the need for a revised concept of gender mainly can be found in the context of other groups, such as men and homosexuals.

Following the paragraph above, the question is whether or not women would also benefit from such a revised concept of gender that is not based on their biological sex, but rather built on a social constructivist definition. In fact, Crawley (2000) argues that there is a persistent problem of equating gender with women, rather than with both men and women. She argues, first of all, that equating gender with women would reinforce and replicate the marginalisation and generalisation of women asylum seekers' experiences. Furthermore, it would dismiss the fact that there are critical differences between women's experiences and would create confusion about the meaning of gender-based persecution when the relation between protection grounds and the harm suffered is not being clear (ibid.).

## 2.4 Concluding discussion

This literature review has provided an academic background to the present study. Throughout the chapter, the importance of regarding the ways in which notions of culture and gender obscure the assessments of women's gender-based experiences has become clear. Gender-based claims seem often to be constructed as private matters and not as constituting persecution. To facilitate an understanding of such claims, there have been calls for gendered guidelines through which the claims could gain recognition. However, the question seems to be whether the definition of gender lies in an understanding of gender as equated with biological difference, and mainly connected to women, or if the definition should rather focus on the ideological expectations that are placed on men and women respectively.

### **3. Theoretical Perspectives and Concepts**

This dissertation takes the social constructivist tradition as its theoretical point of departure. As such, the focus of the present dissertation is analysis of the construction of women asylum seekers' gender-based experiences and claims. Earlier research on the topic has been unanimous in the importance of defining gender through a social constructivist approach (Crawley 2000, 2001, Anker 2002, LaViolette 2007, Oxford 2005). In addition, the dichotomies of public/private and body/mind are important when analysing women asylum seekers experiences, and will therefore serve as important concepts in this dissertation as well. Lastly, the Foucauldian concept of power/knowledge will serve as an important tool in further analysing these constructions and their internal power structures. Such perspectives and theories will be used in the analysis of the present dissertation as a way of understanding the constructions of women's asylum claims. In this sense, deconstructivism will serve as a good tool in breaking down the constructions and to unveil hidden meanings, biases and structures.

Bryman (2012:33) argues that the social constructivist perspective not only regard the social world as the result of human interaction, but the researcher's own specific view of the world will, inevitably, be reflected in his or her work, so that objective claims of the phenomenon studied cannot be made. As such, I firmly believe that the transparency of the research is of major importance, which will enable the reader to critically assess the conclusions made.

#### **3.1 Social constructionism**

Foucault (1989) argued that we can only have knowledge about something when that something is ascribed meaning, meaning that it is the discourse, rather than the thing itself, that is producing knowledge. Furthermore, the knowledge of actions and phenomenon are understood in relation to the context (social, historical, cultural) that they are part of (ibid.).

The following four assumptions are often argued to be the core of social constructionism (Burr 2003, 1995). Firstly, a critical stance shall be taken towards such knowledge that we often take for

granted. The way we understand the world is not objective, but mirrors the way we categorise and define the world. Secondly, the way we understand the world derives from the cultural, historical and social context that we are part of, and how it changes through space and time. What characteristics and ideological expectations ascribed to a woman, depends, thus, on the context. Thirdly, knowledge is gained through social processes, meaning that knowledge is produced through interaction between people (ibid.). The idea of women refugees is therefore produced in the interaction between people. However, as was described in the literature review, it seems that refugees have little power themselves in this process, and the knowledge produced about them stems from the knowledge of other, more powerful, actors. Lastly, knowledge is also sustained through social action. In a specific context, some actions are deemed natural whereas others are seen as unacceptable (ibid.). For instance, it might be deemed natural for a woman to show regret about having to leave a child behind in the care of other family members when fleeing from a country, but it might not be deemed acceptable behaviour to be indifferent towards such a situation.

Language is an important factor in creating and recreating such meaning as outlined above. However, when meaning is ascribed to a phenomenon and when the relationship between the meaning and the phenomenon has been socially accepted, it might hamper reflection of that relationship and what it entails (Winter Jørgensen & Philips 2000). Winter Jørgensen and Philips (2000) argue that this is a way in which what can be deemed as cultural self-explanatory meanings are being created. To deconstruct such 'objective' and seemingly unchallengeable knowledge and 'truths' will be of great importance in the analysis of the constructions of women's claims.

Even though social constructivism is sometimes argued not to be connected to concepts of power, in the context of this dissertation the social constructivist perspective is approached from a more radical view and is closely connected to the Foucauldian concept of power(/knowledge), which will be described below. Social constructivism is often said to be opposed by essentialism (Carlsson 2001). In the present dissertation analysis of phenomenon constructed as being 'natural' or 'essential', and the possible implications or consequences following such a construction, will be central.

### 3.1.1 Dichotomies

In a Derridian sense, language can be understood as organised words and signs which are given their meanings through relations of difference, where one binary opposition is giving and receiving its meaning from its opposite, although they are, in fact, dependent on the existence of one another (Eriksson et. al. 2011:18). Examples of such binary oppositions are woman/man, normal/abnormal, white/black. Furthermore, the relation between them is not symmetrical, but one binary is dominating over the other. Thus, when meaning is created in terms of binary opposition, the meaning constructed build on hidden power structures, and the creation of hierarchical structures are being maintained (ibid.). The binary oppositions of the private/public sphere and of unconscious/conscious acts will be important in the analysis of the verdicts, which have been further explained in Chapter 2.

Gendered constructed dichotomies and their emanating binary categories are central in most research concerning the understanding of women's experiences (Reilly 2009, Freedman 2007, Crawley 2001, Spijkerboer 2000, 2005). Crawley (2001) argues that the dichotomies are gendered ideological and political constructions, which will, in turn, have gendered consequences.

### 3.1.2 The concept of gender

It has been argued that the distinction between gender and sex lies in the definition, where the latter is usually connected to categories such as biological, natural and with 'real' difference, and the former is connected to cultural and social constructions (Carlsson 2001, Chancer & Watkins 2007). However, Butler (1990) stresses that the so called 'real' differences between men and women are as much constructed as gender ought to be. Since difference is perceived, and is all part of a discursive process, even the difference between gender and sex should be seen as socially constructed (ibid.).

The focus on gender within social constructivism is where socially constructed characteristics ascribed to either women or men are being examined (Carlsson 2001). As dichotomies are fairly strict, with no grey zones, it is argued that an individual can only either be a man or a woman

(Eriksson et. al. 2011). The dichotomy of man/woman holds preferences towards both sex and gender, where the former relates to the understanding of man/woman, and the latter refers to the understanding of masculinity/femininity (Chancer & Watkins 2007). Furthermore, categories such as 'private', 'submission' and 'passivity' are seen as to be connected with femininity, and the categories 'public', 'control' and 'activity' are associated with masculinity (Chancer & Watkins 2007, Spijkerboer 2000). In addition, these categories are politically and discursively informed and will therefore demand certain expectations of the individual (Butler 1990). Furthermore, the categories do not only entail power structures between men and women, but also between women and between men, determined by other factors such as culture and class (Butler 1990, Chancer & Watkins 2007).

LaViolette (2007:170) states that “gender-based persecution flows not from the victim's biological sex but, rather, from the power relations that characterize relations between men and women”. Spijkerboer (2000) argues that a woman's experiences will be different from those of a male victim if subjected to sexual violence, precisely because of the social positions, power relations and expectations that are placed on the sexes. However, it shall be noted that such expectations change over time and space, and the context in which they occur is an important factor in such an analysis.

In the introduction to this dissertation, I have referred to the need for a gender sensitive approach towards the assessments of gender-based claims. Such an approach demands a social constructivist definition of gender, as outlined above. However, it also demands a deeper understanding that gendered violence and discrimination derive from gendered power relations and from ideological expectations placed on the genders (Bexelius 2008). Bexelius argues that without this approach when assessing claims, violence and harm feared might be misunderstood and the credibility of the applicant is wrongly questioned.

### 3.2 The concepts of power/knowledge and deconstructionism

The Foucauldian concept of power is closely connected to the concept of knowledge. In fact, the two terms are inseparable and shall be seen as one (Sprague 2005). A definition of the concept of power/knowledge is given by Sprague (2005:36): “power is enacted through the organisation of



knowledge, and knowledge is constructed as a form of domination”. Järvinen (1998) argues that the power of what can be said – and therefore what is seen as to be the truth – is determined by those who have the power. In addition, the concept of power/knowledge builds on the notion of 'the other', namely the object/person who is being excluded from the hegemonic discourse and who does not have access to power/knowledge (ibid.). For instance, non-Western culture is often deemed as being homogeneous and as containing a fixed essence. However, it can be argued that such a construction is the result of Western domination over 'the other' and in recreating the culture as being homogeneous and with an unchangeable essence, such domination is being upheld (Eriksson et. al. 2011).

The creation of discourses, leads, inevitably, to the control of people. Foucault (1993) argues that the mechanisms for exclusion are created in the interaction between people and in the constant presence of power/knowledge. He argues that this is how things become prohibited or taboo, but also, and possibly more important, how what is 'true' and 'false' is defined. Bergström & Boréus (2012) argue that the possible (subject) positions to be taken by an actor are therefore determined by the limits of the discourse. In other words, the discourse in a particular context determines who is allowed to say what and how, and with what authority. So, *“knowledge is a power over others, the power to define others”* (Burr 1995:64). In the meaning of this dissertation, the concept of power/knowledge will be used as a way of understanding how decision makers have the power to determine what kind of 'knowledge' is supposed to be deemed as true, and false. In addition, analysing how such arguments are constructed enables a deeper understanding of how different notions of, for instance, gender and culture intersect and possibly build such an argument. Such a deeper understanding is facilitated by the use of deconstructionism as a tool to unveil constructions that are seen as true.

Deconstructivism is a useful tool when analysing discourses through simply deconstructing, or breaking down, the discourses (Sprague 2005). The aim, as Järvinen (1998) argues, is to find what is overlooked, omitted, mocked or suppressed by the domineering discourses. She argues, in line with Derrida, that the construction of one phenomenon always stands in contrast to the other, why it can be argued that the focus of deconstructivism is the binary oppositions as outlined above. In the

present dissertation deconstructivism will be used as a tool when analysing the constructions in the decisions. It will provide a critical approach to what is deemed 'true' and 'false' in the material, and highlight how the notions of such value assessments are being constructed. However, deconstructivism shall not be seen as a tool with which we can eradicate binary oppositions and their power structures (Eriksson et. al. 2011). It rather serves as a tool with which such structures can be unveiled (ibid.).

## 4. Methodology

In this section, the methodological considerations will be presented. As such, the verdicts used as data will be presented, as well as the selection process. Further, the methods used in analysing the data will be outlined, as well as a description of how the analysis was completed. The analysis has been divided up into two different parts, with the first giving a shorter outline of statistics gathered from the verdicts, and the second providing a more in-depth analysis of how women's experiences are constructed by decision makers. Although the main focus of this dissertation is the qualitative analysis of the verdicts, the statistics will provide a valuable context to the construction of women's experiences by decision makers. In addition, the two parts will be able to inform each other, and in the end conclusions will be drawn from the findings in both parts.

### 4.1 Data collection

As Bryman (2012) states, it is extremely important that a researcher applies a critical mind-set towards the documents that are going to be used as data, although the possibility of the researcher investigating the quality of the data is rather low (*ibid.*). Proving the credibility of the data used in this dissertation is less difficult as it is sourced by a state institution. In addition, it is the language used in the documents that are the main focus of this dissertation.

The data collected is derived from written verdicts from the Migration Court (MC). In Sweden the applicant has the right to appeal a negative decision given by the Migration Board (MB), which constitutes the first instance in the asylum process. Such an appeal is tried in the MC. Further, if given a negative verdict from the MC, then the applicant has the right to apply for leave to appeal at the Supreme Migration Court (SMC). There are three MC's in Sweden (Migrationsverket 2012b). All verdicts used in this dissertation are gathered from the MC located in Gothenburg.

#### 4.1.1 Outlining of the verdicts

Initially, the verdicts provide background information about the applicants' asylum reasons, in

addition to the MB's decision and the reasons for the decision. After the first section, the verdicts provide a section where the applicant gives a statement arguing against the MB's verdict, and why the applicant should be granted a residence permit. Furthermore, protection grounds that have not yet been addressed may be given in this section. Throughout the next part, the MC will give their verdict, and the reasons backing up their decision. The verdicts are generally from six to thirteen pages long.

The analysis will include statements, decisions, verdicts and reasons thereof made by the MB and the MC. The use of verdicts from the MC will, therefore, enable an analysis of statements made by both the MB and the MC. However, I am unable to generalise on the decisions made by the MB since I have not examined this agency's decisions. Thus, information about how the MB has assessed applications that have been approved, or for other reasons have not been appealed to the MC, have not been studied.

#### 4.1.2 The Scope

The verdicts are gathered from three different time periods: 1<sup>st</sup> February 2008 - 1<sup>st</sup> July 2008, 1<sup>st</sup> July 2009 - 1<sup>st</sup> July 2010 and 1<sup>st</sup> July 2011 - 1<sup>st</sup> July 2012. The first period is shorter than the others as the MC saves verdicts for only five years. The documents used solely include single women who are over 18. The documents solely regard asylum seekers (from the category "Asylsökande 60/01"), and do not include verdicts regarding family reunification, applications for work permits, appeals against a Dublin regulation decision etc. The verdicts have been chosen, randomly, from a list of all verdicts within the given timeframe. The table below shows the number of verdicts selected for the purpose of this dissertation.

|  | Period 1 | Period 2 | Period 3 | Total |
|--|----------|----------|----------|-------|
| Total number of verdicts in the period | 611      | 1364     | 957      | 2932  |
| Number of verdicts selected            | 106      | 117      | 111      | 334   |

|                                    |           |           |           |           |
|------------------------------------|-----------|-----------|-----------|-----------|
| <b>Number of verdicts studied*</b> | <b>21</b> | <b>30</b> | <b>35</b> | <b>86</b> |
|------------------------------------|-----------|-----------|-----------|-----------|

\* This is the number after verdicts regarding men, children and families, as well as verdicts regarding family reunification, applications for work permits and appeals against a Dublin regulation decision and verdicts containing too much secrecy etc. had been singled out.

The verdicts are all in Swedish, and the citations presented in the analysis have been translated to the best of my ability. However, I have encountered some linguistic barriers where certain expressions and/or wordings do not have an English equivalent, and these citations have not been used as examples in the present dissertation. However, the verdicts have still been included in the content analysis, which will be explained below.

Countries represented as countries of origin in the verdicts are: Burundi, Afghanistan, Georgia, Russia, the Democratic Republic of Congo (DRC), Kosovo, Morocco, Iran, secrecy, Serbia, Iraq, Bosnia-Hercegovina, Lebanon, Azerbaijan, stateless, Syria, Somalia, Libya, Ivory Coast, Albania, Jordan, Cameroon, Turkey, Eritrea, Ethiopia, Kyrgyzstan, Nigeria and Kenya. The majority of the applicants state Iran, Iraq, Somalia and Kosovo as their country of origin. 16 of the total 86 verdicts were given permanent residence permits (RP), one was given a time-limited RP, two were referred back to the MB and the remaining 67 cases were rejected. In chapter 6 more statistics gathered from the verdicts will be presented.

## 4.2 Analysis of the data collected

The analysis of the data collected has been divided up into two parts with the first taking on a quantitative approach, and the latter offering a more in-depth qualitative analysis of the verdicts and a deeper understanding of the material.

Content analysis will be used as the method of analysis in both parts (explained further below), and tools and frameworks from the theoretical perspective presented earlier will be used when analysing the verdicts. It shall be noted, initially, that in the analysis the women are often referred to as 'applicants', and state officials and lawyers at the MB and the MC as 'decision makers'.

#### 4.2.1 Quantitative content analysis

Bergström & Boréus (2012:50) argue that content analysis is foremost used as a quantitative research method, even though it can be, and is used within qualitative research as well. The focus of the method, when used within a quantitative framework, is to count the occurrence of certain terms/concepts/phenomenon in texts. In other words, the interest lies in the examination of what is explicitly expressed (Bergström & Boréus 2012). This first part is foremost informed by the research question of how often gender is discussed in relation to gender-based claims. See Appendix 1 for coding scheme used.

The coding of the decisions has been done manually, and not through the use of a computer. Even though only collecting statistics of explicitly expressed grounds, the reason for not using the assistance of a computer is that the wordlist used cannot simply be used by a computer since some of the variables used might not be phrased in one single word, but rather explained in different ways or discussed throughout the verdicts, even though the same concept or idea is still referred to. The validity of the study will, therefore, be higher when carrying out the coding manually than if computer assistance would have been used, even when the human error has been considered.

The coding scheme has been used on the different period-based samples separately, even though no comparison will be made between the time periods – the sample is relatively small, and consequently would not give reliable results. Furthermore, the focus of this dissertation is not to compare possible developments between different periods, and the period-based samples mainly serve as a warranty of a spread between different groups since the scope of migrators constantly shift.

Chapter 6 of the present dissertation will, thus, present statistics gathered from the verdicts, such as the explicit use and referencing to gender and of the gender-based experiences claimed. The statistics provide an empirical background of the verdicts that will not only inform the second part, but will also provide transparency in the analysis of the verdicts, since it will give a background to, for example, the major asylum claims and how often gender was discussed or referred to by the

decision makers. However, the statistics only cover statements made by the MC, and not the MB, since, as noted before, I will not be able to generalise about the decisions made by the MB.

#### 4.2.2 Qualitative content analysis

Bergström & Boréus (2012:80) state that one critical problem with the use of quantitative content analysis, is that it cannot answer the question of *how* something is said, which becomes clear in Chapter 6, where the statistics is presented. However, as the authors' states, a combined use of quantitative and qualitative content analysis can often bring about a more complete analysis, where not only statistics and a deeper analysis can be made, but the possibility is opened for the different parts to inform each other.

Berg (2009:338) states that the aim of using content analysis is to identify meanings, biases, patterns and themes, which is a meaningful way of studying the constructions and use of gender and gender-based claims. As such, the analysis will be based not only on the manifest content, but also the latent content where interpretations of the text become central (Berg 2009:344). The verdicts have been thoroughly studied and read through several times. The categories of this section have been influenced by the findings from the quantitative part of the analysis, as well as by research questions and theoretical perspectives. However, at the same time as studying the verdicts, earlier research was also studied, while the categories found in the verdicts has been influenced by other researcher's findings as well (see Appendix 2 for coding scheme). Thus, when analysing the verdicts, certain major categories emerged which have been used in the analysis of the present dissertation. It shall be noted that the citations used under each category, or heading, serve as examples of certain major trends found in the verdicts and shall be seen as few examples of many.

It shall be noted that the references to verdicts will not give extensive details of the applicants' experiences. Even though the woman is, in fact, a victim of different forms of gender-based violence or harm, the focus of this dissertation is the construction of such claims as made by the decision makers. In addition, giving extensive details of the experiences risks build on racist discourses of women asylum seeker as solely being victims of the cultures that they come from. The

strength and political agency when resisting oppression is obscured when they are simply constructed as victims.

### 4.3 Limitations of the research

Even though the focus of this study is the construction of female applicants' gender-based claims, other genders, too, can experience gender-based persecution. The sole focus on women is foremost due to restrictions of time and space of this dissertation. Furthermore, even though LaViolette (2007) argues that an interpretation of gender from a social constructivist perspective foremost would benefit men, homosexuals and other sexual minorities, the question, in this study, is whether such an approach would benefit women too, and why I believe that it is fruitful to examine the construction of women's experiences within such a context. However, to examine the use of gender in general is also of great importance for future research.

Another limitation in the present study is that of the sole focus on gender. When studying the experiences of asylum seekers, it might seem odd not to include other aspects, such as culture. The research has excluded the aspect of culture as such, but as explained in Chapter 3, the social constructivist approach towards the concept of gender includes, and maybe even demands, an analysis of culture as an important factor. As such, the analysis of culture will not be completely left out, but will inform the analysis of how women's experiences are constructed and of how cultural ideological expectations are assessed. However, even though the approach can cover some aspects, many issues relating to culture have not been considered, which can be argued to be in the favour of a more in-depth analysis of gender. Including such a concept in future studies of gender-based experiences and the asylum determination would, therefore, also be of great importance.

Lastly, it shall be noted that the new gender guidelines (Migrationsverket 2012a) and the new refugee definition where gender has now been included as a protection ground (Aliens Act 2005), have not been subjected to any extended analysis. However, the new gender framework<sup>1</sup> does lie as

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<sup>1</sup> The 'new gender framework' refers to the changes made in the Aliens Act (2005) as well as the new gender guidelines (Migrationsverket 2012a)



an important background to the analysis of the verdicts – why the changes made and definitions will be outlined in next chapter.

#### 4.4 Ethical considerations

There are, naturally, a few ethical considerations to be made when conducting this kind of research. Even though the documents used can be collected by the general public, the researcher needs to regard the privacy and integrity of the people concerned. In addition, I argue that the asylum claims of refugees can often be of such kind that it could put the individual at risk if she or he returns to the country or origin, why the verdicts will be de-identified. Names will be exchanged as “[she]”, and the verdicts have been given different codes: verdicts from the first selection period are given codes A-1 up to K-3, the second selection period is coded as L-1 up to W-5. The last selection period starts at 1-1 up to 11-7. Thus the first letter/number indicates from which period the verdict derives, whereas in combination with the second it gives the exact verdict referred to.

Bryman (2012) states that there has been a development towards considering the quality of the research as being an aspect for ethical consideration. Research should be undertaken, designed and reviewed in a way to ensure transparency, integrity and quality. Furthermore, the author argues that it would be unethical if the research is of bad quality or if it is not contributing something new to the area. These points have been carefully considered in this dissertation. I believe that the research is needed not least since there is an urgent need to eliminate the marginalisation in the asylum determination process in general but also because there is a persistent need for updated knowledge in the area due to its changing and developing nature. The changes made in the Swedish Aliens Act (2005) and the adoption of gender guidelines (Migrationsverket 2012a), do constitute good grounds for new research on the area. In addition, I believe that undertaking a social constructivist approach towards the topic will contribute a valuable and different stance which highlights aspects that might not be brought to the fore by simply analysing the legal stance on the topic.

## 5. Protection for Women Asylum Seekers

The UNHCR has, alongside researchers and NGOs, acknowledged the problems faced by women asylum seekers, and the UNHCR guidelines issued in 2002 highlights the need to consider gender-related persecution throughout the asylum assessment (Baines 2004).

Sweden has been rather forthcoming in regards to the UNHCR guidelines. The country has adopted national gender guidelines, with the aim of ensuring legal security in assessments of gender-based claims. The guidelines do not only emphasise the importance of awareness and understanding of gender-based claims but also state the importance of decision makers' own approach towards such claims (Migrationsverket 2012a:605). In addition, Sweden has incorporated 'gender' as a protection ground to their refugee definition (Aliens Act 2005).

In Sweden, the right to asylum is regulated in the Aliens Act (2005, into force in March 2006), which states that asylum applications needs to be assessed individually, with 'refugee status' being granted to those that fall under the refugee definition where a refugee is defined as having:

“a well-founded fear of persecution on grounds of *race, nationality, religious or political belief*, or on grounds of *gender, sexual orientations* or other *membership of a particular social group*, and is unable, or because of his or her fear is unwilling to avail himself or herself of the protection of that country”, (Aliens Act 2005:716, chapter 2, section 1) (emphasis added).

Gender-based persecution did, between 1997 and 2006, only constitute subsidiary protection (see definition below) and not refugee status (Folkelius & Noll 1998). However, gender has now been included as a protection ground. The term gender<sup>2</sup> shall, according to the preparatory work:

“be used in its broadest sense and as such include *not only* the biological difference between men and women, but also socially and culturally determined and stereotyping notions concerning how men and women, respectively, should behave” (Prop. 2005:

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<sup>2</sup> In Swedish the term 'kön' is used, which is commonly translated with the English term 'sex'

21) (emphasis added).

This definition regards not only gender in the meaning of the refugee definition, but also gender as outlined in the gender guidelines (Migrationsverket 2012a). However, gender shall, in the meaning of the refugee definition, be counted as a ground within the protection ground 'membership of a social group' (hereafter social group), which stresses the notion of characteristics being 'innate' and 'unchangeable' (Migrationsverket 2012a, LaForest n.d. (cited in LaViolette 2007)). Gender as a protection ground is intended to cover claims made by both men and women (SOU 2004:75), although, it shall be noted that men are only referred to in relation to sexual orientation (homosexuality) in the preparatory work.

Furthermore, the Aliens Act (2005) states that a person who is otherwise in need of protection can be granted a residence permit (RP) on grounds of “subsidiary protection”, which is defined as following:

“1) Feels a well-founded fear of suffering the death penalty or being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment,  
2) needs protection because of external or internal armed conflict or, because of other severe conflicts in the country of origin, feels a well-founded fear of being subjected to serious abuses (Aliens Act 2005:716, chapter 2, section 2)

Lastly, an asylum seeker can be granted RP even though they are not assessed as being either refugees or in need of protection on a subsidiary ground. The RP ground of “exceptionally distressing circumstances” is assessed in relation to a person’s health, his/her adaption to Sweden and his/her situation in the country of origin (Asylum Act 2005:716, chapter 5, section 6).

It shall be noted that the different protection grounds do entail different rights (Aliens Act 2005). In addition, the different protection grounds do, according to Goodman and Speer (2007), offer different social statuses, where a refugee is often seen as to be the 'real' refugee, and other grounds are often associated with migrants, economic migrants or even illegal migrants.

## 6. Gender-Based Claims in Numbers

It is often argued that “women are the (forgotten) majority of the world's refugee population” (Spijkerboer 2000:15). Bhabha (1993) argues that two-thirds of all refugees around the world are women, however, as Boyd (1993, cited in Spijkerboer 2000) argues, only about one third of the refugees seeking protection in western countries are women, and, in addition, single women are a group that is underrepresented.

As statistics published by the Swedish Migration Board (Migrationsverket n.d.) show, 35 per cent of the total number of asylum seekers between 1995 and 2011 were women. In the same time period, 43 per cent of the women asylum seekers gained residence permits (RP) (ibid.). However, this number should be carefully read, as women in this sense constitutes women as included in families, meaning that several of the women might not have gained RP because of their own protection grounds, but rather because of their husband's or children's protection grounds. In fact, as a report by the Swedish Red Cross shows, women in families gain RP much more frequently than single women do (Zamacona Aguirre 2008). Such statistics indicate that women's experiences do not constitute a need for protection to the same extent as men's. This dissertation aims at analysing whether or not the verdicts of gender-based claims have been sensitive to the gendered aspects involved in such claims. The question is, in relation to the statistics above, whether the reason for women's claims to be rejected at a higher frequency than men's, is the fact that they are often gendered and that such claims are seldom getting recognition in asylum determination.

### 6.1 The verdicts

The statistics presented in this section derive from what has been explicitly expressed by the Migration Court (MC). The focus of this dissertation is the decision makers' constructions of women's experiences. Even where it may be obvious to the reader that, for instance, the honour-related violence derived from the applicant's transgression of social mores, if no such connection was made by the decision maker it has not been included in the statistics.

In the verdicts used as data in the present dissertation, 16 of the total 86 verdicts were given permanent residence permits (RP), and one was given a time-limited RP, meaning that in those cases the MC changed the decision made by the Migration Board (MB). The table below shows the spread of RP over the different time periods, in addition to the type of protection given.

|   | <b>2008</b> | <b>2009-2010</b> | <b>2011-2012</b> | <b>Total</b> |
|---|-------------|------------------|------------------|--------------|
| Refugee                                 | 1           | 2                | 3                | <b>6</b>     |
| Subsidiary protection 1*                |             | 3                | 1                | <b>4</b>     |
| Subsidiary protection 2*                | 2           | 3                |                  | <b>5</b>     |
| Exceptionally distressing circumstances |             | 1                |                  | <b>1</b>     |
| Time-limited RP                         |             | 1                |                  | <b>1</b>     |
| Referred back to MB                     |             |                  | 2                | <b>2</b>     |
| Rejected                                | 18          | 20               | 29               | <b>67</b>    |
| <b>Total</b>                            | <b>21</b>   | <b>30</b>        | <b>35</b>        | <b>86</b>    |

\* See definition in the previous chapter

In three of the six verdicts, the MC decided that the woman should be regarded as a refugee because of persecution based on her gender. In two verdicts related to gender, subsidiary protection (both 1 and 2) was granted. The next table below shows how often different gender-based protection grounds were claimed by the applicants in the verdicts, and then rephrased by the decision makers. It shall be noted that in some verdicts more than one protection ground was referred to, for example, forced marriage and honour-related violence.

|                               | <b>2008</b> | <b>2009-2010</b> | <b>2011-2012</b> | <b>Total</b> |
|-------------------------------|-------------|------------------|------------------|--------------|
| Forced marriage               | 4           | 9                | 7                | <b>20</b>    |
| Transgression of social mores | 1           | 3                | 5                | <b>9</b>     |
| Honour-related violence       | 9           | 13               | 10               | <b>32</b>    |

|                            |   |   |   |           |
|----------------------------|---|---|---|-----------|
| Violence within the family | 5 | 3 | 5 | <b>13</b> |
| Sexual violence*           | 1 | 6 | 6 | <b>13</b> |
| FGM                        |   | 2 | 1 | <b>3</b>  |

\*The perpetrator was not a member of the extended family

The table above indicates an overrepresentation of claims regarding honour-related violence. In relation to this number is the fairly low number of applicants that have been regarded as transgressing social mores. Thus, gender-specific claims are well recognised, but gender-related claims do not seem to be acknowledged to the same extent. In addition, it shall be noted that what is referred to as 'honour-related violence' above, is an umbrella term for several different ways of referring to such violence. The following are examples of ways in which such violence was referred to: “honour-related violence”, “honour crimes”, “honour-related killings”, “honour killings” and “honour-related threats”. What such violence entails has not been defined in the verdicts.

In 63 verdicts out of the total 86, the above gender-based protection grounds was claimed. The next table below show whether gendered aspects was discussed by the decision makers when such claims have been made.

|     | <b>2008</b> | <b>2009-2010</b> | <b>2011-2012</b> | <b>Total</b> |
|-----|-------------|------------------|------------------|--------------|
| Yes | 3           | 5                | 4                | 12           |
| No  | 11          | 20               | 21               | 52           |

In 52 out of the 63 verdicts where gender could have been discussed by the decision makers (regarding for instance: sexual violence, honour-related violence, FGM, forced marriage and transgression of social mores), no such reference was made in order to understand the claim. In addition, when no reference to gender was made, the claims were not tried in relation to gender as a protection ground.

## 6.2 Discussion

According to the statistics above, a large majority of the applicants do state gender-based asylum claims, but such claims are seldomly discussed in relation to gender as a way of understanding such claims. Furthermore, it seems that, for instance, honour-related violence is often not constructed as deriving from the transgression of social mores (which is often the case (Crawley 2001:107)), and so it can be argued that the harm feared is recognised but is not connected to a protection ground. In fact, Crawley (2001) argues that the main problem faced by women asylum seekers is the inability of decision makers to connect the gender-based claims to a protection ground.

To enable an understanding of the connection between the method and the grounds for gendered persecution a gender sensitive approach towards such claims is needed as a means of understanding the source of the violence (Bexelius 2008). Even though the violence is being recognised by the decision makers, the problem might rather lie in their uninformed notions of political and social norms regarding the ideological expectations placed on men and women. Crawley argues that “*in order to respond appropriately to [gender-based] claims, representatives need to understand the political significance of gender and of women's sexuality*” (2001:107). Thus, it can be argued that when decision makers refrain from interpreting gender-based experiences against such a gendered understanding of the claims, it hampers the possibility of connecting the claims to a protection ground.

Lastly, the many ways of referring to honour-related violence indicates that the term is not well defined in asylum determination, which is maintained by Noll (2006) who argued that there is a general lack of legal guidance regarding such claims. Thus, there is a risk for claims to be assessed in relation to stereotyped notions of 'cultures' (Eriksson et. al. 2011).

## **7. Constructions of Gender-Based Asylum Claims and the Concept of Gender**

In this chapter, a text analysis of the verdicts will be carried out. The analysis is focused around the question of how gender-based claims are constructed by decision makers. However, it shall be noted, that the analysis will not make any attempt to argue against the decisions made in the verdicts. Even so, where no reference has been made to gender even though the applicant has been subjected to gender-based experiences, it shows that the claims have not been tried in relation to such gendered aspects.

This part of the analysis will be divided up in two main parts. Firstly, the constructions of women's gender-based asylum claims will be analysed, where no reference to gendered aspects have been made. The second part will focus on the construction and use of a gender sensitive approach, as well as the construction and use of gender as a protection ground. As was maintained in the previous chapter, gender-based claims have only to a limited extent been discussed in relation to gender. The second part will, therefore, include such verdicts where gender has been discussed, as well as verdicts granted subsidiary protection regarding gender-based claims, where gender might not have been discussed.

### **7.1 The construction of women's asylum claims**

In the following different ways of constructing women's claims will be analysed.

#### **7.1.1 The lack of credibility – deviations from notions of the practice of culture**

One of the prime reasons for rejecting an application was a perceived lack of credibility. This first section will analyse the reasons for such conclusions related to gender-based claims. One of the main reasons for the applicant to be rendered as lacking credibility was decision makers' view that the deviations from what was deemed as regular or natural procedures within a culture could not be



explained by the applicant.

Verdict 10-3. The applicant has been subjected to violence by her uncle, with whom she lives. He is forcing her to marry one of his sons, her cousin. She also risks honour-related violence. The MB argues that “[s]he has not been able to explain why she was not married off when she was quite young, even though she has explained that she comes from a family where the complexity of honour-related problems occur” (10-3:3). The MC argues that she has not been prevented from finishing school and states that “[s]he has not given a reasonable explanation of why her uncle has waited seven years before forcing her to marry his son” (10-3:10).

In the verdict above the MB is assessing the applicants claim from the background of what is understood by “honour-related problems”, without referring to any country information<sup>3</sup>. Even though the use of country information in itself can be seen as constructing and mainstreaming particular ideas which obscure the possibility of deviation from set norms (Flärd 2007), neither the MB nor the MC referred to any country information in their assessments of the applicants’ claims. It can therefore be argued that the statements made derive from mere personal and subjective understandings and 'knowledge' of the claims made (Winter Jörgenssen & Philips 2000), which, in the previous chapter, seemed to be rather ambiguous. Thus, different notions and understandings of culture would possibly generate different assessments of such claims. However, as the verdict above indicates, if the applicant is falling outside of what is deemed as 'true' within the specific culture, then she will be seen as lacking credibility (Foucault 1993). Thus, the 'domination' is not taking the side of the one with the lived experiences, but takes rather the side of the one that is interrogating and who is not presumed to have the knowledge yet (Foucault 1979).

In the verdict, forced marriage within a 'culture of honour' is constructed by the MB as having a deadline regarding the age of the victim. As such, it can be argued that this kind of culture is understood in a static sense, where deviations from what is deemed as the regular procedure is

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3 The country information database (Lifos) is intended as a tool to help the decision makers in their assessments of claims. The narrative is compared to the country information in order to check if it is coherent with general 'facts' about the situation on the country. The country information does also provide information about whether protection for the specific claim can be sought in the country of origin (Flärd 2007).

regarded as lacking credibility. The arguments made by the MC follows this kind of reasoning when they state that her ability to finish school does not correlate with the specific 'culture' referred to, and especially not with the threat of forced marriage. The possibility of the family valuing education *and* choosing a partner for their family members does not fit within the decision makers' static idea of what constitutes a 'culture of honour'. Thus, the decision makers have positioned themselves as the ones who know and understand how the specific culture works, but also what the likely course of events would look like, as well as what the specific culture entails and implies (Bhabha 1994). In this sense, a 'culture of honour' is not only regarded as being static, but there seems also to be a need for the culture to be retrogressive in order for the claims to be understood in the meaning of international protection.

Thus, constructing culture as static obscures the possibility of deviations and different ways of practicing culture. In the verdict, the applicant has not been able to construct the 'culture' that she comes from in terms of being static and retrogressive, which seems to be needed in terms of being regarded by the decision makers as a 'victim' of this 'culture'. Indeed, with the power and knowledge invested in the decision makers, what falls outside of their understanding of "honour-related problems" is deemed as not credible (Järvinen 1998). The conclusion from this case is that the practice of a 'culture of honour' must follow what is deemed as regular procedures within the culture as understood by the decision makers.

In the majority of cases where it is argued that there is a lack of credibility, such a conclusion is being made because the claim, and/or the context, is falling outside of the decision maker's sphere of comprehension. To be deemed as credible, the claim, and the context of the claim, must not only correlate, but must also be constructed in line with the decision maker's (static) notion of the relation between the culture and of the specific claim. Such a conclusion does also, sadly, correlate with the earlier research presented in Chapter 2.

### 7.1.2 The construction of the violence/harm feared

Gender-based experiences were often seen as not being sufficiently severe as to constitute a need

for international protection. The following section will show different ways in which such an understanding was maintained.

### *Constructing the violence or harm feared as being a private matter*

Several applications regarding violence within the family have been constructed as private matters and rejected because such private violence has not been considered being severe enough. The verdict below is a good example of how such claims has consistently been constructed by the decision makers.

Verdict H-4: The applicant has been subjected to violence from her father, and he is forcing her to marry one of her cousins. The MB argues that “[w]hat has been put forward in the case regarding the *conflict* with her father, does not constitute such circumstances amounting to a need for international protection. [...] In the event of a *worsening situation*, there is a possibility to gain protection in her home country. [...] The question is foremost regarding a *family matter*” (H-4: 2-3) (emphasis added).

In the verdict above, the violence and the threat of forced marriage is constructed as being a “conflict” between the applicant and her father, which is furthermore constructed as a “family matter”. It is argued that the issue shall be dealt with within the privacy of the family. Thus, violence within the family and threats of forced marriage is, when constructed as being a private matter, as opposed to public matters, effectively dismissed as grounds upon which international protection is needed (Reilly 2009). In fact, the MB is not only dismissing it as a question for international protection, but when arguing that “in the event of a worsening situation, there is a possibility to gain protection in her home country” the experiences are not even seen as, at this point, being severe enough to constitute a need for protection from the national authorities. Thus, violence within the family and forced marriage is not only constructed as being a private matter, but is also constructed as not being severe enough for a call for protection, even though the UNHCR (2008) states that such violence and threats are severe enough as to constitute persecution.

The problem of not discussing the claims in relation to gender, is that aspects of gendered roles and

the impacts of power structures between men and women are not being addressed (Bexelius 2008). When decision makers refrain from assessing the experiences in relation to such structures, it becomes obvious that gendered aspects of the claim have not been discussed and thus such claims are being dismissed as not constituting persecution.

In some cases where sexual violence or threats was directed towards the applicant it was similarly constructed as being a private matter.

Verdict 7-6: The applicant claims to have been continually sexually harassed by a man that she did not know before. She also argues that the general situation for women in Lebanon is difficult, and that the police disregard reports regarding sexual harassments and threats. The MC states that “[i]t has been investigated that [she] never reported to the authorities in Lebanon the harassments and threats that she argues that she has been subjected to, when she has been received *unwanted attention* by a, for her, unknown man a *couple of times*”. (7-6:4) (emphasis added)

In the verdict above the MC reconstructed what she stated as on-going sexual harassments, as she “received unwanted attention [...] a couple of times”. It can be argued that such a reconstruction is changing the meaning of what is claimed (Järvinen 1998): from being subjected to sexual harassments to being on the receiving end of attention (even though unwanted), which is often seen as a gesture of amorous interest. Such a reconstruction puts the claim within a new discourse, and moving it from being harassments – which are possibly deriving from gendered power structures between men and women – to being constructed as a private amorous act between a man and a woman, which naturally does not call upon a need for international protection.

Constructing women's experiences as being private matters, as opposed to being public, and as not being severe enough effectively dismisses a need for international protection, and sometimes even a need for national protection. Again, these findings echo earlier research.

*Constructing the violence as being random criminal acts*

In a few cases the applicants reported being subjected to sexual violence and abuse by state officials or military men due to their own or their relative's political activity. All cases in the study were rejected because the decision makers argued that there is no connection between the sexual violence and a protection ground as outlined in the refugee definition. Instead, such violence has been constructed as being random criminal acts, as opposed to being systematic persecutory acts. In fact, the decision makers almost always stated the same kind of reason for the violence, as seen in the next verdict below:

Verdict 8-5. The applicant claims having been continually subjected to sexual violence and abuse by state officials because of her husband's political activities. The MB argues that "[t]he acts of violence and abuse that she states having been subjected to are to be regarded as criminal acts by private persons or state officials acting outside of their jurisdiction and that they are not to be seen as sanctioned by the state of Armenia. They are not, in any way, to be seen as sanctioned or as deriving from the authorities" (8-5: 3-4).

The acts of sexual violence and abuse committed by state officials are constructed as being criminal acts committed by either private persons or state officials acting outside of their jurisdiction. As such, the claims are not only argued not to be related to the applicant's husband's political activities, but the reason for the act is effectively dismissed when the act is, instead, regarded as being bodily and random.

The experiences of the applicant are constructed by the decision makers as not being connected to the political activity. Because of not connecting the violence to a protection ground, it is instead dismissed as being a criminal act, which seemingly did not have a specific purpose, but were rather constructed as being random. Reconstructing the acts as being random seems to be an effective means of dismissing the acts as deriving from the political context in which it occurred (Järvinen 1998).

However, constructing the experiences as random criminal acts is not reserved for acts seemingly deriving from political activity.

Verdict U-2. The applicant claims that her mother and father were killed by members of another clan, and she was taken away and held in captivity for a few weeks before she got a possibility to flee. During the time that she was held captive, she was subjected to sexual violence and abuse. The MC does not question what happened, however, states that: “[t]he Migration Court hold that she has not made probable that the assault had its ground in her membership of the clan Midgan. From what has been put forward by the investigation of the case, the assault seems to have had its ground in criminality” (U-2: 6).

Again, the MC is constructing the violence as criminal acts. Thus, her claim of the acts deriving from her clan membership was rejected.

Claims of gender-specific persecution connected to grounds other than gender have almost exclusively been rejected as being random criminal acts, as opposed to systematic governmental acts. Okin (1998) argues that the distinction between public and private does also refer to the distinction between the state and the society, where violent acts occurring in society are regarded differently to acts committed by the state. In this way it can be argued that the claims are constructed as being random *private* criminal acts, as opposed to the systematic and conscious acts committed by the state. In this sense, the question is whether a man would experience such difficulties in arguing that the torture was directed towards his mind (N.B. I am not dismissing the possibility of male applicants facing other protection problems). The probable answer to such a question does also indicate that sexual bodily acts are seen as less conscious and different from non-sexual bodily acts. Thus, dichotomies are indeed gendered and stem from ideological and political constructions, and do have gendered consequences (Crawley 2001).

Thus, the problems faced by women when claiming sexual violence as the result of being politically active, or as being the result of a membership of a particular group, do seem to derive from the sexual violence being regarded as directed towards the woman's body, and not her mind. Furthermore, such claims have not been discussed in relation to gender, even though such discussion would probably provide a deeper understanding of the claims made (Bexelius 2008). As

has been maintained in the previous chapter, the main problem faced by women asylum seekers seems to be the inability of connecting the harm to a protection ground, and furthermore, the failure to recognise the political nature of claims, instead regarding them as being private matters (Crawley 2001). Furthermore, constructing the violence as being random- societal- criminal acts and therefore irrelevant for international protection, does maintain the notion of persecution as being connected to governmental acts (Okin 1998).

### *The need of obliging to social norms*

In some cases it is argued that the applicant herself can end the abuse and persecution by simply obeying the social norms that she has been resisting. The violence is constructed as being a natural consequence of disobeying such social norms. However, it can be argued that the decision makers are adopting a similar view as the oppressors, since it is being argued that such violence would not occur if only the woman followed the social norms.

Verdict S-3. The applicant claims that she has been held captive several times, and during which times she was whipped by Al-Shabab because she refused to wear more modest clothing. The MB argues that “[t]he reason to why she was subjected by Al-Shabab was that she refused to wear more modest clothing. If she would wear such clothing she would not have any problem with Al-Shabab” (S-3: 4). The MB does not comment on the issue further. The MC states that “[t]he Migration Courts verdict regarding what [she] states that she has been subjected to, is not of such kind and intensity as to constitute that she has been subjected to persecution in her home country” (S-3: 6).

In the verdict above it can be argued that the MB sees the violence inflicted as rational, since it was inflicted due to the applicant's failure of dressing appropriately. Such 'rational' violence does not seem to constitute persecution according to the decision makers, but the violence is instead constructed as the applicant having the ability herself to end such abuse, by wearing more 'modest' clothing. This verdict indicates that breaking social mores through not dressing accordingly to social norms cannot constitute persecution.

In line with a social constructivist approach, one could argue that not wearing 'proper' clothing falls outside of what is deemed acceptable, not only in the eyes of the perpetrators but also in the eyes of the decision makers (Burr 2003). In this sense, several potential alternatives for the reasons behind her not dressing accordingly to the norms are being dismissed. She could have dressed differently because of political or religious reasons. As such, it is hard to believe that the decision makers would ask a political activist to stop being politically active, or a Christian Iranian to convert to Islam to escape violence inflicted by Muslim groups. The initial purpose of the Refugee Convention is for countries to offer refuge for people risking persecution for such fundamental human rights (Anker 2002). The fact that she did dress accordingly to the tradition of her own clan membership has not been observed by the decision makers. This, again, indicates that women's gendered experiences are not seen as to be connected to the protection ground claimed. Instead, it seems that the decision makers take the same view regarding breaking of social mores as the perpetrators, as argued above.

The conclusion is that breaking social mores is not seen as a reason for persecution, but rather, the decision makers also argue that social mores should be followed. In a similar, rather famous, case (*Ward*), a Saudi Arabian woman was seeking asylum in Canada due to the persecution she was subjected to when disobeying discriminatory laws of dress codes. The case was rejected because the decision makers argued that she had to follow the laws and norms that she was disobeying (LaViolette 2007, Anker 2002). However, the case got much public attention, and, according to LaViolette (2007), this was the reason for the Canadian gender guidelines to be drafted. What is interesting about this case, and the effects it had on asylum determination in Canada, is that it took place in 1993. In other words, Sweden is, about seventeen years later (the verdict of the present case was given in 2010), taking the same line of argument as the Canadian Immigration and Refugee Board did, despite having their own gender guidelines.

The next verdict is also an example of how the decision makers argue that the applicant herself can end the abuse feared.



Verdict 9-2. The applicant claims risk of forced marriage. She also risks honour-related violence because of the relationship she is having with a man who is not accepted by the family. The MB argues that “[i]t is also notable that they have not gotten married, since marriage would probably decrease the risk of honour-related violence directed towards them”(9-2: 5). The MC argues that “[s]he has not been able to explain why the dispute between the families could not be solved through marriage. On the contrary, neither [she] nor [he] has expressed any intention to enter into marriage, which should be a natural step given that [she] has referred to the culture of honour that she is subjected to” (9-2: 10).

In the verdict above, the decision makers argue that the problem could be solved if they only got married. The MC refers to marriage as “a natural step” because of “the culture of honour that she is subjected to”. In this sense, the MC is constructing 'culture' as being inherent, why they find it odd that the applicant has not considered marriage. Furthermore, not following such norms is not understandable, why the applicant is falling outside of the notion of what is deemed to be a natural step within this culture (Burr 2003). The applicant is, in this sense, seen as being 'culturally unbelievable', since she is not following the norms set out for her (Baillot et. al. 2012:282).

This case brings about several concerns that need to be highlighted. First of all, the proposal by the decision makers can be seen as completely outrageous, since one could argue that *they* are proposing forced marriage when it is suggested that the threats of harm could be averted if only she got married. Furthermore, it can be argued that her actions are falling outside of what is deemed a natural step within the 'culture of honour'. Thus, she is not following the discourse on the subject, so she is deemed as lacking credibility (Foucault 1993). Culture is, in this verdict, constructed as being unchangeable, and because of her inherent belonging to such culture, she should also follow the essence of that culture, why the 'natural' step is seen to be marriage. Culture is not constructed as socially and culturally mutable, but rather as being inherent and unchangeable (Burr 2003). Such an interpretation of culture obscures the possibility of the applicant refusing marriage to anyone as a political act. Even so, this is again an example of how the breaking of social norms is not argued to be ground for persecution, but rather as something that one has to, or at least should, comply with. Thus, if viewed in relation to a wider understanding of what constitutes persecution, this line of

argument excludes the very possibility of framing the acts as such, since it is constructed as 'if the applicant did not transgress social mores, there would be no persecution'. Possible conscious resistance to such mores and norms are, thus, being ruled out.

## 7.2 The (inadequate) use of the concept of gender

Throughout the previous section, gender-based claims were not discussed in relation to gender as a model of understanding such claims. Instead the claims were dismissed as irrelevant in relation to a need of international protection when rather constructing women's experiences as deviating from the decision makers notions of culture and its practice and therefore as lacking credibility; as being private matters; as criminal acts; or even as self-inflicted (when disobeying social norms and mores). In this next section those verdicts where gender has been considered or discussed will be analysed, as well as those verdicts where gender-based claims have been made but only subsidiary protection has been given and without referencing to gender.

### 7.2.1 Protection grounds and the (inadequate) use of the concept of gender

In the three verdicts (M-1, S-4 and 2-1) where the applicant has been granted refugee status, the decision maker has elaborated on gender in relation to gender as a protection ground. In those verdicts the applicants have claimed a need for protection on grounds such as breaking social norms, forced marriage, honour-related violence and violence within the family. And so, the applicant has been granted refugee status on the ground of gender.

In two of the verdicts (S-4 and 2-1) gender has been discussed in relation to gender as socially constructed, but also in the context of what is deemed a more 'real' difference between men and women, when the general situation of women have been discussed. The general situation for women has in these two cases formerly been discussed in relation to the possibility of women seeking protection within the country. In addition, there have been references not only to the national gender guidelines (Migrationsverket 2012a), but also to UNHCR guidelines (UNHCR 2002a, 2002b). However, to confuse the picture of gender as either being seen as irrelevant (because of different

ways of constructing the experiences as not being a question of international protection), or as to fully embrace gender as a protection ground, the next verdicts will show the complexity of the problem with gender in asylum determination.

### *The definition of gender*

Verdict M-1 was dismissed by the MB because the claim was considered as lacking credibility. However, the MC concluded that there was no lack of credibility, changed the decision made, and granted her refugee status on the ground of gender. The MC states:

“The acts that she risks being subjected to, is obviously rooted in that she, *as a woman*, is deemed to have violated reigning norms of honour [...] Therefore, protection as a refugee due to persecution based on gender is considered to exist”. (Verdict M-1: 11)  
(Emphasis added).

In the verdict above the MC argues that she, as a woman, has violated norms of honour. Being a woman is contrasted with being a man who would not be able to fit within the construction made of the woman in this case (Eriksson et. al. 2011). Even though it can be argued that there are certain expectations placed on both men and women, the question is whether men, too, can be considered as violating social norms imposed upon them. Equating gender with biological sex did lead to a positive result for the applicant in this case. However, the next case will confuse the picture even more. In verdict Q-4, the woman claimed that she risked honour-related violence from her family because of her relationship with a man, who was not accepted by her family. The statement below is given by the MC in this verdict.

“[She] alleges a well-founded fear of persecution due to her gender [kön] and that she should therefore receive protection as a refugee. However, it has not emerged that the threat she refers to has occurred due to her gender [kön]. She has herself stated that even the man she has had a relationship with has been subjected to violence and was eventually killed because of their relationship. [...] [She] has not made a probable case that she risks persecution due to her gender. She is therefore not to be acknowledged as a refugee” (Q-4: 9).

Even though the MC does not recognise that the honour-related violence was gender-based, she gained subsidiary protection because the decision maker argued that regardless of gender, she did fear honour-related violence.

In the verdict, it is argued that the applicant could not be given refugee status because the man that she had a relationship with was also subjected to the abuse. Such an argument indicates that gender is constructed as being equated with sex, and furthermore with women, and that social mores and expectations, and honour-related violence cannot be deemed as gendered if it is directed towards both men and women (Butler 1990).

The construction of gender as linked to biological difference is present in the majority of verdicts where gender has been discussed. The construction and use of gender is not only constituting an issue for female applicants, but does also indicate that men cannot be subjected to gender-based violence, despite the fact that the preparatory work (SOU 2004), the gender guidelines (Migrationsverket 2012a) as well as the Swedish office of the UNHCR (Feijen & Frennmark 2011) stress such a possibility.

Gender as a protection ground was often maintained as connected to a more biological notion of gender in the verdicts, when women *as a group* and their *general situation* in the country are being regarded. Other, individual claims (such as violence within the family, honour-related violence because of transgression of social mores and forced marriage) are regarded as only constituting subsidiary protection, meaning that the harm feared has been recognised (even though protection is not given), but the claim has not been connected to a protection ground. It can be argued that such claims demands an interpretation of gender not as being simply connected to (one) sex, but rather as connected to the socially and culturally context it is part of, and in relation to an understanding of gendered power structures and ideological expectations placed on men and women (Bexelius 2008). For instance, social mores regarding personal relationships not only restrict the free will of women, but also the free will of men, even though often expressed differently (Crawley 2001).

Furthermore, it is often not clear in the verdicts what is included in the meaning of the 'general situation'. Instead, it is often phrased as “the sole circumstance that the applicant is a woman (does, or does not) show that she would be subjected to persecution”. It can be argued that upholding such a definition indicates that women, as opposed to men, can be the only ones being persecuted on grounds of gender (Butler 1990), as opposed to what the gender guidelines state (Migrationsverket 2012a, SOU 2004). However, as chapter 5 indicates, gender as a protection ground shall be counted as a ground within the meaning of the 'social group' protection ground, which stresses notions of characteristics as being innate and unchangeable (Migrationsverket 2012a). In this sense, it could be argued that the inadequate use of gender might stem from an ambiguous definition of the concept in law and policy.

#### *Gender-based claims as only constituting subsidiary protection*

To obscure the picture further, in verdict A-4, neither the applicant's own experiences, nor the situation for women was seen as to constitute persecution in the meaning of the Aliens Act. The applicant has, foremost, stated that she had a need for protection because of her political activity. The decision makers argued that she was not credible, and therefore she was not seen as a refugee. However, they argued that she did have a need for protection because of the general situation for women in Afghanistan and because she feared forced marriage and honour-related violence, and so she was granted RP on subsidiary protection grounds.

In the verdict, only the political activity was seen as connected to a protection ground in the meaning of the Refugee Convention. The applicant's own experiences, and the general situation of women in Afghanistan, were only dealt with after considering her to not be a refugee. Even though it can be argued that not connecting, or even considering, the claims in relation to gender as a protection ground is a relic from the changes of the law in 1997, where such claims could only constitute subsidiary protection (Folkelius & Noll 1998), it can still be argued that it should not have to take such long time as two years to comply with the new gender framework.

However, as has become clear throughout this chapter, there seems to be more issues obscuring the

possibility of informed assessments of women's gender-based claims. One issue seems to be the non-use of gender as a way of understanding such claims when assessing women's experiences in general. Another issue seems to be the inadequate use of the concept of gender, both in the sense of gender-specific experiences in relation to other protection grounds, and in relation to gender as a protection ground. Throughout this dissertation it has become clear that there is a need for a social constructivist approach towards gender-based claims, as well as an understanding of such claims as being connected to gendered power relations and ideological expectations placed on men and women.

## 8. Conclusion

The introduction and the literature review of this dissertation outlined the difficulties faced by women in the asylum determination process. As seen, many of those difficulties were based on the fact that their claims were not assessed in relation to the gendered context in which the experiences were situated. This dissertation analysed the constructions of women's gender-based asylum claims, and examined whether or not verdicts of such claims have been sensitive to the gendered aspects involved. As the statistics show, a great majority of the applicants have experienced some form of gender-based harm and/or persecution (63 out of 86). However, the extent to which such claims have been discussed in relation to gender has been limited (11 out of 63).

When no reference to gender was maintained, the claim was often rejected because it was regarded as lacking credibility in regards to the connection between the claim and the cultural context; because the claim was seen as being a private matter or as mere criminal acts; or because it was argued that the applicant herself could end the abuse by following the social norms that she was disobeying. Furthermore, the actual use of the concept of gender seems to be rather inadequate. Firstly, a prerequisite for discussing gender-based claims and experiences in relation to gender, seems to be that such a discussion must be based in the notion and understanding of gender as a protection ground. For instance, gendered violence as a result of the applicants' political activity, was not discussed in relation to gender, but was instead rejected as constituting random criminal acts. Constructing the claims of persecution as being random criminal acts seemed to be an effective way of rejecting the possibility of such acts being the result of, for instance, political activity.

Secondly, gender as a protection ground was formerly defined as being based in the biological differences between men and women. Therefore, gendered statuses and roles as socially constructed hierarchical positions between men and women were not discussed. The focus on biological differences and that 'gendered violence' could only be understood as being directed towards women, as opposed to men, obscured an analysis of gendered ideological expectations placed on men and women respectively. Thus, the fact that both men and women can be victims because they transgress social norms was not upheld by the decision makers. Furthermore, the construction of

violence within the family as being a private matter, which was not seen as severe enough as to constitute persecution, can be seen as a consequence of defining gender in terms of biological difference. When not being sensitive to the gendered power relations between women and men, as well as to the ideological expectations, it is easy to misunderstand the harm feared.

Lastly, the use of gender as a protection ground formerly referred to the general situation of women in the country of origin. Such a focus indicates, again, that the protection ground is connected to an understanding of gender as equated with women, as opposed to men. Furthermore, such an approach obscured the assessments of women's own experiences of harm as being connected to gender as a protection ground. Instead, such claims were often only deemed to constitute subsidiary protection. Again, the inability of the decision makers to assess the claims from a gender sensitive approach obscures the possibility of understanding, for instance, honour-related violence as being the result of transgressing social mores. The inability of connecting the persecutory method to a protection ground was maintained throughout both analysis chapters.

The assessments of women's experiences seemed also to be strongly connected to notions of culture, and what is deemed to be credible or likely procedures within a specific culture. It seems that women's claims are often being rejected as lacking credibility when the claim and/or the context in which the claim is involved is deviating from what is deemed to be the 'normal procedure'. In this sense, it became clear that the claims were being assessed in relation to a rather static notion of 'the habits of culture', out of which ideas of what was deemed as being credible and likely evolved. Furthermore, the analysis indicated that the rejection of social mores and norms was in fact seen as being a deviation from what the decision makers argued to be the 'natural' step within a culture. As such, breaking social mores was not deemed as being conscious resistance or a conscious act of will against such mores. Instead, it could be argued that the decision makers took the same stand as the persecutors when arguing that such violence and threats could be averted if only the applicant obeyed the social mores. As was maintained in Chapter 6, there seems to be a lack of legal guidance in assessing claims in relation to culture. This is why there seems to be a need not only of guidance on gender-based claims but also on the interrelation of such claims to what is understood by 'culture'.



To sum up, it can be argued that even though Sweden has adopted gender guidelines as well as has added gender as a ground to their refugee definition, the lack of a gender sensitive approach towards the claims has hindered an assessment of gender-based claims as connected to gendered power structures and ideological expectations placed on men and women. As highlighted by the discussions, presented in the literature review, of the issues faced by women in asylum determination, and of how gender shall be defined, Swedish asylum determination practice continues to be in need of improvements. This dissertation cannot conclusively determine whether or not adding gender as a protection ground has been fruitful for the assessments of gender-based claims. However, it can be argued that the ambiguous definition of the protection ground and how it is used in practice has obscured the interpretations of gender-based claims as connected to gendered power structures and ideological expectations on men and women. Thus, it is possible that the inability of adopting a gender sensitive approach when assessing gender-based claims could stem from such a blurry definition of gender. Such a risk indicates the urgent need for further research of the definition of gender and how it has been used within asylum law and asylum policy.

The findings from this study indicate that while women's claims are largely gender-based, decision makers frequently refrain from assessing them as such. The inadequate use and definition of gender seems to be one underlying factor for women not gaining the same international protection as men do. This is not a way of practicing legal security in the asylum determination system.

## 9. Recommendations

As the present dissertation has shown, gender-based claims are often not assessed by decision makers in relation to awareness of gender roles or power structures, or of ideological expectations placed on men and women. I argue that there are measures that need to be taken on different levels to manage the issues faced by applicant's claiming gender-based persecution.

More research is needed, partly on an international level since there are not much research on the possible impact of the new gender guidelines issued in 2002 (UNHCR 2002a, 2002b). Partly on a national (Swedish) level, to investigate the possible outcome of the new gender guidelines and the impact of adding 'gender' as a protection ground in the meaning of the Aliens Act (2005). Such research is highly needed to make sure that legal security is being offered in the assessments of gender-based claims. Following a possible negative outcome of such research, there might be a need for revising the definition of gender in the gender guidelines as well as in the refugee definition. Possible future research questions stated below:

- How is the new gender framework<sup>4</sup> enabling/obstructing a non-marginalising assessment of gender-based asylum claims?
- How is the concept of gender constructed in the new gender framework?
- Does the notion of gender, as understood by the decision makers, correlate with the idea of gender as put forward in the new framework?
- Do notions of culture have an effect on the construction of gender on each level (law and policy, and practice)?

Lastly, training regarding the understanding of gender-based asylum claims should be provided to all decision makers and state officials involved in the assessments of such claims to ensure that the decisions and verdicts are well informed of the gendered aspects in such claims.

**Word count: 16 832**

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<sup>4</sup> The new 'gender framework' refers to the new gender guidelines (Migrationsverket 2012a) and the new refugee definition in the Aliens Act (2005)

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## Appendix 1

### Coding scheme 1

The table below shows the questions used when gathering the statistics included in Chapter 6. Verdict H-4 is given as an example of how the coding of this part has been carried out.

| <b>Code of the verdict</b> | <b>Country of origin</b> | <b>Protection ground(s) as expressed by the Migration Court</b> | <b>Is gender discussed or referred to?</b> | <b>Reasons for the verdict</b> | <b>Verdict</b> |
|----------------------------|--------------------------|---|--|--------------------------------|----------------|
| H-4                        | Iran                     | Honour-related violence, forced marriage                        | No   | Lack of credibility            | Dismissal      |

## Appendix 2

### Coding scheme 2

The coding scheme below build on the idea of how qualitative coding/indexing should be carried out as outlined by Bryman (2012:576-577). The different categories below has been analysed in purpose of finding similarities and differences between them and within the specific category, why the data has been considered in different ways and in relation to different aspects, and has thus been thoroughly studied.

#### *1. Reasons for the verdict:*

- Lack of credibility
- Possibility of seeking protection within the country of origin
- The harm inflicted is not serious enough

#### *2. Protection grounds as expressed by the decision makers:*

- Violence within the family
- Sexual violence
- Honour-related violence
- Transgression of social mores
- Forced marriage
- FGM

#### *3. Is gender discussed or referred to?*

All verdicts where gender was discussed or referred to, as claimed in Appendix 1, were analysed in-depth with the aim of examining the used of the concept.

Major categories that emerged from the analysis of categories 1 and 2 constitute the findings in Chapter 7.