



# The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence

” A tool to end  
female genital  
mutilation



Istanbul Convention

**SAFE** FROM FEAR  
**SAFE FROM**  
**VIOLENCE**



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mutilation

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# Foreword

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**F**emale genital mutilation (FGM) is a gross violation of the human rights of women and girls and a serious concern for the Council of Europe and Amnesty International alike.

FGM is a threat to girls and women around the globe, including in Europe – a fact that has remained unacknowledged for too long. Governments and citizens must take a stand against FGM. Legislation must be put in place and adequately implemented by the police and the courts. An effective support structure, particularly providing appropriate health services, must be available to respond to the needs of victims and those at risk.

Although some European countries have made efforts to legislate against FGM and to better identify and provide support to girls and women who have already been subjected to the practice or who are at risk, these attempts are too few and have too little impact. Most governments do not provide a comprehensive national response to FGM, addressing prevention, protection, prosecution and adequate provision of services.

This guide, produced jointly by Amnesty International and the Council of Europe, will help put FGM on the political agenda, design policies and measures to better address FGM and to pave the way for change.

It is based on the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (also known as the Istanbul Convention), which was adopted in 2011. The treaty offers states both inside and outside the Council of Europe the framework for a comprehensive approach to preventing and combating such violence.

It is the first treaty to recognise that FGM exists in Europe and that it needs to be systematically addressed. It requires states parties to step up preventive measures by addressing affected communities as well as the general public and relevant professionals. It entails obligations to offer protection and support when women and girls at risk need it most – and makes sure that their needs and their safety always come first.

The treaty calls for the provision of specialist support services and legal protection orders for women and girls at risk. In a bid to guarantee cases of prosecution that respect the best interest of the child, the convention requires states parties to make FGM a criminal offence, and to ensure that criminal investigations are effective and child-sensitive. A key feature of the convention is that the above measures must form part of a comprehensive policy that will be implemented across government and in co-operation with non-governmental organisations (NGOs) and support organisations.

The comprehensive nature of the convention makes it a practical tool to address FGM. It incorporates existing international human rights law, standards and promising practices to address violence against women. It offers policy makers a wide variety of measures that can be introduced, and offers NGOs and civil society a sound basis for advocacy. To women and girls already affected by FGM, it sends the message that their stories are being heard. To those at risk, it is a beacon of hope.

The convention must become part of the law and practice of all states in Europe. We call on all Council of Europe member states and the European Union to sign, ratify and implement the convention – and we call on NGOs and civil society to use it to lobby for change.

We hope that this publication will make the convention more widely known among those dealing with affected women and girls at risk, and all those working to end FGM, and that it will lead to real improvements in protecting the physical integrity of all women and girls.

Change requires courage and co-operation. Amnesty International and the Council of Europe have joined up to offer you a tool for change. We hope you will find it useful.

*Mr Salil Shetty*  
*Secretary General of Amnesty International*

*Mr Thorbjørn Jagland*  
*Secretary General of the Council of Europe*

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# Introduction

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## Female genital mutilation

**T**he World Health Organization (WHO) estimates that around 100-140 million women and girls have been subjected to female genital mutilation, with an estimated 3 million at risk of being subjected to the practice each year. The practice of FGM is widespread in large parts of Africa, some countries in the Middle East and in some communities in Asia and Latin America. It is also prevalent in Europe among certain communities originating from countries where FGM is prevalent. The exact number of women and girls living with FGM in Europe is still unknown, although the European Parliament estimates that it is around 500 000 in the European Union (EU) with another 180 000 women and girls at risk of being subjected to the practice every year.<sup>1</sup> For European countries outside the EU, neither data nor estimates exist.

FGM can take diverse forms and have different effects on women and girls. In every case it entails the cutting, stitching or removal of part or all of the female external genital organs for non-therapeutic reasons. As a mutilation of healthy body parts, the practice has a detrimental impact on the health and well-being of women and girls.

There are several forms of FGM and these differ from community to community. The 2008 World Health Organization (WHO) classification<sup>2</sup> divides FGM into four types:

- ▶ Type I – partial or total removal of the clitoris and/or the prepuce (clitoridectomy);
- ▶ Type II – partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (excision);

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1. European Parliament Resolution of 24 March 2009 on combating female genital mutilation in the EU (2008/2071(INI)), available at [www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0161+0+DOC+XML+V0//EN](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0161+0+DOC+XML+V0//EN).

2. See WHO, "Classification of female genital mutilation", available at [www.who.int/reproductivehealth/topics/FGM/overview/en/](http://www.who.int/reproductivehealth/topics/FGM/overview/en/).

- ▶ Type III – narrowing of the vaginal orifice with creation of a covering seal by cutting and appositioning the labia minora and/or the labia majora, with or without excision of the clitoris (infibulation);
- ▶ Type IV – all other harmful procedures to the female genitalia for non-medical purposes, for example pricking, piercing, incising, scraping and cauterisation.

Inspired by this WHO classification, Article 38 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) introduces the obligation to criminalise such conduct:

#### Article 38 – Female genital mutilation

Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

- a** excising, infibulating or performing any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris;
- b** coercing or procuring a woman to undergo any of the acts listed in point a;
- c** inciting, coercing or procuring a girl to undergo any of the acts listed in point a.

### Health consequences of FGM

Immediate consequences of FGM include excessive bleeding and septic shock, difficulty in passing urine, infections and sometimes death. In addition to the severe pain during and in the weeks following the cutting, women who have undergone FGM experience various long-term effects – physical, sexual and psychological. These include chronic pain, chronic pelvic infections, and the development of cysts, abscesses and genital ulcers. There can be excessive scar tissue formation, infection of the reproductive system, decreased sexual enjoyment and painful intercourse. Although the scientific research addressing the psychological consequences of FGM is limited, documented psychological consequences include fear of sexual intercourse, post-traumatic stress disorder, anxiety, depression and memory loss.

■ FGM is a human rights violation. It constitutes a form of violence against women.

FGM, in any form, is recognised internationally as a gross violation of the human rights of women and girls. The practice denies women and girls their right to: physical and mental integrity; freedom from violence; the highest attainable standard of health; freedom from discrimination on the basis of sex; freedom from torture, cruel, inhuman and degrading treatment; and the right to life when the procedure results in death.

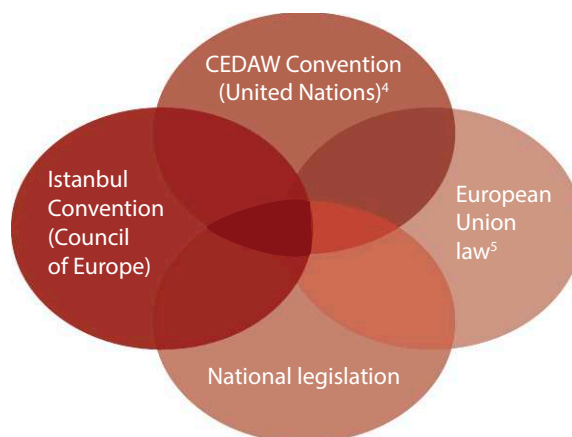
” It is not in dispute that subjecting a child or adult to FGM would amount to ill-treatment contrary to Article 3 of the [European] Convention [on Human Rights].

European Court of Human Rights<sup>3</sup>

3. European Court of Human Rights, Decision as to the Admissibility of Application No. 43408/08 by Enitan Pamela Izevbekhai and Others against Ireland, paragraph 73.



## Key standards on violence against women and FGM



### FGM in Europe: what is at stake?

Research<sup>6</sup> has shown that there are still many challenges in Europe that need to be addressed in order to develop adequate national and European policies on FGM. These include:

- ▶ the lack of data and research to properly determine the prevalence of FGM and to assess related needs for state policies and services in Europe;
- ▶ the need to take preventive measures and to evaluate their impact in order to ensure they are organised in a sustainable way;
- ▶ the need to enhance the capacity of professionals likely to be in contact with women and girls living with or at risk of FGM to enhance their protection (e.g. professionals from the health, social, education, asylum and justice sector);
- ▶ the need for a common approach to the implementation of existing policies on international protection and, where necessary, the development of new European policies that are in line with international standards and guidelines to better protect those seeking asylum on the grounds of FGM, and affected women and girls within the asylum system;
- ▶ the need to remove obstacles to the prosecution of FGM cases while taking into account the best interest of the child;
- ▶ the lack of a systematic approach to the provision of services relating to FGM and the need for culturally sensitive services;
- ▶ the need for better involvement of affected communities and the development of partnerships between relevant stakeholders, including civil society organisations (CSOs), governments and relevant professionals.

The most recent data released by the Council of Europe (2014)<sup>7</sup> on how countries are ensuring the protection of women against violence across Europe shows that the legislative, policy and services response to FGM is still far behind other forms of violence against women. Ten member states of the Council of Europe have not

4. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention) and its interpretation by the Committee on the Elimination of Discrimination against Women (CEDAW Committee), such as its General Recommendation No. 14 (1990) on female circumcision and its General Recommendation No. 19 (1992) on violence against women; see also: UN General Assembly Resolution on intensifying global efforts for the elimination of female genital mutilations, adopted on 20 December 2012, A/RES/67/146.
5. EU law creates a legal framework for EU member states only. Nonetheless, several EU directives are of direct relevance, such as the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, the Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) (also known as the EU Reception Conditions Directive), the Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (also known as the EU Procedures Directive), Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order; and Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (also known as the EU Qualifications Directive).
6. EIGE (2013a), "Female genital mutilation in the European Union and Croatia"; Leye E. and Temmerman M. (2008), "Female genital mutilation. A study of health services and legislation in some countries of the European Union", p. 175; UNHCR (2013b), "Too much pain: female genital mutilation & asylum in the European Union – A statistical overview", see also UNCHR (2014), update published in March 2014.
7. Since 2005, the Council of Europe has monitored to what extent member states have implemented Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence. Four rounds of monitoring have been completed to date and the results of the fourth round, in which 46 of the 47 member states of the Council of Europe have taken part, together with a comparative analysis of trends over time, since 2005, are available as: Council of Europe (2014), "Analytical study of the results of the 4th round of monitoring the implementation of Recommendation Rec(2002)5 on the protection of women against violence in Council of Europe member states", Strasbourg. The report can be consulted here: [www.coe.int/t/dghl/standardsetting/convention-violence/Docs/Analytical%20Study%20ENG.pdf](http://www.coe.int/t/dghl/standardsetting/convention-violence/Docs/Analytical%20Study%20ENG.pdf).

introduced any legal sanctions, criminal or otherwise, for FGM. However, concern about FGM or cutting has been significantly increasing in recent years. Compared to the situation in 2010, when only ten member states reported that FGM was addressed in their national policy, 17 member states did so in 2014. This indicates a growing awareness of the problem in Europe compared to previous years, when many member states of the Council of Europe perceived that FGM was not common or not practised at all in their country. It is hoped that the Istanbul Convention will give stronger impetus to this trend.

This guide is written with the aim of harnessing the potential of the newest legal instrument on preventing and combating violence against women – the Istanbul Convention. As a treaty dedicated to ending all forms of violence against women, it applies to FGM as well. This guide reviews the provisions of the Istanbul Convention relevant to FGM and shows how they can and should be applied to put an end to this harmful practice in Europe and beyond.

## The Istanbul Convention as a common framework and a tool to end FGM

Opened for signature in May 2011, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence marks an important milestone in achieving the aspiration of a Europe free of violence against women. The Istanbul Convention is the first legally binding instrument in Europe on preventing violence against women and domestic violence, protecting victims and punishing perpetrators. It reflects current international law and knowledge of good and promising practices to eradicate violence against women, in a comprehensive and binding treaty.

The aims of the Istanbul Convention are: to protect women against all forms of violence; to contribute to ending discrimination against women; to promote substantive gender equality; to design a comprehensive framework for the protection of and assistance to all victims of violence against women and domestic violence; and to end impunity for acts of such violence.

The Istanbul Convention requires states to prevent, prosecute and eliminate physical, psychological and sexual violence, including rape, sexual assault and sexual harassment, stalking, forced marriage, forced abortion, forced sterilisation, female genital mutilation and killings, including crimes in the name of so-called “honour”. These are all manifestations of gender-based violence which aim to control women’s behaviour, sexuality and autonomy, and which are common to all cultures. Although striking because of its severity and scale, it is important to recognise that FGM is just one of many forms of violence and social injustice which women suffer worldwide.

Recognising that civil, political, social, economic and cultural rights are indivisible and interdependent is a crucial starting point for addressing the whole range of underlying factors behind the perpetuation of all forms of violence against women in general and of FGM in particular. Grounded in a human rights-based approach and promoting a comprehensive and integrated approach to tackling all forms of violence against women, the Istanbul Convention is a framework which, if adequately put in place, will support states parties in accelerating their efforts towards ending the practice and will help to achieve the goal of eliminating FGM within one generation.<sup>8</sup>

### Framework promoted by the Istanbul Convention



8. WHO (2008), “Eliminating female genital mutilation”, UN Inter-agency Statement, OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO, available at [www.un.org/womenwatch/daw/csw/csw52/statements\\_missions/Interagency\\_Statement\\_on\\_Eliminating\\_FGM.pdf](http://www.un.org/womenwatch/daw/csw/csw52/statements_missions/Interagency_Statement_on_Eliminating_FGM.pdf). Also recalled in the UN General Assembly Resolution on intensifying global efforts for the elimination of female genital mutilation, adopted on 20 December 2012, A/RES/67/146.

The Istanbul Convention is open for signature and ratification to the 47 Council of Europe member states, but non-member states and the EU can also become a party to the treaty.

### **How will the Istanbul Convention contribute to preventing FGM and protecting women and girls affected by the practice or at risk?**

The Istanbul Convention requires states parties to organise their response to violence against women, including FGM, in a way that allows relevant authorities to diligently prevent, investigate, punish and provide reparation for such acts, as well as to provide protection to women and girls at risk (Article 5). The treaty requires states to act with due diligence, which is a concept recognised in existing international law standards.<sup>9</sup> It is not an obligation of results but an obligation of means. In this respect, states are legally obliged to prevent FGM, protect its victims and prosecute its perpetrators by adopting a comprehensive approach involving all relevant actors and agencies in their actions. In particular, states have an obligation to apply the so-called “four Ps approach”: preventing violence against women, protecting victims and prosecuting the perpetrators as part of a set of integrated policies. Measures on FGM should also include work towards partnerships between relevant professionals and with communities, as it is crucial for changing attitudes and beliefs. Prevalence studies to develop targeted, evidence-based policies and monitor the impact of existing prevention and protection measures are also required.

#### **Article 5 – State obligations and due diligence**

- 1** Parties shall refrain from engaging in any act of violence against women and ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this obligation.
- 2** Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors.

This guide seeks to clarify the content of the “four Ps approach” of the Istanbul Convention when applied to FGM-related situations. It focuses on the relevance of the Istanbul Convention to preventing and combating FGM, while fully recognising that the scope of the convention is much broader. A selection of promising practices are listed to complement the legal explanation and illustrate the feasibility of the obligations that states are required to respect and implement in order to demonstrate their particular relevance to eliminating FGM. These practices were mainly collected through desk-based research and from the partners of the END FGM European Campaign.

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9. The application of the due diligence standard to violence against women is recognised in the UN General Assembly Declaration on the Elimination of Violence against Women (1993) in Article 4(c), where states are urged to “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or by private persons”. The Committee on the Elimination of Discrimination against Women (CEDAW) noted in its General Recommendation No. 19 (1992) that “states may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence”.

# Diligently prevent FGM

## Prevention: general definition

The Istanbul Convention requires states parties to fully commit to the prevention of gender-based violence against women (Article 12), including the prevention of FGM. The Istanbul Convention approach to prevention reflects international and European case law<sup>10</sup> and standards,<sup>11</sup> as well as best practices developed at national level. It entails the development of measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating stereotypes and prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men. It implies supporting the creation of an enabling environment for women and girls and encouraging their empowerment. It also means the reinforcement of institutions in a position to provide a response to the issue of violence against women.

### Article 12 – General obligations

- 1 Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.
- 2 Parties shall take the necessary legislative and other measures to prevent all forms of violence covered by the scope of this Convention by any natural or legal person.
- 3 Any measures taken pursuant to this chapter shall take into account and address the specific needs of persons made vulnerable by particular circumstances and shall place the human rights of all victims at their centre.
- 4 Parties shall take the necessary measures to encourage all members of society, especially men and boys, to contribute actively to preventing all forms of violence covered by the scope of this Convention.
- 5 Parties shall ensure that culture, custom, religion, tradition or so-called “honour” shall not be considered as justification for any acts of violence covered by the scope of this Convention.
- 6 Parties shall take the necessary measures to promote programmes and activities for the empowerment of women.

10. European Court of Human Rights, *Opuz v. Turkey* (No. 33401/02), 9 June 2009; Inter-American Court of Human Rights, *Case of Gonzalez et al. (“Cotton Field”) v. Mexico*, 16 November 2009, paragraph 252; Inter-American Court of Human Rights, *Velásquez Rodríguez Case*, (Ser. C) No. 4 (1988), 29 July 1988, paragraph 175.

11. UN Commission on Human Rights (2006), “The due diligence standard as a tool for the elimination of violence against women”, report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, 20 January 2006, E/CN.4/2006/61, paragraph 15. The duty to prevent encompasses “all those measures of a legal, political, administrative and cultural nature that ensure the safeguard of human rights... It is also clear that the obligation to prevent is one of means or conduct, and failure to comply with it is not proved merely because the right has been violated”. The obligation to prevent should also comprise “the duty to transform patriarchal gender structures and values that perpetuate and entrench violence against women”.

The UN Secretary General's report on ending female genital mutilation<sup>12</sup> highlights that "prevention is a core component of any strategy to end female genital mutilation and it needs to complement legislation and other measures in order to effectively eliminate the practice". The UN General Assembly Resolution on intensifying global efforts for the elimination of female genital mutilations<sup>13</sup> calls on states to "develop, support and implement comprehensive and integrated strategies for the prevention of FGM". In general, any prevention measures against FGM should aim at the transformation of social beliefs and behaviour.

Preventing violence against women, including FGM, requires an integrated and comprehensive approach encompassing a range of measures at societal, institutional, community and individual levels. Examples in relation to preventing FGM are described below to illustrate the main elements of the obligation to prevent, as recognised and defined by the Istanbul Convention.

## Preventing FGM: what does the Istanbul Convention say?

### To fulfil their obligation to prevent violence against women, including FGM, states parties to the Istanbul Convention should:

■ **Address gender stereotypes** and take measures that are necessary to promote changes in mentality and attitudes (Article 12, paragraph 1)

Parties to the Istanbul Convention are required to promote changes in mentality and attitudes, because existing patterns of behaviour are often influenced by prejudices, gender stereotypes and gender-biased customs and traditions.

Gender stereotypes are defined as being "concerned with the social and cultural construction of men and women, due to their different physical, biological, sexual and social functions. ... Gender stereotype is an overarching term that refers to a 'structured set of beliefs about the personal attribute of women and men'".<sup>14</sup> One of the functions of gender stereotyping is to downgrade the suffering of women and girls as normal and acceptable. Because it is so prevalent, it is seen as unremarkable, a normal part of life and therefore acceptable.

Addressing stereotypes related to FGM implies working on issues related to the justifications for the practice. The practice has a variety of underpinning beliefs promoting it for purported health and hygiene benefits, religious, traditional or gender-related reasons. This categorisation is somewhat artificial: in reality FGM might be performed for a number of reasons at the same time. The reasons also vary between regions or communities.<sup>15</sup>

” [FGM] is said to test a woman's ability to bear pain and defines her future roles in life and marriage while preparing her for the pain of childbirth. FGM is also a result of the patriarchal power structures which legitimize the need to control women's lives. It arises from the stereotypical perception of women as the principal guardians of sexual morality, but with uncontrolled sexual urges. FGM reduces a woman's desire for sex, reduces the chances of sex outside marriage and thus promotes virginity. It is also deemed necessary by society to enhance her husband's sexual pleasure. A husband may reject a woman who has not gone through the 'operation'. Health reasons are also put forward as justifications for FGM. Unmutilated women are considered unclean. It is believed that FGM enhances fertility. It is considered that the clitoris is poisonous and that it could prick the man or kill a baby at childbirth. In some FGM-practising societies, there is a belief that the clitoris could grow and become like a man's penis. Even though FGM pre-dates Islam, religious reasons are given for the continuation of FGM in some societies.

Radhika Coomaraswamy<sup>16</sup>

12. UN Commission on the Status of Women, Fifty-sixth session, "Ending female genital mutilation – Report of the Secretary-General", 5 December 2011, E/CN.6/2012/8, paragraph 24.
13. UN General Assembly Resolution on intensifying global efforts for the elimination of female genital mutilations, adopted on 20 December 2012, A/RES/67/146, paragraph 15.
14. Cook R. and Cusack S. (2010), *Gender stereotyping: transnational legal perspectives*, University of Pennsylvania Press, Philadelphia, p. 20.
15. De Bruyn M. (2003), "Discussion paper: socio-cultural aspects of female genital cutting", in Leye E., De Bruyn M. and Meuwese S. (eds), *Proceedings of the expert meeting on female genital mutilation in Ghent, Belgium, 5-7 November, 1998*, ICRH Publications No. 2, De Consulterij, Lokeren, pp. 68-82.
16. UN Special Rapporteur on violence against women, its causes and consequences, in UN Commission on Human Rights, "Cultural practices in the family that are violent towards women", report of the Special Rapporteur on violence against women, its causes and consequences, Ms Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights Resolution 2001/49, 31 January 2002, E/CN.4/2002/83, paragraph 14.

Given the variety of justifications for the practice, measures to address such stereotypes should be tailored to each community. It is crucial to determine the belief systems and what barriers there are to ending FGM within each community in order to better target and maximise the impact of prevention activities.

### ► **Promising practice**

#### **United Kingdom, Netherlands: REPLACE – “Pilot toolkit for replacing approaches to ending FGM in the EU: implementing behaviour change with practising communities”<sup>17</sup>**

REPLACE is a project funded by the European Commission which seeks to end FGM among communities affected by the practice across Europe. The project uses a behaviour change approach combined with participatory action research methods to identify particular behaviours and barriers that can “be changed” to end FGM.

The first phase of the project, REPLACE 1, was co-ordinated by the University of Coventry (UK) in partnership with two NGOs, FORWARD (Foundation for Women’s Health Research and Development, UK) and FSAN (Federation of Somali Organisations, the Netherlands) working with Somali and Sudanese communities residing in both countries. Members of these communities were trained to collect data and their contribution was put at the centre of the research process. They also contributed to analysing the data.

The community participatory research identified a number of barriers to ending FGM in Europe. These include: ambiguity regarding terminology and understanding of the different types of FGM; strong religious beliefs; lack of communication; issues regarding choice and consent; and the medicalisation of certain types of FGM. Findings of the research also showed that the Somali and Sudanese communities hold different belief systems relating to FGM.

In 2011, the project developed a toolkit which provides guidelines on how to use the behaviour change methodology with organisations working on prevention with affected communities. As such, it seeks to offer an alternative to the prevailing approaches that expect individuals to change their behaviour with a mere focus on raising awareness of the health and legal issues associated with FGM. The behaviour change approach is deemed to help individuals and communities through a series of steps which build on each other and provide opportunities to examine behaviour that can result in sustainable changes in the social norms of a practising community.

The REPLACE method will be evaluated and its implementation will be multiplied in a second project (REPLACE 2) funded by the European Commission.<sup>18</sup> Other projects have started in other European countries.

**Key aspects:** involvement of communities in tailoring a prevention approach, empowerment of affected communities through their active participation in research (development of a network of community-based researchers), alternative methods for qualitative research, evaluation

**Challenges:** sustainability (need to move away from the project-based approach)

### ■ **Address the specific needs of women and girls in positions of vulnerability** (Article 12, paragraph 3)

The convention requires states parties to address the specific needs of persons made vulnerable by particular circumstances. There is an obligation to pay specific attention to, among others, pregnant women, women living in rural or remote areas, women with insecure residence status, migrants (including undocumented migrants), refugees, disabled women and girls in general.

FGM is an example of intersectional discrimination as women and girls are subjected to it on the basis of their gender, ethnicity and age. It is therefore important for states parties to acknowledge that women and girls affected by or at risk of FGM face greater challenges in accessing and fulfilling their rights. As such, they have specific needs. This is why states should provide responses that address the complex intersecting dynamics of FGM and develop measures targeting intersectional and multiple discrimination.

### ■ **Involve all members of society**, especially men and boys (Article 12, paragraph 4)

States parties to the Istanbul Convention should encourage men and boys to contribute actively to preventing violence against women.

Preventive work against FGM has proven more effective when targeted at the entire affected community. It implies involving and building the capacities and dialogue skills of religious leaders, youth advocates, community leaders and “champion” campaigners, and members of women’s groups. They must be encouraged to speak out against the practice and use their influential role. Men in affected communities could also be engaged as

17. The pilot toolkit is available on the REPLACE website at: [www.vawpreventionscotland.org.uk/sites/default/files/replacetoolkit.pdf](http://www.vawpreventionscotland.org.uk/sites/default/files/replacetoolkit.pdf).

18. For more information, please visit REPLACE 2, [www.replaceFGM2.eu/](http://www.replaceFGM2.eu/).

role models.<sup>19</sup> Professionals working in the education and health sector should be equipped with the necessary skills to discuss the practice with the communities.

■ **Ensure that culture, custom, religion, tradition or so-called “honour” shall not be invoked to justify any act of violence** (Article 12, paragraph 5)

The Istanbul Convention makes it clear that culture, custom, religion, tradition or so-called “honour” cannot be seen as justifications for gender-based violence. States parties shall ensure that national laws do not permit such interpretations. The obligation extends to the prevention of any official statements, reports or proclamations that condone violence on the basis of culture, custom, religion, tradition or so-called “honour”.

■ **Seek empowerment of women and girls** (Article 12, paragraph 6)

The Istanbul Convention understands this obligation as comprising empowerment in all aspects of life, including political and economic empowerment. This obligation reflects the greater aim of achieving gender equality by increasing women’s agency and reducing their exposure to violence.

Empowerment of girls has been defined as “an active and inclusive process centred on the girl that engages all stakeholders – parents, guardians, teachers, elders, the community and the state at large – and results in girls who are transformed through the acquisition of knowledge on their rights and their bodies, and the skills and tools needed for developing a strong and proud sense of their own identity”.<sup>20</sup> In particular, “it means addressing the low levels of expectation that they may hold for themselves as a result of societal and familial attitudes and behaviours, building their social assets by ensuring their access to education and skills building, and creating channels for girls’ participation, such as through girl-friendly spaces and environments that provide girls a wide range of resources and activities”.<sup>21</sup>

The 27th Special Session of the UN General Assembly on children in 2002 recognised that the achievement of development goals for girls was contingent upon women’s empowerment: “this means not only empowering women as mothers, but also empowering them as rights-bearing individuals. Evidence suggests that women whose rights are fulfilled are more likely to ensure that girls have access to adequate nutrition, health care, education and protection from harm”.<sup>22</sup>

Civil society organisations have developed and worked on a range of activities to empower women and girls in the context of FGM. Several of them focus on young people and seek the development of their speaking and advocacy skills.

### ► **Promising practice**

#### **United Kingdom: FORWARD UK, Young people speak out (YPSO!)<sup>23</sup>**

Young People Speak Out (YPSO!) is a programme co-ordinated by the UK-based NGO FORWARD UK. The programme seeks to empower young people (aged 16 to 24) from FGM-affected communities and to give them the skills to advocate within their local communities against FGM and early/child marriages. FORWARD UK offers its premises as a safe space for discussion and a staff member is dedicated to the co-ordination of the groups. On request, it provides training on FGM, leadership and advocacy to young people.

For example, a group has been in operation in London since 2006. Through the YPSO! programme, they have developed a platform for young women in order to support them and to enable them to propel themselves into society. Since its creation, the group activities have been numerous. They have included spoken word and music events, the production of a DVD and the publication of educational materials. Although the main focus is on highlighting the impact of FGM, the events aim to educate, empower and inspire the public to take a stand on gender discrimination and gender-based violence.

**Key aspects:** involvement and empowerment of young people, dedicated staff and long-term programme

**Challenges:** funding for civil society organisations

Other initiatives, such as declarations against FGM, have been developed as a tool to support parents who oppose the practice and to help them negotiate and face the pressure exerted by their family and community.

19. UNFPA/UNICEF (2012), “Accelerating change: 2011 Annual report of the Joint programme on female genital mutilation/cutting”, p. 6.

20. UN Expert Group Meeting (2006), “The elimination of all forms of discrimination and violence against the girl child” (EGM/Girl Child/2006/REPORT), p. 24.

21. UNICEF (2008), *From invisible to indivisible: promoting and protecting the right of the girl child to be free from violence*, New York, p. 77.

22. Ibid.

23. More information on YPSO! can be found at [www.forwarduk.org.uk/what-we-do/uk-programmes/ypso](http://www.forwarduk.org.uk/what-we-do/uk-programmes/ypso).

### ► Promising practice

#### Netherlands: Supporting parents opposed to FGM

In 2011, the Dutch government developed an official document<sup>24</sup> to help parents withstand pressure from their families. This document is known as the “Statement opposing female circumcision”.

The statement exists in several languages. It outlines the health consequences of FGM and explains relevant Dutch legislation. Parents are given a copy of the document by children’s health-care centres and school doctors.

The statement is officially stamped by the ministries of health and justice and aims to help parents counter pressure when visiting their families in their country of origin. To reinforce this action, the Dutch Deputy Health Minister appointed “ambassadors” against FGM for 2010-2011. Engaged as role models, they were responsible for passing on information on the dangers of the practice to parents who originally come from countries where the custom is practised, such as Somalia, Ethiopia and Sudan.

The UK and Belgian governments replicated this document by respectively issuing a “Statement opposing female genital mutilation”<sup>25</sup> and a “Passeport STOP MGF”<sup>26</sup> which were signed by various ministries including, home affairs, justice, health and foreign affairs.

**Key aspects:** official endorsement by government, dissemination strategy (place, time, actors), role models, shared and exported methodology

**Challenges:** impact assessment is needed, duration of the appointment of ambassadors against FGM, complementing the distribution of such declarations by wider prevention activities targeted at communities

■ **Undertake awareness-raising and information campaigns** (Article 13) on a regular basis and in co-operation with national human rights institutions, equality bodies, civil society organisations (including professional medical bodies) and the media to raise awareness of the different forms of violence against women, including FGM, among the general public.

#### Article 13 – Awareness-raising

- 1 Parties shall promote or conduct, on a regular basis and at all levels, awareness-raising campaigns or programmes, including in co-operation with national human rights institutions and equality bodies, civil society and non-governmental organisations, especially women’s organisations, where appropriate, to increase awareness and understanding among the general public of the different manifestations of all forms of violence covered by the scope of this Convention, their consequences on children and the need to prevent such violence.
- 2 Parties shall ensure the wide dissemination among the general public of information on measures available to prevent acts of violence covered by the scope of this Convention.

The objective is to help all members of society to recognise such violence, prevent it, speak out against it and support its victims as neighbours, friends, relatives, service users or colleagues, where possible and appropriate.

Awareness-raising activities on FGM can take the form of conferences, seminars and workshops, social mobilisation campaigns, including theatre plays, and communication material such as leaflets and posters translated into several languages and disseminated online.<sup>27</sup> There might also be events to commemorate the International Day of Zero Tolerance for Female Genital Mutilation on 6 February each year or as part of the 16 Days of Activism against Gender Violence that run from November 25 to 10 December every year.

In Europe, awareness-raising campaigns on FGM have tended to target the general public.<sup>28</sup> However, engaging with the affected populations, that is women and girls either living with, or at risk of FGM, or their families, remains the main means to work towards overcoming cultural barriers and stereotypes related to FGM.

24. The “Statement opposing female circumcision” is available at [www.pharos.nl/documents/doc/pp5056-verklaring-uk-2011\\_definitief.pdf](http://www.pharos.nl/documents/doc/pp5056-verklaring-uk-2011_definitief.pdf). More information on the Dutch model is available at <http://geneva.nlmission.org/statements---speeches/international-day-of-zero-tolerance-for-female-genital-mutilation.html>.

25. The UK “Statement opposing female genital mutilation” is available at [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/208440/FGM-v12-web.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/208440/FGM-v12-web.pdf).

26. The Belgian “Passeport STOP MGF” is available at [www.health.belgium.be/internet2Prd/groups/public/@public/@mixednews/documents/ie2divers/19087094\\_nl.pdf](http://www.health.belgium.be/internet2Prd/groups/public/@public/@mixednews/documents/ie2divers/19087094_nl.pdf).

27. UN Commission on the Status of Women (2011), op. cit., paragraph 25, p. 9.

28. EIGE (2013a), op. cit., p. 54.



Messages on FGM should be integrated within the broader context of gender equality and respect for human rights. The negative consequences of FGM on girls' health and their ability to reach their full potential should be highlighted. A hopeful and positive approach can be beneficial to engage the target groups by helping families to envisage the potential of a daughter if she grows up in the absence of violence or harmful practices.

The means of communication should be adapted to the literacy levels and the languages used by the different communities. Hence, local and diaspora-focused broadcast media in the local languages are ideal media platforms to reach the targeted population. Publications should be translated into as varied a range as possible of languages and formats (e.g. images, videos).

Information campaigns should also target other groups, such as professionals in education, health, asylum and social services, community and religious leaders and decision makers.

### ► Promising practice

#### **European Union: END FGM European Campaign Art for Action<sup>29</sup> (Amnesty International)**

In 2010, during the 16 Days of Activism against Gender Violence (25 November–10 December), the END FGM European Campaign collected 42 446 signatures across Europe to call on Europe's leaders to end FGM and protect young girls and women at risk. Of the total signatures, 8 000 were collected on paper rose petals and were designed into art and design works by four international artists and designers who agreed to collaborate with the END FGM European Campaign.

Each artwork is a personal representation of complex aspects of the practice of FGM within a positive framework of creativity and action. The artworks create a space for dialogue and build on the engagement of well-known artists to reach out to the media, thereby creating a broader audience for a subject that is often ignored by mainstream media.

In 2012, the END FGM European Campaign launched an Art for Action tour to exhibit these works of art and design in various European locations. This tour offered an opportunity to influence decision makers, to encourage them to listen to the voices of the people who call for a European strategy and to seek creative responses for addressing FGM. The tour was an opportunity to hold public debates on FGM with key national and European decision makers and this led to commitments to improve their actions on the issue. It also allowed for media attention both at European and national level. A video summary of the Art for Action tour is available online.<sup>30</sup>

**Key aspects:** cross-European action targeted at EU decision makers, positive messaging on FGM, awareness raising and mobilisation of the public in several EU countries, work with well-known artists for better media engagement, engagement with key decision makers both at national and European level for a better co-ordinated approach

**Challenges:** cross-European action requires extensive resources for appropriate co-ordination

■ **Use formal and informal education** to teach children about equality between women and men, non-stereotyped gender roles, mutual respect, gender-based violence and the right to personal integrity (Article 14)

#### Article 14 – Education

- 1 Parties shall take, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity of learners, in formal curricula and at all levels of education.
- 2 Parties shall take the necessary steps to promote the principles referred to in paragraph 1 in informal educational facilities, as well as in sports, cultural and leisure facilities and the media.

29. More information is available at [www.endFGM.eu/en/what-we-do/art-for-action](http://www.endFGM.eu/en/what-we-do/art-for-action).

30. See [www.youtube.com/watch?v=n\\_zY0RzkC6k](https://www.youtube.com/watch?v=n_zY0RzkC6k).

Education curricula and institutions, or informal educational facilities, provide an important forum for educating about and raising awareness of FGM. In many countries, this might imply training for teachers.

### ► Promising practice

#### France: Interministerial agreement for gender equality in the education system<sup>31</sup>

In 2013, the French government adopted a five-year interministerial action plan to introduce gender equality education into school curricula and combat gender stereotypes. The plan focuses on three main priorities:

- introduce and promote a gender equality culture in the education system;
- strengthen mutual respect and equality between girls and boys, women and men;
- commit to greater gender diversity in training schemes, at all levels of education.

In particular, the plan foresees activities to prevent and better identify situations of sexist behaviour and sexual violence, including specific forms of violence such as FGM. Among others, the plan includes measures to train education professionals, to collect data and improve knowledge on sexist behaviour and sexual violence, to exchange good practices and to develop innovative tools on gender stereotypes at an early age.

The plan was adopted by the ministries for national education, women's rights, labour, employment, vocational training and social dialogue, higher education and research, and agriculture and forests. Its implementation is co-ordinated by the Ministry of Social Affairs, Health and Women's Rights. A steering committee involving government representatives, experts and civil society organisations has been appointed to regularly monitor and evaluate the plan, as well as to set operational priorities.

**Key aspects:** gender equality included in formal education, cross-ministerial approach, organised monitoring and evaluation with dedicated steering committee

**Challenges:** sustainability of governmental commitment/engagement

■ **Provide training for professionals** that come into contact with victims of all forms of violence against women (Article 15); in relation to FGM, the aim is to ensure that those in the medical, social, education, legal and law-enforcement professions, as well as immigration officials, offer quality services to women and girls who are already affected by FGM, or those who are at risk<sup>32</sup>

#### Article 15 – Training of professionals

- 1 Parties shall provide or strengthen appropriate training for the relevant professionals dealing with victims or perpetrators of all acts of violence covered by the scope of this Convention, on the prevention and detection of such violence, equality between women and men, the needs and rights of victims, as well as on how to prevent secondary victimisation.
- 2 Parties shall encourage that the training referred to in paragraph 1 includes training on co-ordinated multi-agency co-operation to allow for a comprehensive and appropriate handling of referrals in cases of violence covered by the scope of this Convention.

Training should address issues such as the prevention and detection of FGM, equality between women and men, the needs and rights of affected women, and how to prevent secondary victimisation.

31. Convention interministérielle pour l'égalité entre les filles et les garçons, les femmes et les hommes dans le système éducatif, available in French at [http://cache.media.education.gouv.fr/file/02\\_Fevrier/17/0/2013\\_convention\\_egalite\\_FG\\_241170.pdf](http://cache.media.education.gouv.fr/file/02_Fevrier/17/0/2013_convention_egalite_FG_241170.pdf).

32. As part of its resources and document centre, the European Institute for Gender Equality has set up a web page with existing training on FGM for professionals in the EU, available at [www.eige.europa.eu/content/rdc](http://www.eige.europa.eu/content/rdc).

### ► Promising practice

#### **Cyprus, Portugal, Italy, Ireland: United to end FGM (UEFGM): an e-learning tool for health and asylum professionals<sup>33</sup>**

In March 2013, partner organisations of the END FGM European Campaign (Mediterranean Institute of Gender Studies – MIGS, Family Planning Association, Portugal – APF, Italian Association for Women in Development – AIDOS, and AkiDwa, Ireland) launched an e-learning tool, offering information and practical advice on FGM in Europe. The training is supported and endorsed by the UNHCR.

The UEFGM e-learning course aims to raise awareness and enhance the skills of health professionals and asylum officers supporting women and girls affected by FGM. The training takes a gender-sensitive approach to FGM, looking at the practice as a socio-cultural norm that constitutes a violation of women's and girls' fundamental human rights. It also looks at the practice's harmful effects on women's and girls' physical, psychological, reproductive and sexual health. This course provides health professionals, asylum officers and social welfare officers with an understanding of the practice in the context of migration, an overview of the legal framework in the EU, and examples of interventions that have worked – as well as those that have not worked – to effectively support women and girls in their move towards abandoning FGM. It is available in English, Portuguese and Italian.

**Key aspects:** training with gender-sensitive and human rights-based approach to FGM, targeted at various professionals likely to be in contact with affected communities, available in several EU languages, endorsement by the UNHCR, easy (online) accessibility, promotion and dissemination strategy, free of charge

**Challenges:** sustainability and expansion depending on extra funding

Training should be supported and reinforced by clear protocols and guidelines that set the standards that professionals are expected to follow in their respective fields. These tools should assist relevant professionals in the prevention and management of cases of FGM and should encourage their reporting to competent authorities (see also the chapter on protection).

### ► Promising practice

#### **Belgium: Multidisciplinary guidelines for professionals<sup>34</sup>**

In 2011, the Belgian Ministry of Health published guidelines developed by CSOs targeting all professionals working with communities likely to be affected by FGM. This includes health professionals, psychosocial workers, professionals in childcare facilities, teachers, lawyers and the police. The objectives of the guidelines are to help professionals to:

- better understand the issue of FGM (prevalence, geographic distribution, medical and psychological consequences) and the socio-cultural context in which it evolves;
- offer better support to affected families (practical advice on how to discuss with families, choice of words, work with translators and mediators, etc.);
- provide adequate health care and psychological support to women who have already undergone FGM (monitoring of pregnancy, treatment in case of medical complications, counselling) as well as legal and social support;
- participate in FGM preventative actions (family counselling, referral to associations or institutions).

The guidelines were developed in co-operation with professionals from each relevant sector. They are promoted on various institutional websites and through specialised NGOs (Groupe pour l'abolition des mutilations sexuelles – GAMS Belgium, International Network to Analyze, Communicate and Transform the Campaign against FGC/C – INTACT) and have been circulated via networks of professionals.

**Key aspects:** integrated guidelines, co-operation between CSOs, professionals and government, government endorsement, dedicated funding, dissemination strategy

**Challenges:** continued dissemination, guidelines need to be complemented with institutionalised training

33. More information is available at [www.uefgm.org/](http://www.uefgm.org/).

34. Available in French at [www.strategiesconcertees-mgf.be/wp-content/uploads/guide-mgf-fr\\_web.pdf](http://www.strategiesconcertees-mgf.be/wp-content/uploads/guide-mgf-fr_web.pdf). SPF Santé publique, Sécurité de la Chaîne alimentaire et Environnement et GAMS Belgique. *Mutilations Génitales Féminines: guide à l'usage des professions concernées*. Brussels, 2011.

Obligations similar to those of the Istanbul Convention are also included in the EU Directive on the rights of victims of crime.<sup>35</sup> The directive creates obligations for EU member states to train professionals from the police, judiciary and victims' support sector. This training should include sessions on:

- ▶ the identification of victims and their needs;
- ▶ non-discriminatory attitudes;
- ▶ adopting a gender-sensitive approach to victim's rights.  
(Article 25 and recital 61 of the directive).

■ **Address the role of the media and the information and communication technology (ICT) sector** in prevention and in enhancing respect for the dignity of women (Article 17)

#### Article 17 – Participation of the private sector and the media

- 1 Parties shall encourage the private sector, the information and communication technology sector and the media, with due respect for freedom of expression and their independence, to participate in the elaboration and implementation of policies and to set guidelines and self-regulatory standards to prevent violence against women and to enhance respect for their dignity.
- 2 Parties shall develop and promote, in co-operation with private sector actors, skills among children, parents and educators on how to deal with the information and communications environment that provides access to degrading content of a sexual or violent nature which might be harmful.

The convention requires parties to encourage the media and ICT sector to set guidelines and self-regulatory standards to enhance respect for the dignity of women, and to prevent violence against women. The establishment of ethical codes of conduct for the media and ICT sector are also encouraged.

As with other forms of violence against women, the media can play an important role in reducing FGM. It can serve as a tool to raise awareness about the practice, as well as to promote the wider aim of ending the practice, through general programmes or programmes targeting affected communities. It may also be a way of reaching decision makers in order to sensitise them to the issue and ultimately influence their view on FGM, as well as their desire to work towards its eradication. However, the media also have a responsibility to ensure that their communications are non-stigmatising and that they properly gauge the social and political context in which they are communicating.

FGM is a global problem, an internationally condemned human rights violation and it is illegal in most European countries, as well as in a number of the countries of origin of affected communities. Hence, messages should be targeted to reach the affected populations without stigmatising them. Creating an "us v. them" or "here v. there" dichotomy should be avoided as such messages can alienate and stigmatise the families, especially newly arrived migrants. Messages and communication techniques should be tested with focus groups that include NGOs working against FGM.

35. EU Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.

## ► Interesting initiatives

### 1. United Kingdom: BBC TV Programme

In 2013, the BBC television drama series “Casualty” focused one of its episodes on the issue of FGM. By telling the story of a girl who has undergone the procedure and is trying to protect her younger sister from the same fate, the producers and scriptwriters have attempted to break the silence and taboos around the practice. The episode was developed with the assistance of FGM-specialised NGOs and young women from affected communities.

**Key aspects:** use of mainstream media/TV media to raise awareness and inform the public about the practice and what to do when confronted by it, episode developed with the support of professionals and affected communities

### 2. International Federation of Journalists (IFJ): “Guidelines for reporting on violence against women”<sup>36</sup>

In 2008, the IFJ published its guidelines for reporting on violence against women in which the media are invited to use accurate and non-judgmental language and to avoid victimisation, as well as to use preferred terms such as “survivors” instead of victims, to treat survivors with respect and to maintain confidentiality. Similarly, the Dart Center Europe for Journalism and Trauma has developed a tip sheet on reporting sexual violence.<sup>37</sup>

### 3. Media and the image of women, Report and recommendations from the 1st Conference of the Council of Europe Network of National Focal Points on Gender Equality, Amsterdam, 4-5 July 2013

This conference examined the relationship of the media to the female images they project, including issues related to stereotyping and sexism, freedom of expression and gender equality, female leadership positions in the media and the new media as a tool for positive change. Recommendations included a call on media organisations to:

- “Combat the proliferation of stereotyping through careful reporting, appropriate programming in general and everyday practice in the daily business of media organisations;
- Provide guidance in the use of appropriate terminology in describing and reporting violations of the law and human rights, such as child abuse, rape, sexual harassment and other forms of violence;
- Avoid beautifying, glamorising, obscuring and relativising terms to describe such abuses. This should go hand-in-hand with a conscious and systematic effort to strengthen ‘good’, that is, appropriate language, which should be as accurate and sensitive to gender-specific violence as possible.”<sup>38</sup>

36. International Federation of Journalists (2008), *Guidelines for reporting on violence against women*, available at <http://ethicaljournalisminitiative.org/en/contents/ifj-guidelines-for-reporting-on-violence-against-women>.

37. Available at <http://dartcenter.org/content/reporting-on-sexual-violence#U4Ss8ijj2-W>.

38. Council of Europe (2013), *Media and the image of women*, report of the 1st Conference of the Council of Europe Network of National Focal Points on Gender Equality, Council of Europe, Strasbourg, p. 3, available at [www.coe.int/t/dghl/standardsetting/equality/05conferences/2013amsterdam/Report\\_MediaImageWomen\\_Amsterdam\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/equality/05conferences/2013amsterdam/Report_MediaImageWomen_Amsterdam_en.pdf).

# Diligently protect and support women and girls affected by or at risk of FGM

## Protection and support: general definition

**T**he Istanbul Convention requires states parties to step up efforts to protect and support women who have been subjected to or are at risk of gender-based violence, including FGM (Article 18). States parties are required to take the necessary legislative and other measures to protect women from any further acts of violence. This implies the development of appropriate mechanisms of co-operation between relevant stakeholders in contact with affected women.

The duty to protect women and girls who have been subjected to or are at risk of violence has been defined as an obligation to use “all appropriate means of a legal, political, administrative and social nature to provide access to justice, health care and support services that respond to their immediate needs, protect against further harm and continue to address the ongoing consequences of violence for women and girls, taking into consideration the impact of violence on their families and communities”.<sup>39</sup> As recommended by the UN Secretary-General in his report on ending female genital mutilation, “the protection and support of victims of female genital mutilation and women and girls at risk should be an integral part of legislation, policies and programmes that address the issue. Victims should be provided with a range of specialized services, including legal, psychological, social assistance and health services to ensure their recovery from trauma and the prevention of serious health conditions”.<sup>40</sup>

Two types of protection scenarios have to be considered:

- ▶ when a woman or a girl is at **(immediate) risk** of FGM;
- ▶ when a woman or a girl has already been **subjected to the practice**.

39. UNHRC (2011), “Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in protection”; UN Commission on Human Rights (2006), op. cit., paragraph 82.

40. UN Commission on the Status of Women (2011), op. cit.

## Article 18 – General obligations

- 1 Parties shall take the necessary legislative or other measures to protect all victims from any further acts of violence.
- 2 Parties shall take the necessary legislative or other measures, in accordance with internal law, to ensure that there are appropriate mechanisms to provide for effective co-operation between all relevant state agencies, including the judiciary, public prosecutors, law enforcement agencies, local and regional authorities as well as non-governmental organisations and other relevant organisations and entities, in protecting and supporting victims and witnesses of all forms of violence covered by the scope of this Convention, including by referring to general and specialist support services as detailed in Articles 20 and 22 of this Convention.
- 3 Parties shall ensure that measures taken pursuant to this chapter shall:
  - ▶ be based on a gendered understanding of violence against women and domestic violence and shall focus on the human rights and safety of the victim;
  - ▶ be based on an integrated approach which takes into account the relationship between victims, perpetrators, children and their wider social environment;
  - ▶ aim at avoiding secondary victimisation;
  - ▶ aim at the empowerment and economic independence of women victims of violence;
  - ▶ allow, where appropriate, for a range of protection and support services to be located on the same premises;
  - ▶ address the specific needs of vulnerable persons, including child victims, and be made available to them.
- 4 The provision of services shall not depend on the victim's willingness to press charges or testify against any perpetrator.
- 5 Parties shall take the appropriate measures to provide consular and other protection and support to their nationals and other victims entitled to such protection in accordance with their obligations under international law.

Any protection strategy on FGM should also include the **right to international protection** as a component of the duty to protect (Article 18, paragraph 5). FGM has been recognised as a form of violence amounting to gender-based persecution and child-specific persecution and can be considered as a ground for claiming asylum.<sup>41</sup> The UNHCR Guidance note<sup>42</sup> reaffirms that women and girls at risk of or affected by FGM can be considered as members of a particular social group, as described by the UN 1951 Convention relating to the Status of Refugees (Geneva Convention).<sup>43</sup> The guidance note establishes that a girl or woman seeking asylum because she has been compelled to undergo FGM, or is likely to be subjected to it, can qualify for refugee status under the Geneva Convention. Under certain circumstances, a parent could also establish a well-founded fear of persecution because of the risk of FGM for his or her child. This approach is also promoted by the Istanbul Convention which calls on its parties to recognise that gender-based violence may be recognised as a form of persecution under the Geneva Convention (Article 60, paragraph 1). To ensure these forms of persecution are disclosed during the refugee determination process, the Istanbul Convention goes a step further to require states parties to introduce gender-sensitive asylum procedures (Article 60, paragraph 3).

## Providing protection and support in FGM-related cases: what does the Istanbul Convention say?

### General protection and support for women affected by or at risk of FGM

Women and girls affected or threatened by FGM must have access to protection when they need it most. In this respect, one of the main convention objectives is to ensure that the **needs and safety of women and girls who have undergone the practice, or those at risk**, are at the centre of all measures. Women should have access to protection and to physical, psychological and social support and assistance as this has proved the most effective way to prevent an immediate risk of violence or further violence.

To achieve this, the convention requires the provision of protection and support for women in an integrated manner (Article 18). It stresses the need for **appropriate mechanisms** for effective **co-operation between services** across NGOs, child protection, health care, the police and the prosecution services. Such mechanisms could take on the form of agreed protocols, round tables or any other method that enable a number of professionals to co-operate in a standardised manner.

41. UNHCR (2009), "Guidance note on refugee claims relating to female genital mutilation", May 2009.

42. Ibid.

43. UN General Assembly (1951), Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, Vol. 189, p. 137.

As an enabling environment is crucial for the implementation of the right to access support services, the Istanbul Convention makes clear that the provision of services shall **not depend on the victim's willingness to press charges or testify** against any perpetrators (Article 18, paragraph 4). Therefore, protection measures and support services prescribed by the convention should be provided regardless of police investigations into the case or the institution of judicial proceedings.

This obligation is particularly relevant in the context of FGM in Europe where the number of FGM cases reported to the police and brought to courts has been limited owing to issues around the secrecy surrounding the practice within communities and the reluctance of girls to formally implicate parents.<sup>44</sup> An obligation to press charges and testify in order to access services may act as a disincentive to seeking essential health care.

### **The Istanbul Convention requires states parties to fulfil their obligation to protect and support women and girls who have been subjected to violence against women, including FGM. It foresees obligations for states parties to:**

■ Provide for both **general and specialist support services** which are appropriate and accessible

**General support services** (Article 20) are understood to include services facilitating the recovery from violence such as legal and psychological counselling, financial assistance, housing or access to health care and social services. Typically, these are services offered by public authorities that are available to the general public, including victims of all crime. While they are not exclusively designed to address the specific needs of women who have experienced violence, such as FGM, the services they offer are vital for their recovery and well-being. In the context of supporting women who have undergone FGM or are at risk of the practice, the Istanbul Convention requires states parties to ensure that these public welfare services have the professional expertise and capacity to identify and address their particularly difficult situation and trauma.

#### Article 20 – General support services

- 1 Parties shall take the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence. These measures should include, when necessary, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment.
- 2 Parties shall take the necessary legislative or other measures to ensure that victims have access to health care and social services and that services are adequately resourced and professionals are trained to assist victims and refer them to the appropriate services.

**Specialist support services** (Article 22) are required by the convention to complement these general support services and must be run by specialised and experienced staff with in-depth knowledge of gender-based violence. They should be able to ensure the implementation of an approach that is tailored to the needs and trauma of the woman or girl. Typically, these are services offered by non-governmental organisations and are specifically designed to offer help and assistance in relation to one or more forms of violence against women.

#### Article 22 – Specialist support services

- 1 Parties shall take the necessary legislative or other measures to provide or arrange for, in an adequate geographical distribution, immediate, short- and long-term specialist support services to any victim subjected to any of the acts of violence covered by the scope of this Convention.
- 2 Parties shall provide or arrange for specialist women's support services to all women victims of violence and their children.

44. Leye E. et al. (2007), "An analysis of the implementation of laws with regard to female genital mutilation in Europe", *Crime Law Soc Change*, February 2007, Volume 47, Issue 1. Other reasons for such a limited number of reported and prosecuted cases include conditions attached to the extraterritorial application of criminal law and the reluctance of professionals to follow through on all complaints and concerns.



Women who have undergone FGM require access to health care for immediate injuries and long-term care, and women and girls at risk of the practice might require counselling and shelter. Therefore states parties shall ensure that these specialised services are available to all women, irrespective of their legal status in the country (Article 4, paragraph 3).

#### Article 4, paragraph 3

The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.

To be **accessible and appropriate**, such specialist support services should:

- ▶ have experienced staff with an in-depth knowledge of gender-based violence, including FGM;
- ▶ be integrated and take into account the relationship between victims, perpetrators, children and the wider social environment;
- ▶ be provided in an adequate geographical distribution;
- ▶ offer immediate medical support;
- ▶ be provided on a short- and long-term basis according to the woman's needs;
- ▶ include psychological counselling and trauma care;
- ▶ offer legal counselling;
- ▶ be made available to all victims or women at risk and their children in a language they understand (interpreters and translators made available to victims should have received training on gender-based violence, including FGM, to ensure a sensitive and non-judgmental translation of terminology; for example, it might be more sensitive to use words such as "cut" rather than "mutilation" when addressing the issue for the first time with the affected woman or girl);
- ▶ be conceived as a space that seeks the empowerment of women and girls (for example, they could include vocational training, in order to allow women and girls to become self-supporting in the long run).

#### ▶ **Promising practice**

##### **France: Multidisciplinary and integrated approach in delivering specialised health services<sup>45</sup>**

In 2012, the Bicêtre Hospital (Ile-de-France Region) opened an FGM-specialised unit. Rather than providing only repair surgery to women affected by FGM, the unit team has chosen to offer a holistic set of medical, psychological and sexual health care to women in need. The team is composed of a surgeon (gynaecologist and obstetrician), a victimologist and ethnologist, as well as a sex therapist.

According to the unit's protocol, the following steps are required before any surgery: a medical consultation to discuss the health and sexual consequences of the mutilation, followed by a psychological consultation in order to assess the existence of post-traumatic disorders and avoid further post-surgery trauma. Finally, a consultation with a sex therapist will help assess and if possible, improve the woman's sexual satisfaction before surgery. All consultations take place in the same location but are spaced out over a certain period of time to allow for sufficient time for reflection and to formulate the type of support an individual woman will actually need. The unit's experience shows that repair surgery is not always necessary at the end of the consultation process.

Most women are referred to the unit by NGOs, social services, doctors or midwives. All consultations and surgery are fully reimbursed by the French social security system.

**Key aspects:** multidisciplinary approach, one-stop-shop, free of charge

**Challenges:** sustainability of institutional engagement

45. For more information see GAMS France at <http://gamsfrance.wordpress.com/category/reparation-excision-2/>.

### ► Promising practice

#### Malta: Migrant Health Unit<sup>46</sup> (cultural mediators)

In 2008, the Maltese Ministry for Health developed a Migrant Health Unit which seeks to inform migrant women about their rights to sexual and reproductive health, among other health topics. Gynaecological, antenatal, childbirth and postnatal services are offered to migrant women in Malta within the mainstream health-care services. A number of individuals from the migrant communities (namely Somali, Ethiopian, Eritrean, Congolese and Nigerian) have pursued the training programme for Cultural Mediators in Health Care which was developed and delivered by the Migrant Health Unit. Some of these cultural mediators have been employed by the Maltese health authority. Female cultural mediators provide assistance at the child health clinics, and in antenatal and gynaecological clinics. In 2009, the Migrant Health Unit began an awareness-raising initiative on FGM in co-operation with the cultural mediators. The unit worked closely with them to educate its staff about FGM and, in turn, to raise awareness within the migrant communities, and among Maltese health professionals and university students within the Faculty of Health Sciences. Because cultural mediators often leave Malta as part of resettlement programmes or for reasons of family reunification, the Ministry for Health is seeking to continue overcoming cultural and linguistic barriers to promote a positive clinical encounter with migrant patients and to raise cultural awareness among health professionals.

**Key aspects:** work with communities, training of cultural mediators, governmental initiative and integration of FGM prevention into health-care services

**Challenges:** sustainability of state's engagement

■ Ensure that victims of violence against women receive, in a language they understand, **adequate and timely information** (Articles 19 and 21), for example on available support services and legal remedies

#### Article 19 – Information

Parties shall take the necessary legislative or other measures to ensure that victims receive adequate and timely information on available support services and legal measures in a language they understand.

#### Article 21 – Assistance in individual/collective complaints

Parties shall ensure that victims have information on and access to applicable regional and international individual/collective complaints mechanisms. Parties shall promote the provision of sensitive and knowledgeable assistance to victims in presenting any such complaints.

This is particularly important for women and girls affected by or at risk of FGM. The obligation also extends to providing information on national legal procedures and on how to use regional and international human rights bodies to complain about ineffective protection and reparation, for example the European Court of Human Rights or the United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee).

■ Establish **shelters** (Article 23) in sufficient numbers to provide **safe accommodation** and to proactively reach out to victims

#### Article 23 – Shelters

Parties shall take the necessary legislative or other measures to provide for the setting-up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their children.

In particular, the convention encourages the establishment of specialised shelters, which may also be equipped to support women and girls affected or at risk of FGM. The Explanatory report to the Istanbul Convention underlines that “women’s shelters play a central role in networking, multi-agency co-operation and awareness-raising in their respective communities”<sup>47</sup>

46. For more information see [http://ehealth.gov.mt/HealthPortal/health\\_institutions/primary\\_healthcare/migrant\\_healthunit.aspx](http://ehealth.gov.mt/HealthPortal/health_institutions/primary_healthcare/migrant_healthunit.aspx).

47. Explanatory report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), paragraph 133.

Because their functions go beyond providing a safe place to stay, these specialised shelters would be best equipped to address the needs of girls and women who are escaping particular forms of violence such as FGM. To ensure their needs are properly addressed, these specialised shelters must provide women and girls affected by FGM with adequate support and enable them to cope with their traumatic experiences. As there is currently very little done in relation to FGM, it is advisable to ensure that shelters are better equipped to deal with FGM-related issues in the future. For example, they would benefit from employees that have themselves undergone the practice or employees that have been specifically trained on the issue.

In the context of protecting girls, safe accommodation is a central element. Where girls are at risk of or affected by FGM, their situation must be analysed in the light of their family context and attention should be paid to their specific needs. Indeed, in FGM-related cases, child protection services may be confronted with the issue of child placement when the right to custody is at stake. In these cases, it is crucial to guarantee that the girl child is placed in an environment which is adapted to her situation. This is particularly important in a situation where the right to custody is only temporarily suspended. Protection measures should not create further trauma for children. Accommodation with another member of the family or a foster family might therefore be more appropriate than a centre for neglected children or victims of child abuse, as these centres offer a very different type of support.

■ Provide round-the-clock free **telephone helplines** (Article 24) to give advice to callers on all forms of violence against women, including FGM, and to guide them to a service near them, confidentially or with due regard to their anonymity.

#### Article 24 – Telephone helplines

Parties shall take the necessary legislative or other measures to set up state-wide round-the-clock (24/7) telephone helplines free of charge to provide advice to callers, confidentially or with due regard for their anonymity, in relation to all forms of violence covered by the scope of this Convention.

#### ► Promising practice

##### **Germany: National telephone helpline “Violence against women support hotline” (08000 116 016),<sup>48</sup> also answers FGM calls**

In 2013, the German Federal Ministry for Family, Senior, Women's and Youth Affairs set up a national, toll-free telephone helpline that offers victims of all forms of violence against women competent advice on demand. Around 60 specially trained counsellors provide confidential support in 15 languages, around the clock, 365 days a year and free of charge. If needed, they can point callers to appropriate local support options in their area. This new service filled a gap in the support structure in Germany and is an important tool in directing victims, relatives and friends, as well as professionals, to appropriate support resources across the country.

An evaluation of the service use and callers during its first year in operation showed that the majority of calls were made in relation to domestic violence (35%), while many other calls or online requests for help were made in relation to a number of other forms of violence against women. FGM-related calls accounted for 0.07% of the calls (13 in total).<sup>49</sup>

**Key aspects:** free of charge, available around the clock, one national hotline instead of several local helplines

**Challenges:** sustainability of institutional engagement, raising awareness of its existence

48. For more information see [www.hilfetelefon.de/en/about-us/](http://www.hilfetelefon.de/en/about-us/).

49. See first annual report for 2013, published 31 March 2014 (in German), available at [www.hilfetelefon.de/de/aktuelles/pressekonferenz-jahresbericht/](http://www.hilfetelefon.de/de/aktuelles/pressekonferenz-jahresbericht/).

Obligations similar to those of the Istanbul Convention also exist in the EU Directive on the rights of victims of crime.<sup>50</sup> The directive creates obligations for EU member states to develop support services that are:

- ▶ accessible;
- ▶ of quality;
- ▶ for all victims;
- ▶ based on an integrated and targeted approach.

(See Articles 8 and 9 and recitals 37, 38, 39, 40, 62, 63 of the directive)

■ Encourage **reporting** to a competent authority or organisation by any person who witnesses or has reasonable grounds to suspect that an act of violence against women, such as FGM, has been or may be committed (Article 27).

#### Article 27 – Reporting

Parties shall take the necessary measures to encourage any person witness to the commission of acts of violence covered by the scope of this Convention or who has reasonable grounds to believe that such an act may be committed, or that further acts of violence are to be expected, to report this to the competent organisations or authorities.

To that aim, states parties shall take the necessary measures to allow professionals normally bound by rules of **professional secrecy** to report suspected cases of violence (Article 28).

#### Article 28 – Reporting by professionals

Parties shall take the necessary measures to ensure that the confidentiality rules imposed by internal law on certain professionals do not constitute an obstacle to the possibility, under appropriate conditions, of their reporting to the competent organisations or authorities if they have reasonable grounds to believe that a serious act of violence covered by the scope of this Convention, has been committed and further serious acts of violence are to be expected.

This obligation is particularly relevant in cases of FGM as the practice remains largely unreported. The reasons for such lack of reporting are various: reluctance of the women and girls subjected to FGM or members of their family to approach the police or other authorities, lack of awareness of the law, lack of understanding of the practice by professionals or because they consider it to be part of the cultural background of a woman or girl and do not question it.<sup>51</sup>

Professional confidentiality as to information gathered in the course of occupational duties is generally superseded by the right or duty to report cases of possible harm, particularly in relation to children. Laws and regulations that lift professional confidentiality rules under certain circumstances are therefore important mechanisms to ensure the implementation of FGM laws and the protection of girls at risk of FGM.

However, if legislation should encourage reporting, it is also essential to sufficiently define the terms “reasonable grounds of suspicion” and ensure it is not based solely on a family’s ethnic origin. In this respect, it is advisable to develop **guidelines and protocols for professionals**<sup>52</sup> (health-care providers, social workers and teachers) on the type of factual information that may give rise to a suspicion that should be reported to the authorities.

There is no harmonised approach towards or legislation regulating issues of confidentiality in Europe. However, breaches of confidence may be governed by **codes of ethics or professional** standards for the different professional groups.<sup>53</sup>

50. EU Directive establishing minimum standards on the rights, support and protection of victims of crime, op. cit.

51. For more information see UN Division for the Advancement of Women (2009), “Good practices in legislation on ‘harmful practices’ against women”, report of the Expert Group Meeting in Addis Ababa, Ethiopia, 26 to 29 May 2009, p. 17; Leye E. and Sabbe A. (2009), “Overview of legislation in the European Union to address female genital mutilation: challenges and recommendations for the implementation of laws”, p. 6; EIGE (2013a), op. cit., p. 45.

52. See, for example, recommendations developed by CSOs in Belgium in support of future governmental guidelines on prevention and protection: GAMS Belgique, INTACT, *Recommandations visant à améliorer la prévention et la protection des filles et des femmes victimes ou à risque d’excision*, January 2014, available at [www.intact-association.org/images/stories/news/recommandations%20mgf\\_2014-02-04.pdf](http://www.intact-association.org/images/stories/news/recommandations%20mgf_2014-02-04.pdf).

53. EIGE (2013a), report, op. cit., p. 47.

## Protection in situations of immediate risk

Effectively protecting the physical integrity of women and girls at immediate risk of FGM requires robust legal procedures and protocols that are followed by all relevant professionals. They are described in more detail in the section “Diligently investigate and prosecute”, below.

## International protection

As reflected in existing international standards,<sup>54</sup> the due diligence obligation to protect includes the right to **international protection**. Women and girls who suffer from gender-based violence in third countries can seek protection in another state when their own fails to prevent persecution or to offer adequate protection and effective remedies.

The UNHCR guidance note on refugee claims relating to FGM recognises the practice as a form of gender-based violence that inflicts severe harm, both mental and physical, and that amounts to persecution.<sup>55</sup> The UNHCR guidelines on child asylum claims further calls for a gender- and age-sensitive interpretation of the refugee definition, stating that FGM can be seen as a form of child-specific persecution.<sup>56</sup>

The Istanbul Convention reinforces the call for more gender sensitivity in refugee determination procedures and obliges states parties to take the “necessary legislative and other measures to ensure that **gender-based violence against women may be recognised as a form of persecution**” (Article 60) within the meaning of the Geneva Convention and as a valid ground for claiming asylum. It also foresees that subsidiary protection<sup>57</sup> may be granted to women who have not qualified as a refugee but who would face gender-based violence if returned to their previous country of residence.

### Article 60 – Gender-based asylum claims

- 1 Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/ subsidiary protection.
- 2 Parties shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds and that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status according to the applicable relevant instruments.
- 3 Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection.

The extent to which states currently recognise refugee status for women and girls at risk of gender-based and child-specific persecution varies significantly. Differences exist between states in the approaches to a gender-sensitive interpretation of the term “persecution” in accordance with the 1951 Geneva Convention. Possible reasons for such variations include the lack of explicit laws and guiding policies nationally, and inadequate provision of legal support and other services. Other obstacles arise from the lack of awareness and consideration of persecution by non-state actors. Some states regard gender-based violence as a “private” matter. When occurring in the private sphere, gender-based violence may be more difficult to prove, creating credibility issues for asylum seekers with gender-related claims.<sup>58</sup>

54. See in particular: UNHCR (2002), Guidelines on international protection No. 1: Gender-related persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the status of refugees, 7 May 2002, HCR/GIP/02/01; UNHCR (2009), op. cit.; Article 3 of European Convention on Human Rights as interpreted by the European Court of Human Rights, for example in European Court of Human Rights, *Izevbekhai and others v. Ireland* (No. 43408/08), 17 May 2011.

55. UNHCR (2002), op. cit., paragraph 9: “[t]here is no doubt that rape and other forms of gender-related violence, such as dowry-related violence, female genital mutilation... are acts which inflict severe pain and suffering – both mental and physical – and which have been used as forms of persecution, whether perpetrated by state or private actors.”

56. UNHCR (2009), *Guidelines on international protection No. 8: Child asylum claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the status of refugees*, 22 December 2009, HCR/GIP/09/08.

57. Explanatory report to the Istanbul Convention, Chapter IV on migration and asylum, paragraph 311.

58. Asylum Aid (United Kingdom) et al. (2012), *Gender related asylum claims in Europe: A comparative analysis of law, policies and practice focusing on women in nine EU Member States*, GENSEN project, p. 41. On improving the identification and states’ responses to the particular needs of vulnerable asylum seekers see: UNHCR (2013a), “Response to vulnerability in asylum – Project report”.

### Specific considerations related to FGM-based persecution

It is crucial that FGM is recognised as a continuing form of harm and not as a one-off experience. During her life, a woman may fear being subjected to another form of FGM and/or may suffer particularly serious long-term consequences of the initial procedure.<sup>59</sup>

FGM is a **form of persecution by a non-state agent** and it is mostly perpetrated by private individuals. This, however, does not preclude the establishment of a well-founded fear of persecution if the authorities concerned are unable or unwilling to protect girls and women from the practice.<sup>60</sup>

FGM can be both a **gender- and child-specific form of persecution**.<sup>61</sup> The fact that a girl is unwilling or unable to express her fear of being subjected to FGM does not mean she is not eligible for refugee status. In these cases, the fear remains well-founded since, objectively, FGM is clearly considered as a form of persecution.

Some national courts have qualified “girls at risk of FGM” as members of a particular social group pursuant to the requirements of the EU Qualification Directive.<sup>62</sup> Where a family seeks asylum based on the fear that a girl child of the family will be subjected to FGM, the child will normally be the main applicant, even when accompanied by her parents. In such a case, a parent can be granted derivative status based on his or her child’s refugee status.

### To fulfil their obligation to develop a gender-sensitive asylum system, states parties to the Istanbul Convention are required to:

■ Ensure a **gender-sensitive interpretation of each of the 1951 Geneva Convention grounds** (Article 60, paragraph 2)

According to the 1951 Geneva Convention, to be entitled to international protection, asylum seekers must show they have a well-founded fear of persecution due to their race, political opinion, religion or membership of a particular social group. They also have to demonstrate that they are unable to seek protection from their authorities in their own countries. Therefore, when implementing the Istanbul Convention, it is key to ensure that all grounds for asylum are given a gender-sensitive interpretation.

As is often the case in gender-based persecution, there is a trend<sup>63</sup> to consider FGM as falling within the ground of “membership of a particular social group”, and to overlook other grounds. Parents who oppose the performance of FGM on their daughters may come under the ground of political opinion. Similarly, where FGM is considered a religious practice, if a woman or a girl does not behave in accordance with the interpretation of her religion, such as by refusing to undergo FGM or to have FGM performed on her children, she may have a well-founded fear of being persecuted for reasons of religion.<sup>64</sup>

The EU Qualifications Directive<sup>65</sup> espouses some of the obligations contained in the Istanbul Convention. The directive was adopted in 2011 as part of the Common European Asylum System. It creates obligations for EU member states to:

- ▶ recognise that acts of persecution can take the form of acts of a gender-specific or child-specific nature (Article 9);
- ▶ consider gender-related aspects when determining membership of a particular social group or identifying a characteristic of such a group (Article 10);
- ▶ ensure that authorities and organisations working on “qualification” aspects receive adequate training (Article 37).

59. For more considerations see UNHCR (2009), op. cit., paragraphs 13-15.

60. Ibid, paragraphs 16-18.

61. Ibid, paragraphs 9-12.

62. See, in particular, decisions of the French Conseil d'Etat: *CE, Ass., 21 décembre 2012, M<sup>lle</sup> E. F., n° 332492; M<sup>me</sup> F., n° 332491; OFPRA c/ M<sup>me</sup> B C, n° 332607*. In its 2012 decision, the French Conseil d'Etat applied the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. A recast version of this directive was adopted in December 2011. EU member states had an obligation to transpose it into their national legislation by 21 December 2013 (see Directive 2011/95/EU, op. cit.).

63. *Asylum Aid (United Kingdom) et al.* (2012), op. cit., p. 55; and UNHCR (2009), op. cit., paragraph 22.

64. For more considerations see UNHCR (2009), op. cit., paragraph 27.

65. EU Directive 2011/95/EU, op. cit.

■ Develop **gender-sensitive reception conditions** and **support services** for asylum seekers (Article 60, paragraph 3)

The Istanbul Convention sets out the obligation to establish gender-sensitive reception procedures. They should take into account women's and men's differences in terms of experience and specific protection needs.

This may include the identification of women and girls who have experienced some form of violence against women, including FGM, as early in the process as possible, the separate accommodation of single men and women, separate toilet facilities, and formal arrangements for intervention and protection in instances of gender-based violence.<sup>66</sup> Additional psycho-social and crisis counselling, as well as medical care for trauma treatment, should also be made available. Furthermore, **access to information** related to gender-based violence should be guaranteed to ensure that women asylum seekers are aware of their rights and of the available assistance services. In support of the above, the convention requires the development of **gender guidelines** and the training of reception-centre staff.

Some of the obligations of the Istanbul Convention are also covered by the EU Reception Conditions Directive.<sup>67</sup> The directive was adopted in 2013 as part of the Common European Asylum System. It creates obligations for EU member states to:

- ▶ take into account the specific situation of vulnerable persons such as, inter alia, pregnant women, persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation (Article 21);
- ▶ take into consideration gender and age-specific concerns and the situation of vulnerable persons within the premises and accommodation centres (Article 18, paragraph 3);
- ▶ take appropriate measures to prevent gender-based violence, within the premises and accommodation centres (Article 18, paragraph 4);
- ▶ ensure that persons working in accommodation centres and other authorities and organisations working on "reception conditions" receive adequate training with respect to the needs of both "male and female" asylum seekers (Article 18, paragraph 7, and Article 25).

The identification of gender-sensitive reception needs for women affected by FGM requires adequate measures to address legal and social barriers that may prevent women and girls from accessing vital health or other services. Restrictions on the freedom of movement might bar women asylum seekers from accessing specialist health care or counselling services. Social barriers may include language barriers, a lack of competent or non-judgmental interpreters and different ways of understanding and viewing health issues. Some women asylum seekers may not be aware that they have undergone FGM, particularly if it was performed at an early age and their reason for fleeing their country of origin is unrelated to FGM. Women may come to health professionals with long-term complications resulting from FGM but may not know that these complications are associated with it.<sup>68</sup> There is also a need to address the psychological consequences of FGM. They may include fear of sexual intercourse, post-traumatic stress disorder, anxiety, depression and memory loss.<sup>69</sup>

Support services should aim to empower women and enable them to actively rebuild their lives. For example, while their claims for asylum are being considered, asylum seekers from affected communities should receive information about the consequences of FGM, and the existing legislation and actions to end the practice.<sup>70</sup> The reception period should be conceived as an opportunity to undertake prevention work with FGM-affected communities.

66. Explanatory report to the Istanbul Convention, op. cit., paragraph 314.

67. EU Directive 2013/33/EU, op. cit.

68. IFPA (Irish Family Planning Association) (2011), *Sexual health and asylum. Handbook for people working with women seeking asylum in Ireland*, p. 14.

69. Ibid.

70. See, for example, activities organised by the NGO GAMS in Belgium: groups for discussion; reception and support of women affected by FGM. More information is available at: [www.gams.be/index.php?option=com\\_content&view=article&id=35&Itemid=38&lang=en](http://www.gams.be/index.php?option=com_content&view=article&id=35&Itemid=38&lang=en).

## ■ Develop **gender-sensitive procedures for asylum seekers** (Article 60, paragraph 3)

**Gender-sensitive procedures** that take into account the particular situation of women affected by FGM would imply that states parties:

- ▶ put in place a refugee determination process that is respectful of cultural sensitivities;
- ▶ ensure that women and girls do not face further stigmatisation upon arrival in destination countries;
- ▶ guarantee that women's needs are met with a supportive environment allowing them to disclose relevant information (this supposes that the confidentiality of their claim and the objective of the procedure are made clear at the outset).

In particular, the obligation to put in place gender-sensitive procedures would include:<sup>71</sup>

- ▶ the provision of information on the asylum procedure, including gender-specific aspects of the procedure;
- ▶ the opportunity to have a personal interview separately from their husbands/partners and without the presence of family members (the presence of children might affect the capacity of a woman to disclose or describe in detail acts of violence she experienced);
- ▶ the opportunity for women to raise independent needs for protection and gender-specific grounds leading to a separate application for international protection;
- ▶ gender-sensitive and child-sensitive interviews led by a trained interviewer, and assisted by a trained interpreter when necessary;
- ▶ the possibility for the applicant to express a preference for the gender of their interviewer and interpreter;
- ▶ the elaboration of gender guidelines on the adjudication of asylum claims, and training to ensure their implementation.

Some of the obligations of the Istanbul Convention are also contained in the EU Procedures Directive.<sup>72</sup> Adopted in 2013 as part of the Common European Asylum System, the directive creates obligations for EU member states to:

- ▶ identify asylum seekers in need of special procedural guarantees due to, *inter alia*, their gender, age or forms of psychological, physical or sexual violence (Article 24);
- ▶ develop gender-sensitive examination procedures (Article 15, paragraph 3);
- ▶ ensure precise and up-to-date information, including on child-related and gender issues, is provided to all staff examining applications; information should be obtained from various sources, such as relevant international human rights organisations (Article 10, paragraph 3);
- ▶ train the staff at the determining authority (Article 4, paragraph 3).

## ■ Respect the **principle of non-refoulement** (Article 61)

States parties have the obligation to protect female victims of violence, regardless of their residence status. In this respect, states should guarantee that women in need of protection are not returned to any country where their life would be at risk or where they may be subjected to torture or inhuman or degrading treatment or punishment. Such obligation should extend to abuses by non-state actors or individuals who perpetrate FGM when the authorities in the country concerned are complicit, fail to exercise due diligence or are negligent in their effort to prevent or redress the abuse.

### Article 61 – Non-refoulement

- 1 Parties shall take the necessary legislative or other measures to respect the principle of non-refoulement in accordance with existing obligations under international law.
- 2 Parties shall take the necessary legislative or other measures to ensure that victims of violence against women who are in need of protection, regardless of their status or residence, shall not be returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment.

71. See Explanatory report to the Istanbul Convention, op. cit., paragraph 317.

72. EU Directive 2013/32/EU, op. cit.



## ► Promising practice

### Belgium: Gender-sensitive asylum procedures

In 2007, Belgium adopted a law on gender mainstreaming<sup>73</sup> which obliged its authorities to step up efforts to integrate a gender dimension into all its public policies, including asylum procedures. Since then, the authorities have developed a series of measures seeking to improve knowledge on gender-related aspects of the asylum procedure for both asylum authorities and asylum seekers.

#### For asylum authorities

A set of instructions to guide asylum officers when examining gender-related asylum claims was adopted. However, they are not legally binding and not public. In 2011, two operational notes on asylum claims based on FGM were adopted.<sup>74</sup> In 2012, Belgium also organised training on gender-related issues for interpreters. The objective was to sensitise and inform them about the various specificities of gender-related asylum claims. Following the training, interpreters received written instructions on how to deal with such cases. Some of them received additional training on the issue of FGM.<sup>75</sup>

#### For asylum seekers

A gender-specific brochure entitled "Women, girls and asylum in Belgium: information for women and girls seeking asylum"<sup>76</sup> was developed in seven languages. It provides specific information on rights and obligations of asylum seekers such as the right to ask for a female interviewer and interpreter, the right to have an individual interview and access to childcare during the interview. The brochure also gives information on particular issues which could be relevant for women: pregnancy, contraception and other sexual and reproductive health and rights matters, health and well-being issues, violence within the family, other forms of abuse, exploitation and FGM.

The brochure is distributed to all women entering the asylum system. It was updated in 2011 after the national authority conducted a survey with female asylum seekers, refugees and relevant NGOs to assess its impact. In practice, however, the distribution of this brochure at registration or during the interview is not systematic.<sup>77</sup>

**Key aspects:** legal obligation for gender mainstreaming, government initiative, actions targeted at professionals and asylum seekers, monitoring and evaluation of impact

**Challenges:** no national harmonised approach to gender-sensitive asylum procedure, need for regular and institutionalised training of all asylum professionals, sustainability of government commitment

### The issue of internal flight alternatives in FGM-related cases

In the context of an asylum claim based on persecution by non-state actors, it is regular practice of national refugee status determination authorities or asylum courts to inquire whether there was/is an internal alternative location to which the applicant should have fled before seeking asylum abroad or to which the applicant ought to be returned because protection would be available. In FGM-related asylum cases, it is often difficult to argue that an internal flight or relocation alternative exists because it is generally practised in all parts of the country. Where this is not the case, the general situation in relation to the rights of women and girls ought to be taken into account to assess whether any proposed internal flight or relocation alternative is reasonable for the particular woman and girl given her circumstances. The UNHCR Guidance note on refugee claims relating to female genital mutilation states that "in determining whether there is an internal flight or relocation alternative in cases involving FGM, it is necessary to determine whether such an alternative is both relevant and reasonable."<sup>78</sup>

73. La loi du 12 janvier 2007 visant au contrôle de l'application des résolutions de la Conférence mondiale sur les femmes, réunie à Pékin en septembre 1995 et intégrant la dimension du genre dans l'ensemble des politiques fédérales (M.B. 13/02/2007) [Law of 12 January 2007 introducing a gender dimension to all federal policies in Belgium and aiming at monitoring the implementation of the Beijing Declaration and Platform for Action adopted at the Fourth World Conference of Women in Beijing in 1995 (M.B. 13/02/2007)].

74. Asylum Aid (United Kingdom) et al. (2012), op. cit., p. 35.

75. Office of the Commissioner General for Refugees and Stateless Persons (Belgium), *Annual report 2012*, Brussels, June 2013, p. 22. More information on gender-specific activities of the office will become available in the course of 2014. The 2013 Annual Report was not available at the time of writing.

76. Information about this brochure is available at: [www.cgra.be/en/Publications/brochures/](http://www.cgra.be/en/Publications/brochures/).

77. For more information see: Asylum Aid (United Kingdom) et al., op. cit.

78. For more considerations on internal flight alternatives see UNHCR (2009), op. cit., paragraphs 28-32.

# Diligently investigate and prosecute

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## Investigate and prosecute: general definition

**T**he Istanbul Convention requires states parties to take the necessary legislative and other measures to ensure that investigations and judicial proceedings in relation to violence against women are carried out without undue delay. They should take into consideration the rights of the victim during all stages of criminal proceedings (Articles 49 and 50).

The obligation to investigate and punish acts of gender-based violence with due diligence has been defined as “an obligation to adopt or modify legislation while reinforcing the capacities and powers of police, prosecutors and magistrates.”<sup>79</sup> To this end, international law requires the development of specific policing practices and procedures in relation to cases involving the investigation and prosecution of violence against women.<sup>80</sup> Specific protocols on investigation and the collection of evidence can also be developed.

The objective is to encourage women to seek justice and reparation rather than feel intimidated by the authorities. Similarly, when cases of gender-based violence reach the judicial system, judges are required to hand down appropriate sentences for these crimes.

## Investigating and prosecuting FGM: what does the Istanbul Convention say?

### Investigate and protect

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Where suspicions arise that a girl or a woman is at risk or is affected by violence against women, including FGM, protection systems that help with identification, reporting, referral and support are required to trigger a co-ordinated action that would prevent violence from taking place and protect the girl or woman in question (Articles 18, 49, 50, 51 and 53).

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79. UN Commission on Human Rights (2006), *op. cit.*, paragraph 50.

80. See Article 5, paragraph 2, of the Istanbul Convention as well as Amnesty International (2010), Six-point checklist on justice for violence against women, ACT 77/002/2010.

## To that effect, the Istanbul Convention foresees an obligation for the states parties to:

■ Ensure **law-enforcement agencies engage promptly and appropriately** in the prevention and protection of a woman or a girl at risk by taking preventive operational measures and ensuring the collection of evidence (Article 50).

### Article 50 – Immediate response, prevention and protection

- 1 Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies respond to all forms of violence covered by the scope of this Convention promptly and appropriately by offering adequate and immediate protection to victims.
- 2 Parties shall take the necessary legislative or other measures to ensure that the responsible law enforcement agencies engage promptly and appropriately in the prevention and protection against all forms of violence covered by the scope of this Convention, including the employment of preventive operational measures and the collection of evidence.

When a child under 18<sup>81</sup> is at risk of FGM it is advisable that professionals first consider adopting voluntary child protection measures which may include:

- ▶ providing information on the consequences of FGM and on national legislation to the parents;
- ▶ hearings with the family;
- ▶ counselling and warnings to the family.

If these voluntary measures prove insufficient, compulsory child protection measures may be considered. These include issuing a protection order to ensure the physical integrity of the child at risk and may also include the temporary removal from the family. While protection orders are generally considered an effective safety measure in domestic violence cases, they have rarely been issued in the context of FGM. The Istanbul Convention requires their availability to women and girls at risk of any form of violence against women, including FGM, and states parties to the convention will have to take the necessary legislative measures to ensure they may easily apply for such orders in relation to all forms of violence covered by the convention (Article 53).

■ Ensure that an **assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence** is carried out by all relevant authorities (Article 51)

### Article 51 – Risk assessment and risk management

- 1 Parties shall take the necessary legislative or other measures to ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities in order to manage the risk and if necessary to provide co-ordinated safety and support.
- 2 Parties shall take the necessary legislative or other measures to ensure that the assessment referred to in paragraph 1 duly takes into account, at all stages of the investigation and application of protective measures, the fact that perpetrators of acts of violence covered by the scope of this Convention possess or have access to firearms.

In FGM-related cases, professionals in charge of assessing the risks for a woman or a girl would need to:

- ▶ check whether parents can satisfactorily guarantee that they will not proceed with FGM in the event the person at risk is a child;
- ▶ establish whether some other relatives have undergone the practice and whether there are siblings at similar risk;
- ▶ consider whether it is likely a girl or a woman will be removed from the country to undergo FGM abroad while knowing that the risk is higher during the summer holiday season.

81. For more information on child protection measures adopted in EU countries, see EIGE (2013a), op. cit., p. 47; Leye E. and Temmerman M. (2008), op. cit.

There are additional risks for women and girls who speak out against FGM which must be taken into account when determining the type of protection measures that women and girls ought to benefit from during the criminal proceedings.

#### **Risk for people speaking out against FGM**

Women who speak out against the practice in Europe have been known to be threatened, intimidated and even attacked by people from their communities. Some were threatened to the extent that they were forced to move house.

Just like any human rights defender, anti-FGM activists must be provided with information on existing mechanisms (e.g. police protocols) to enable them to seek protection when they need it. Simultaneously, police authorities must be trained on the particular nature of such threats so that they are able to protect them. The overall aim should be to avoid the silencing of activists.<sup>82</sup>

**Protocols for law-enforcement authorities** and other relevant authorities who are likely to devise and manage safety plans for a particular victim or person at risk can help ensure that an appropriate risk assessment for each individual woman or child at risk of violence, including FGM, is carried out.

#### **► Promising practice**

##### **Spain: Catalan protocol for the prevention of FGM<sup>83</sup>**

In 2002, the Catalan Government developed a protocol which aims at preventing FGM and addresses health professionals, primary care services, schools, police and others, such as NGOs, working on prevention. Since then, it has been several times amended to adapt to changes in legislation (new legislation on gender-based violence and children's rights and modifications related to FGM in the penal code).

The protocol seeks to ensure a comprehensive intervention by the relevant services and departments and helps define intervention measures to be undertaken by professionals who have been trained on FGM. When a person at risk is identified, professionals are first required to assess the risk level (urgent or non-urgent) and then to carry out measures of protection. If there is a suspicion that FGM has been performed, health institutions are expected to make a diagnosis. Afterwards, the youth authority can require measures to be taken to ensure the physical and psychological recovery of the victim, ask for judicial protection measures and pass on the information to the prosecution services.

The impact and efficiency of the protocol are yet to be evaluated. However, it can be assumed that this cross-sectorial co-operation framework contributes to better prevention and protection of affected women and girls.

**Key aspects:** protocol supporting and guiding professionals' actions, integrated approach, cross-sectorial co-operation, local government initiatives

**Challenges:** evaluation, sustainability of the public authorities' engagement

82. UN General Assembly (1999), Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, resolution adopted on 8 March 1999, A/RES/53/144.

83. The Catalan protocol has been defined as a good practice by EIGE. More information is available at <http://eige.europa.eu/content/the-catalan-protocol-for-the-prevention-of-fgm>.

## ► Promising practice

### Belgium: FGM Prevention Kit – Decision tree<sup>84</sup>

In 2014, Belgian CSOs produced a decision tree as part of an “FGM Prevention Kit” to guide professionals in detecting FGM and supporting girls affected by or at risk of the practice. The decision tree is a protocol describing the protection measures that professionals need to adopt when confronted with a risk or an act of FGM. The tree is supplemented by risk assessment indicators and a risk scale which professionals are advised to consider before reporting. Risk indicators aim to help professionals in making an objective assessment of the situation and have been designed to be culturally and child-sensitive. Once the risk indicators have been identified, professionals can refer to a five level risk scale: 1. no risk; 2. possible risk but not imminent; 3. serious and imminent risk; 4. suspicion of FGM; 5. FGM recorded. Protection measures as described in the decision tree are then determined according to the level of risk identified by the professionals.

The risk indicators as well as the decision tree have been agreed after consultation with various stakeholders through the “strategies concertées” (concerted strategies) programme.<sup>85</sup> Developed as part of the Belgian national action plan on violence against women, this programme brings together NGOs, governmental institutions, researchers, CSOs and FGM-affected communities. The programme allows for strategic discussion and multidisciplinary workshops to develop actions and tools tailored to tackle FGM in Belgium. Since the creation of the programme in 2010, Belgium improved the co-ordination and quality of its FGM prevention work. The FGM Prevention Kit,<sup>86</sup> which features the decision tree, is the result of this co-ordination. The kit aims to facilitate access to all prevention tools available to professionals and other stakeholders likely to be in contact with women and girls affected by or at risk of FGM in Belgium. In addition to the decision tree, such tools include a guide for professionals, a brochure on professional secrecy, and a manual for interviews with girls and their families.

**Key aspects:** protocol designed in response to a need expressed by stakeholders and developed with them, cultural and child-sensitive approach, protocol integrated into a comprehensive action on prevention and protection

**Challenges:** dissemination, training of professionals, long-term institutional commitment

■ Ensure that an **investigations and judicial proceedings in relation** to cases concerning all forms of violence against women **are carried out without undue delay** (Article 49)

#### Article 49 – General obligations

- 1 Parties shall take the necessary legislative or other measures to ensure that investigations and judicial proceedings in relation to all forms of violence covered by the scope of this Convention are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings.
- 2 Parties shall take the necessary legislative or other measures, in conformity with the fundamental principles of human rights and having regard to the gendered understanding of violence, to ensure the effective investigation and prosecution of offences established in accordance with this Convention.

To ensure adequate investigation into gender-based violence, including FGM cases, police protocols or guides to investigation that are geared towards the girl's or woman's safety, while at the same time respecting their dignity and the sensitive nature of the offence are helpful. They should focus on interviewing techniques for young people and women affected. They should also be accompanied by regular state-of-the-art training on FGM and on the most respectful methods of dealing with women and girls affected by or at risk of FGM. To ensure the collection of evidence that may be used at trial, it is important to ensure the timely and sensitive collection of medical evidence and to train the police on how to question girls or women in a respectful, timely and age-appropriate manner.<sup>87</sup>

84. Information available at [www.strategiesconcertees-mgf.be/wp-content/uploads/MGF-tryptique\\_final\\_RTP.pdf](http://www.strategiesconcertees-mgf.be/wp-content/uploads/MGF-tryptique_final_RTP.pdf).

85. Information on the consultation process is available at [www.strategiesconcertees-mgf.be/presentation/dispositif/](http://www.strategiesconcertees-mgf.be/presentation/dispositif/).

86. Information on the FGM Prevention Kit is available at [www.strategiesconcertees-mgf.be/scmgf-15/](http://www.strategiesconcertees-mgf.be/scmgf-15/).

87. See UN Virtual Knowledge Centre to End Violence against Women and Girls, available at [www.endvawnow.org/en/articles/721-police-protocols.html](http://www.endvawnow.org/en/articles/721-police-protocols.html).

### ► Promising practice

#### United Kingdom: Metropolitan Police – Guide to investigation<sup>88</sup>

In 2008, the Metropolitan Police (London) issued standard operating procedures (SOP) on FGM entitled “Female genital mutilation – A guide to investigation”, within the Project Azure. These guidelines target police forces and provide instructions with regard to dealing with all incidents of FGM. The SOP provides an overview of FGM, describes risk groups and gives step-by-step instructions for police working on FGM cases. They describe the procedures to be adopted when a girl is at risk of FGM or a girl or an adult woman has already been subjected to the practice. The objective is to ensure that those at risk are protected and supported, and to achieve best evidence for prosecution and protection orders. The procedures are advised to be utilised in conjunction with the London Safeguarding Children Board document “Safeguarding children at risk of abuse through female genital mutilation”, and the current London Child Protection Procedures. The SOP is mandatorily reviewed every three years and otherwise updated as necessary.

**Key aspects:** child-, gender- and culture-sensitive approach to investigation, joint work with other agencies and communities, consistent approach to investigation and safeguarding

**Challenges:** regular training of professionals, sustainability of state’s commitments

■ Offer **restraining or protection orders** (Article 53) for women and girls at immediate risk of violence or further violence

#### Article 53 – Restraining or protection orders

- 1 Parties shall take the necessary legislative or other measures to ensure that appropriate restraining or protection orders are available to victims of all forms of violence covered by the scope of this Convention.
- 2 Parties shall take the necessary legislative or other measures to ensure that the restraining or protection orders referred to in paragraph 1 are:
  - available for immediate protection and without undue financial or administrative burdens placed on the victim;
  - issued for a specified period or until modified or discharged;
  - where necessary, issued on an *ex parte* basis which has immediate effect;
  - available irrespective of, or in addition to, other legal proceedings;
  - allowed to be introduced in subsequent legal proceedings.
- 3 Parties shall take the necessary legislative or other measures to ensure that breaches of restraining or protection orders issued pursuant to paragraph 1 shall be subject to effective, proportionate and dissuasive criminal or other legal sanctions.

The main objective of such measures is to prevent the commission of violence and to protect affected women. It also offers a fast legal remedy to protect a woman or girl at risk of FGM. In order to ensure a fast response, such orders can be issued on an *ex parte* basis, which means that a judge or other competent official would have the authority to issue a temporary restraining or protection order based on the request of one party only.

In addition, UN Women (the United Nations Entity for Gender Equality and the Empowerment of Women)<sup>89</sup> recommends that legislation on FGM should provide that any “reputable” person (family member, teacher, neighbours, etc.) being aware of a child in need of protection and having reasonable ground for a suspected risk of FGM, may petition the court for an order of protection from FGM. Similarly, it is recommended that girls over the age of 10, as well as all women, be entitled to apply for a protection order.

88. Information available at [www.londonscb.gov.uk/fgm/](http://www.londonscb.gov.uk/fgm/). Other examples of police protocols can be found at the EIGE Resources and Document Centre.  
89. See the UN Virtual Knowledge Centre to End Violence against Women and Girls, at [www.endvawnow.org/en/articles/714-protection-orders.html](http://www.endvawnow.org/en/articles/714-protection-orders.html).

The protection order should include:

- ▶ injunction against the performance of FGM;
- ▶ removing the girl from her household, if the risk is imminent;
- ▶ withdrawal of travel permission if the court determines that there is a risk that the child will be taken out of the country to undergo FGM.

When there is reason to believe that a girl is at risk from her parents or guardian, the Istanbul Convention obliges states parties to take the necessary legislative and other measures to ensure that the exercise of **custody rights** does not jeopardise the rights and safety of the child (Article 31).<sup>90</sup>

#### Article 31 – Custody, visitation rights and safety

- 1 Parties shall take the necessary legislative or other measures to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account.
- 2 Parties shall take the necessary legislative or other measures to ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children.

## Prosecute and punish

The Istanbul Convention introduces a number of new criminal offences and requires states parties to legislate and thereby recognise various forms of violence against women, including FGM. Article 38 defines FGM as excising, infibulating or performing any other mutilation on the whole or any part of a woman's labia majora, labia minora or clitoris.

The introduction of criminal law definitions of specific forms of violence against women such as FGM aims at strengthening the legal protection and at guiding states parties in putting in place effective policies to limit such forms of violence. It also aims at ensuring effective prosecution and at bringing perpetrators to justice.

**A number of measures are required to this effect.  
The convention foresees an obligation for the states parties to:**

■ Introduce the act of performing FGM and inciting, coercing or procuring a girl to undergo FGM as a **criminal offence** (Article 38)

#### Article 38 – Female genital mutilation

Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:

- a excising, infibulating or performing any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris;
- b coercing or procuring a woman to undergo any of the acts listed in point a;
- c inciting, coercing or procuring a girl to undergo any of the acts listed in point a.

This is a first step to recognising the severity of the practice, whether or not it is performed by medical professionals. This includes the act of coercing or procuring a woman or girl to undergo the procedure “voluntarily”.

90. It is important to read this obligation in conjunction with the provisions related to child protection measures and child placement (see second chapter on protection and support).

■ Ensure that FGM is punishable by **effective, proportionate and dissuasive sanctions** (Article 45, paragraph 1)

#### Article 45, paragraph 1

Parties shall take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. These sanctions shall include, where appropriate, sentences involving the deprivation of liberty which can give rise to extradition.

**Justifications** on the basis of culture, custom, religion, tradition or so-called “honour” **cannot be used in order to reduce sanctions** (Article 42). This means that no legal defence based on the invocation of cultural or religious reasons should be allowed to justify the commission of FGM. Nor shall the victim be required to participate in mandatory mediation or conciliation measures.

#### Article 42 – Unacceptable justifications for crimes, including crimes committed in the name of so-called “honour”

- 1 Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called “honour” shall not be regarded as justification for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour.
- 2 Parties shall take the necessary legislative or other measures to ensure that incitement by any person of a child to commit any of the acts referred to in paragraph 1 shall not diminish the criminal liability of that person for the acts committed.

The convention foresees a catalogue of circumstances in the performance of FGM that would aggravate the crime and lead to harsher criminal sanctions (Article 46). This includes situations where the perpetrator has previously been convicted of FGM, where the offence resulted in severe physical or psychological harm for the affected woman, or if the offence was committed against a child or adolescent under 18.

#### Article 46 – Aggravating circumstances

Parties shall take the necessary legislative or other measures to ensure that the following circumstances, insofar as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offences established in accordance with this Convention:

- a the offence was committed against a former or current spouse or partner as recognised by internal law, by a member of the family, a person cohabiting with the victim or a person having abused her or his authority;
- b the offence, or related offences, were committed repeatedly;
- c the offence was committed against a person made vulnerable by particular circumstances;
- d the offence was committed against or in the presence of a child;
- e the offence was committed by two or more people acting together;
- f the offence was preceded or accompanied by extreme levels of violence;
- g the offence was committed with the use or threat of a weapon;
- h the offence resulted in severe physical or psychological harm for the victim;
- i the perpetrator had previously been convicted of offences of a similar nature.



The parents or close relatives are frequently those who perform or seek out a practitioner to subject their girl child to the practice. This is why the convention foresees the **withdrawal of parental rights** (Article 45, paragraph 2) as a possible measure if the girl's safety cannot be guaranteed in any other way. This may be of particular relevance where a first attempt by a parent or legal guardian to subject a girl to the practice has failed and there is reason to believe another attempt will be made.

#### Article 45, paragraph 2

Parties may adopt other measures in relation to perpetrators, such as:

- ▶ monitoring or supervision of convicted persons;
- ▶ withdrawal of parental rights, if the best interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way.

However, consideration should be given first and foremost to the child's best interest. Prison sentences, large fines or long separations from the parents/family may have a serious impact on the child's well-being and must therefore be weighed against other options.<sup>91</sup> Efforts should be made to change the underlying beliefs that perpetuate FGM. In this respect, it is advisable to envisage the temporary withdrawal of parental rights in tandem with follow-up measures by social services. In particular, states parties should seek inspiration from the provisions of the Istanbul Convention related to preventive measures, and **ensure specific prevention programmes** are developed for the parents or members of the family.

■ Apply the principle of **extraterritorial jurisdiction** (Article 44) in FGM-related cases<sup>92</sup>

This means that states parties shall make sure FGM is punishable if committed in a third country by or against one of their nationals or residents even if this practice is not considered a criminal offence in that country (Article 44, paragraph 3). Thus, the Istanbul Convention covers new ground by eliminating the need for the principle of dual criminality for FGM – a principle that allows for cross-border prosecution only if the act in question is placed under criminal sanction in both countries. Similarly, the Istanbul Convention obliges its parties to take the necessary measures to establish jurisdiction over an FGM offence when an alleged perpetrator is present on their territory (Article 44, paragraph 5).

#### Article 44, paragraph 3

For the prosecution of the offences established in accordance with Articles 36, 37, 38 and 39 of this Convention, Parties shall take the necessary legislative or other measures to ensure that their jurisdiction is not subordinated to the condition that the acts are criminalised in the territory where they were committed.

#### Article 44, paragraph 5

Parties shall take the necessary legislative or other measures to establish jurisdiction over the offences established in accordance with this Convention, in cases where an alleged perpetrator is present on their territory and they do not extradite her or him to another Party, solely on the basis of her or his nationality.

91. UNICEF (2010), "Legislative reform to support the abandonment of female genital mutilation/cutting". In its thematic paper UNICEF recalls that the Convention on the Rights of the Child (in Article 9.1) "provides that unless necessary for the best interest of the child and determined by competent authorities according to the law, a child should not be separated from his or her parents. Only when the girl appears to be at high risk, and if the parent after multiple warnings is assessed as not responding to other interventions, should long-term alternative care options be considered".

92. States parties to the convention may opt out of this obligation by entering a reservation in accordance with Article 78, paragraph 2.

■ Protect the rights and **interests of victims** (Article 56), including their special needs as witnesses

**Article 56 – Measures of protection**

- 1** Parties shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and judicial proceedings, in particular by:
  - a** providing for their protection, as well as that of their families and witnesses, from intimidation, retaliation and repeat victimisation;
  - b** ensuring that victims are informed, at least in cases where the victims and the family might be in danger, when the perpetrator escapes or is released temporarily or definitively;
  - c** informing them, under the conditions provided for by internal law, of their rights and the services at their disposal and the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein, as well as the outcome of their case;
  - d** enabling victims, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and have their views, needs and concerns presented, directly or through an intermediary, and considered;
  - e** providing victims with appropriate support services so that their rights and interests are duly presented and taken into account;
  - f** ensuring that measures may be adopted to protect the privacy and the image of the victim;
  - g** ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided where possible;
  - h** providing victims with independent and competent interpreters when victims are parties to proceedings or when they are supplying evidence;
  - i** enabling victims to testify, according to the rules provided by their internal law, in the courtroom without being present or at least without the presence of the alleged perpetrator, notably through the use of appropriate communication technologies, where available.
- 2** A child victim and child witness of violence against women and domestic violence shall be afforded, where appropriate, special protection measures taking into account the best interests of the child.

The Istanbul Convention contains a general requirement to protect victims from intimidation, retaliation and repeat victimisation. Indeed, victims regularly withdraw complaints due to intimidation and suffer acts of retaliation from perpetrators because they are left without support and protection during the investigations, prosecution and the trial itself.

Victims also have a right to be kept informed of progress in their case, the rights and services at their disposal, as well as of the whereabouts of their perpetrators. They can be protected from contact with the perpetrator during court hearings, and permitted to give evidence through video link or from behind screens and, in general, their privacy should be respected.



# Integrated policies

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## Integrated policies: general definition

The Istanbul Convention requires states to take an **integrated and interdisciplinary approach** (Article 7) to violence against women. The promotion of co-operation and co-ordinated measures between the police, health and social services, the judiciary, child protection agencies, civil society and other relevant actors has proven<sup>93</sup> to be an effective response to the elimination of gender-based violence and practices such as FGM.

## Integrated policies on FGM: what does the Istanbul Convention say?

The convention foresees obligations for states parties to:

■ Establish a **framework for comprehensive and co-ordinated policies** across all levels of government and agencies (Article 7)

### Article 7 – Comprehensive and co-ordinated policies

- 1 Parties shall take the necessary legislative and other measures to adopt and implement State-wide effective, comprehensive and co-ordinated policies encompassing all relevant measures to prevent and combat all forms of violence covered by the scope of this Convention and offer a holistic response to violence against women.
- 2 Parties shall ensure that policies referred to in paragraph 1 place the rights of the victim at the centre of all measures and are implemented by way of effective co-operation among all relevant agencies, institutions and organisations.
- 3 Measures taken pursuant to this article shall involve, where appropriate, all relevant actors, such as government agencies, the national, regional and local parliaments and authorities, national human rights institutions and civil society organisations.

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93. See UN General Assembly (2006), "In-depth study on all forms of violence against women", report of the Secretary-General, 6 July 2006, A/61/122/Add.1; and Kelly L. and Dubois L. (2008), *Combating violence against women: minimum standards for support services*, Council of Europe, Strasbourg.

The Istanbul Convention requires states parties to adopt state-wide effective, comprehensive and co-ordinated policies that comprise all relevant measures to prevent and combat FGM, as well as all other forms of gender-based violence, and that form part of a holistic response to violence against women. To ensure the effective implementation of such integrated policies, states parties are also expected to provide appropriate **financial and human resources** (Article 8).

#### Article 8 – Financial resources

Parties shall allocate appropriate financial and human resources for the adequate implementation of integrated policies, measures and programmes to prevent and combat all forms of violence covered by the scope of this Convention, including those carried out by non-governmental organisations and civil society.

A national action plan can serve as an appropriate framework in which to group all necessary policies on FGM.

#### ► Promising practice

##### **Finland: National Action Plan for the prevention of circumcision of girls and women (2012-2016)<sup>94</sup>**

In 2012, the Finnish Ministry for Social Affairs and Health adopted a four-year National Action Plan (NAP) on FGM. This is the result of dialogue between national experts appointed in 2009. This expert group included representatives from the Ministry of Social Affairs and Health, the National Institute for Health and Welfare, the Ministry of the Interior, the Ministry of Employment and the Economy, the National Police Board and various NGOs and international organisations. The Ministry of Education and Culture was also consulted in the preparation of the NAP.

The NAP specifically targets decision makers and professionals in contact with affected communities along with NGOs and key persons in targeted communities. It is expected to be used and promoted by municipalities.

The NAP foresees the training of professionals, the development of material on FGM for professionals and affected communities, the development of specialised health services at local level, child protection measures, research and preventive measures targeted at the communities.

Key actors in implementation are identified for each of these activities. Indeed, the purpose of the NAP is to create permanent Finnish national and regional structures to prevent girls and women from undergoing FGM. It aims at more effective collaboration, clearer division of work and better co-ordination between different authorities and other actors. It is foreseen that a liaison officer will be appointed by the National Institute for Health and Welfare to manage a national network of relevant stakeholders.

The NAP is part of the Finnish Programme of Action on sexual and reproductive health (SRHR) which supports the NAP on violence against women. The Ministry of Social Affairs and Health and the National Institute for Health and Welfare are in charge of its dissemination and promotion. The aim is for it to be shared with relevant authorities at national, regional and local level, with hospital district, social welfare, health-care authorities and educational institutions, and with key community-based and religious organisations. A monitoring and evaluation system of its implementation is included.

**Key aspects:** the NAP as a framework for co-ordinated policies, clear division of tasks, designed to create ownership by the government and its agencies, cross-sector approach, connection with other programmes on SRHR and violence against women, focus on prevention, regular monitoring and evaluation

**Challenges:** sustainability of the public authorities' engagement

A co-ordinated approach to addressing FGM also means linking the efforts of NGOs, community leaders, relevant professionals and government representatives. This should include building bridges between stakeholders in countries of origin and destination countries, and between destination countries.

Indeed, the pressure to subject girls to FGM comes from families and communities both in the countries of origin and in destination countries. Therefore, the development of comprehensive and co-ordinated policies towards ending FGM would require **a cross-border approach**. Partnerships and co-ordinated approaches between countries of origin and migrant communities in destination countries are key to ensuring that advances in combating FGM in countries of origin become known in the diaspora and vice versa.

94. More information is available at [www.stm.fi/c/document\\_library/get\\_file?folderId=5197397&name=DLFE-22004.pdf](http://www.stm.fi/c/document_library/get_file?folderId=5197397&name=DLFE-22004.pdf). See also: EIGE (2013a), op. cit., p. 52.

### ► Promising practice

#### European Commission, EU: Communication: towards the elimination of female genital mutilation<sup>95</sup>

In November 2013, on the International Day for the Elimination of Violence against Women, the European Commission released its first action plan “Towards the elimination of female genital mutilation” which aims to prevent FGM and protect women and girls living with, or at risk of, this practice.

Several divisions of the European Commission worked towards the development of this multidisciplinary plan, including in the areas of justice and fundamental rights, asylum, health, external relations, development and education.

The plan calls, *inter alia*, for more data in Europe, better training of relevant professionals, funding for civil society and the exchange of good practice examples within the EU. In its external relations, the EU is urged to raise the issue of FGM in annual dialogues with relevant partner countries, in its work with the African Union and in its development programmes. EU member states are expected to actively support the plan’s objectives and actions.

The action plan also foresees an implementation, monitoring and evaluation mechanism where NGOs and FGM experts are acknowledged as key partners.

**Key aspects:** cross-border and multidisciplinary approach, large outreach (in particular EU member states, CSOs in Europe and beyond)

**Challenges:** sustainability of the EU engagement, long-term action dependent on political will

■ Work in **partnership with NGOs and civil society** (Article 9) and **involve them in any law making** as well as in the planning and implementation of policies and measures (Article 7, paragraph 3)

#### Article 9 – Non-governmental organisations and civil society

Parties shall recognise, encourage and support, at all levels, the work of relevant non-governmental organisations and of civil society active in combating violence against women and establish effective co-operation with these organisations.

#### Article 7, paragraph 3

Measures taken pursuant to this article shall involve, where appropriate, all relevant actors, such as government agencies, the national, regional and local parliaments and authorities, national human rights institutions and civil society organisations.

The convention requires member states to acknowledge the expertise of NGOs and CSOs and to involve them in developing and implementing governmental policies on violence against women, including FGM. These organisations have experience in dealing with women and girls from affected communities, providing support, counselling, legal advice and other services to them and advocating for women’s rights. The convention also obliges states parties to ensure NGOs and CSOs are enabled and supported, including through financial support for their work.

95. More information on the EC Communication is available at [http://ec.europa.eu/justice/newsroom/gender-equality/news/131125\\_en.htm](http://ec.europa.eu/justice/newsroom/gender-equality/news/131125_en.htm).

### ► Promising practice

#### Portugal: Intersectorial group<sup>96</sup>

In 2009, the government launched a Programme of Action (PoA) to strengthen Portugal's role in ending FGM in two ways: internally, by engaging in awareness raising, training and support for affected women and girls; externally, by increasing Portugal's engagement at the international level to bring FGM to an end globally. The PoA is supported by the Presidency of the Council of Ministers and is co-ordinated by a public institution that is responsible for the implementation of public policies addressing citizenship and the promotion and defence of gender equality (Commission for Citizenship and Gender Equality, CIG). The programme is implemented through an "intersectorial group".

This intersectorial group is composed of actors from several sectors and with different expertise of relevance in tackling FGM in Portugal. These include professionals and experts from the following sectors: health, sexual and reproductive health and rights, justice, police, immigration, gender equality, development co-operation and education. Members of the group come from public administration bodies, international organisations and NGOs. The intersectorial group on FGM is responsible for developing and implementing policy measures with regard to FGM that are integrated in the national programmes of action for the elimination of FGM. Such measures have included the development and dissemination of a leaflet raising awareness about the consequences of FGM, demystifying some myths around the practice, providing information on Portuguese legislation and explaining measures to take when confronted with a woman or girl at risk. The work of the intersectorial group also led to the development of ministerial guidelines for health professionals, security forces and criminal police, as well as to actions targeted at affected communities.

Although no specific budget is attributed either to the programmes of action or to the intersectorial group, its sustainability currently depends on the annual budget dedicated to the CIG and the resources made available by the members of the intersectorial group. The impact of the PoA on affected communities has yet to be assessed.

**Key aspects:** ownership by the government, acknowledgement of NGOs' and CSOs' expertise, partnership which includes NGOs and CSOs from development to implementation of the governmental action

**Challenges:** sustainability of the public authorities' engagement

■ Set up a **co-ordinating body** to co-ordinate, implement, monitor and evaluate all policies and measures taken to address violence against women and domestic violence, including FGM (Article 10, paragraph 1)

The Istanbul Convention requires a co-ordinating body to lead the co-ordination, implementation, monitoring and evaluation of the national comprehensive policy framework on all forms of violence against women, including FGM. To this end, states parties are obliged to set up a new, or designate an existing, official government body to ensure that all relevant actors assume their responsibility in implementing the various new measures, policies and legislative changes introduced to prevent and combat gender-based violence. They may also spread the different tasks of the co-ordinating body across several entities. The co-ordination should also ensure that all national policies, legislation and measures are monitored and scientifically evaluated.

#### Article 10, paragraph 1

Parties shall designate or establish one or more official bodies responsible for the co-ordination, implementation, monitoring and evaluation of policies and measures to prevent and combat all forms of violence covered by this Convention. These bodies shall co-ordinate the collection of data as referred to in Article 11, analyse and disseminate its results.

96. The Portuguese Intersectorial Group has been defined as a good practice by EIGE. More information is available at: <http://eige.europa.eu/content/intersectorial-group-on-fgm-grupo-intersectorial-sobre-mgf>, and at [www.endfgm.eu/content/assets/Portugal\\_First\\_and\\_Second\\_Plans\\_of\\_Action\\_for\\_the\\_Elimination\\_of\\_FGM\\_Ms\\_Fatima\\_Duarte.pdf](http://www.endfgm.eu/content/assets/Portugal_First_and_Second_Plans_of_Action_for_the_Elimination_of_FGM_Ms_Fatima_Duarte.pdf).

## ■ Establish a robust **data collection and research** system (Article 11)

### Article 11 – Data collection and research

- 1 For the purpose of the implementation of this Convention, Parties shall undertake to:
  - a collect disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the scope of this Convention;
  - b support research in the field of all forms of violence covered by the scope of this Convention in order to study its root causes and effects, incidences and conviction rates, as well as the efficacy of measures taken to implement this Convention.
- 2 Parties shall endeavour to conduct population-based surveys at regular intervals to assess the prevalence of and trends in all forms of violence covered by the scope of this Convention.
- 3 Parties shall provide the group of experts, as referred to in Article 66 of this Convention, with the information collected pursuant to this article in order to stimulate international co-operation and enable international benchmarking.
- 4 Parties shall ensure that the information collected pursuant to this article is available to the public.

The development of relevant integrated policies necessitates a clear understanding of the nature and prevalence of violence against women, including FGM. Collecting data and developing research will help to identify the existing gaps in protection and to design evidence-based policies to address them.

**Data on the prevalence** of FGM would uncover the extent and the effects of the practice in Council of Europe member states, and is necessary both to determine the types of programme and measure that are needed, as well as to measure the impact of policies put in place to combat the practice.

**Qualitative data** is important to properly understand the beliefs and stereotypes that act as causes and facilitators for gender-based violence. In combating a practice like FGM, data on the socio-cultural dimension is required, for example to analyse whether the beliefs underlying the practice in Europe differ from the beliefs in the country of origin. An understanding of this dimension is essential in order to design effective strategies for behaviour change processes.

### Collection of FGM prevalence data in Europe

While data on the prevalence of FGM is available in Africa, such information is less accessible in the European context.

In 2009, the European Parliament estimated that up to half a million women living in the EU had been subjected to FGM, with a further 180 000 at risk of being subjected to the practice every year. This data has been extrapolated from the prevalence data in countries of origin and the number of women from those countries living in the EU. It does not include migrants and asylum seekers. In a statistical overview on FGM and asylum in the EU,<sup>97</sup> the UNHCR has estimated that over 20 000 women and girls from FGM-practising countries seek asylum in the EU every year,<sup>98</sup> of whom in 2013 around 16 000 were potentially already affected by FGM at the time of arrival in the EU.<sup>99</sup>

The few surveys that exist do not use a harmonised approach to gather data on FGM prevalence in Europe.<sup>100</sup> Some EU member states have developed national prevalence estimation studies.<sup>101</sup> However, these data are not comparable due to the use of different research methodologies. EU data is therefore often underestimated and based on anecdotal evidence. This is partly due to the nature of FGM which remains very much underground; but this also creates an invisibility of the issue among decision makers.

97. UNHCR (2013b), op. cit.

98. Ibid. In 2013, over 25 000 women and girls sought asylum from FGM-practising countries; this number has been steadily increasing since 2008.

99. Ibid.

100. EIGE (2013b), *Good practices in combating female genital mutilation*, report., p. 25.

101. For more information, see presentation by Dr Dominique Dubourg, Institute of Tropical Medicine, entitled "FGM Prevalence in Europe – From data to action", available at [www.endfgm.eu/content/assets/FGM\\_Prevalence\\_in\\_Europe\\_From\\_data\\_to\\_action\\_Dr\\_Dominique\\_Dubourg.pdf](http://www.endfgm.eu/content/assets/FGM_Prevalence_in_Europe_From_data_to_action_Dr_Dominique_Dubourg.pdf).



This is why the Istanbul Convention requires the establishment of systematic data collection and research to ensure that interventions designed to combat violence against women are based on accurate knowledge. Efforts to this extent should be linked with any work on indicators allowing for such data to be accessible to decision makers.<sup>102</sup>

Information about and the number of women and girls at risk of FGM and those who have undergone FGM (both within Europe and in countries of origin prior to arriving in Europe) is one of the major missing links to the development of an adequate policy response to FGM in Europe.

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102. UNHRC (2008), "Indicators on violence against women and State response", report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, 29 January 2008, A/HRC/7/6, paragraph 30.

# Conclusion

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**T**he Istanbul Convention is the first European legally binding instrument specifically devoted to violence against women and is an important step towards greater gender equality. As such, it covers various forms of gender-based violence, and FGM is one of them. This means that for the first time in Europe, a detailed set of legally binding standards aimed at preventing and combating all forms of violence against women and domestic violence, including FGM, has become available to governments wishing to bring this scourge to an end.

This guide has covered and explained the various measures that states parties to the Istanbul Convention are required to take in the area of preventing and combating violence against women and domestic violence. Moreover, it has explained how to use such measures to prevent FGM, protect women and girls at risk or already affected by the practice, prosecute the perpetrators and develop comprehensive policies designed to eliminate FGM. These measures vary in their approach and aim, and require both short- and long-term engagement with the issue, as well as human and financial resources. From criminalising the act of FGM to offering specialist health care and counselling services, as well as according legal protection to girls and women at risk of FGM, the Istanbul Convention sets high standards to ensure girls and women in Europe are spared and that those who seek international protection from the practice for themselves or their daughters find it here. Prevention is essential in eliminating FGM. This is why the convention requires a set of forceful measures to change attitudes, traditions and customs that are based on notions of the inferiority of women or that have the effect or purpose of controlling women's bodies and their sexuality. Because FGM in Europe is associated with migrant and refugee communities, transforming attitudes towards FGM will require particularly sensitive approaches that focus on the human rights and well-being of women and girls.

To assess how its provisions are put into practice by the states parties to the convention, the Istanbul Convention will be monitored by a monitoring mechanism, consisting of two pillars: the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) and the Committee of the Parties. While GREVIO will be composed of independent and impartial experts in the area of violence against women, the Committee of the Parties will be made up of representatives of all states parties to the convention.

The process of monitoring states' compliance with the Istanbul Convention will shed more light on what is being done to prevent and combat FGM, and will thus be an important element in ensuring that states live up to their responsibility to guarantee the physical, psychological and sexual integrity of all women.

As elsewhere in international law, the level of implementation of the Istanbul Convention will depend on the level of political will to assume the responsibility to prevent, protect, investigate, punish and provide reparation for acts of violence covered by the convention, including FGM. The Istanbul Convention provides states parties with a unique opportunity to lift the silence and taboos around FGM in Europe. It is hoped that under the watchful eyes of civil society and national parliaments – both of which may contribute to the monitoring of the convention – states parties will actively engage in ending this harmful practice.

# Appendix 1 – Checklist

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## Prevention

Prevention requires governments to take measures to prevent FGM from occurring. To respect and fulfil the obligation to prevent FGM, states parties to the Istanbul Convention should:

- ▶ **address gender stereotypes** and take measures that are necessary to promote changes in mentality and attitudes;
- ▶ **address the specific needs** of women and girls in a position of vulnerability that are affected by or at risk of FGM;
- ▶ involve all members of society, especially men and boys, and community and religious leaders;
- ▶ **seek empowerment** of women and girls;
- ▶ undertake **awareness-raising and information campaigns** on a regular basis and in co-operation with national human rights institutions, equality bodies, civil society organisations (including community-based organisations and professional medical bodies) and the media; campaigns in Europe should particularly target **FGM-affected communities** and relevant **professionals**;
- ▶ **use formal and informal education** to teach children about equality between women and men, non-stereotyped gender roles, mutual respect, gender-based violence and the right to personal integrity;
- ▶ **provide training for professionals** so that those in medical, social, education, legal and law-enforcement profession, as well as asylum and immigration officials, give appropriate service to women and girls who are already affected by FGM, or to those who are at risk. It is advisable that training be reinforced by clear **protocols and guidelines**;
- ▶ **address the role of the media and the information and communication technology (ICT) sector** in prevention, in enhancing the dignity of women in media portrayals and in ensuring communication in a non-stigmatising manner.

## Protection

Protection requires governments to keep women and girls safe from violence. This includes international protection. Protection also means avoiding the recurrence of violence and the provision of support and assistance. To respect and fulfil their obligation to protect and support women and girls at immediate risk of FGM or affected by the practice, states parties to the Istanbul Convention should:

- ▶ provide for both **general and specialist support services** which are appropriate and accessible for women and girls affected by FGM;
- ▶ ensure women affected by FGM or those at risk receive, in a language they understand, **adequate and timely information**, for example on available support services and legal remedies;
- ▶ establish **shelters**, provide **safe accommodation** and reach out proactively to victims;
- ▶ provide round-the-clock free **telephone helplines** to give advice to callers on all forms of violence against women, including FGM, and to guide them to a service near them, confidentially or with due regard to their anonymity;

- ▶ encourage **reporting** to a competent authority or organisation by any person who witnesses or has reasonable grounds to suspect that an act of violence against women such as FGM has been or may be committed; to that aim, states parties shall take the necessary measures to allow professionals normally bound by rules of **professional secrecy** to report;
- ▶ develop a **gender-sensitive asylum system** and:
  - ensure a gender-sensitive interpretation of each of the 1951 Geneva Convention grounds;
  - develop gender-sensitive reception conditions and support services for asylum seekers;
  - develop gender-sensitive procedures for asylum seekers;
  - respect the principle of *non-refoulement*;
- ▶ **deliver training** and guidance on the obligation to protect to the relevant professionals.

## Investigation and prosecution

Investigation and prosecution relate to the response of statutory agencies such as the police, prosecution services, child protection services and the judiciary to cases of FGM. In particular, where it arises that a girl or a woman is at immediate risk or is affected by FGM, protection systems are necessary that help with identification, reporting, referral and support, and that envisage swift investigation into the case and offer legal protection measures. In this regard, states parties to the Istanbul Convention are required to:

- ▶ ensure **law-enforcement agencies engage promptly and appropriately** in the prevention and protection of a woman or a girl at risk by taking preventive operational measures and ensuring the collection of evidence; when a child under 18 is at risk of FGM it is advisable that professionals first consider adopting voluntary child protection measures;
- ▶ ensure an **assessment of the lethality risk and the seriousness of the situation** and of the risk of repeated violence is carried out by all relevant authorities;
- ▶ guarantee **investigation and prosecution procedures that are gender, child and culture-sensitive**;
- ▶ offer **restraining or protection orders** for women and girls at immediate risk of violence or further violence;
- ▶ legislate to recognise FGM as a **criminal offence**;
- ▶ ensure that FGM is punishable by **effective and proportionate sanctions**, with due respect for the **best interest of the child**;
- ▶ apply the principle of **extraterritorial jurisdiction** in FGM-related cases;
- ▶ protect the rights and **interests of victims**, including their special needs as witnesses;
- ▶ **deliver training** and guidance on investigation and prosecution in FGM-related cases to the relevant professionals.

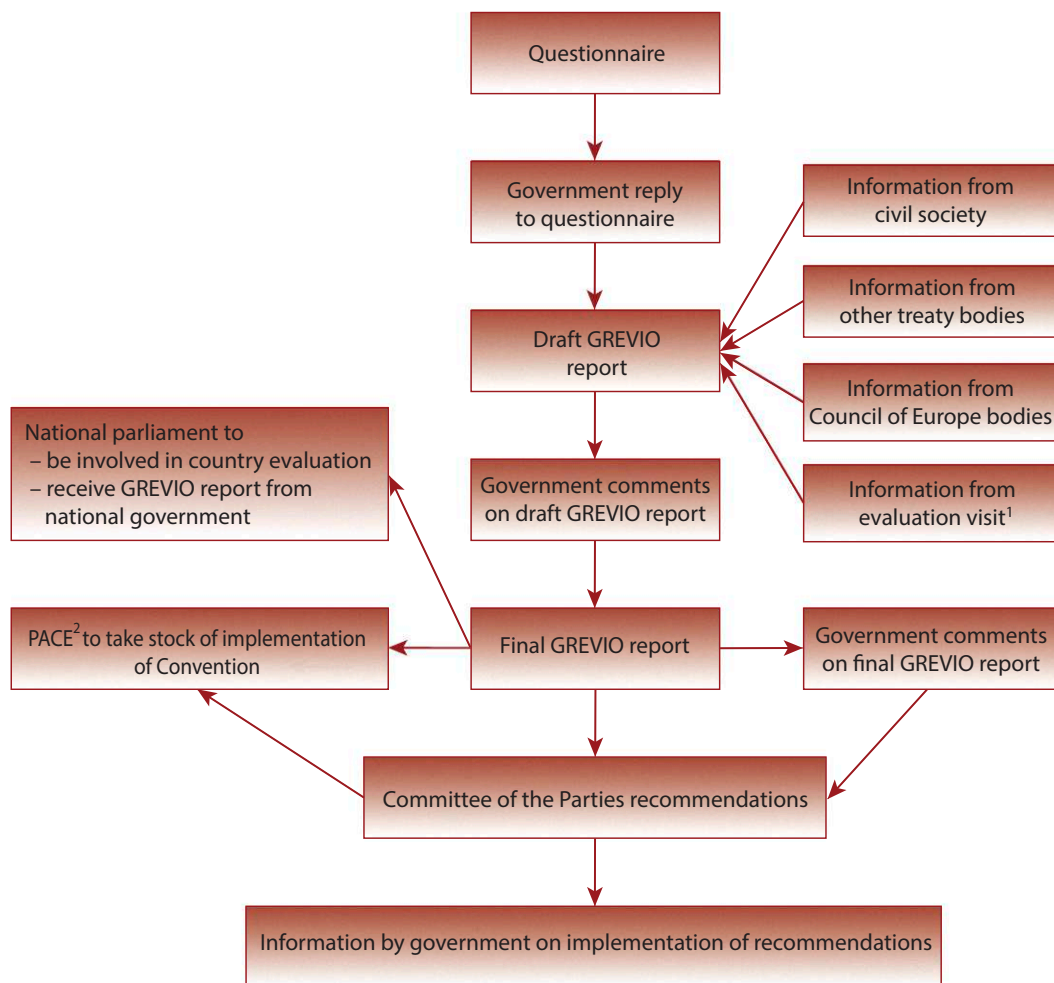
## Integrated policies

The concept of integrated policies refers to the obligation for governments to devise and implement policies comprising a multitude of measures to be taken by different actors and agencies and which, taken as a whole, offer a holistic response to violence against women and FGM. It requires government to ensure that the adopted policies are implemented by way of effective multi-agency co-operation. To respect and fulfil the obligation to develop integrated policies on FGM, states parties to the Istanbul Convention are required to:

- ▶ establish a **framework for comprehensive and co-ordinated policies** across all levels of government and agencies which is **adequately resourced**;
- ▶ work in **partnership with NGOs and civil society**, including community-based organisation and professional bodies, and **involve them in any law making**, as well as in the planning and implementation of policies and measures;
- ▶ set up a **co-ordinating body** to co-ordinate, implement, monitor and evaluate all policies and measures taken to address violence against women, including FGM;
- ▶ establish a robust **data collection and research** system.

# Appendix 2 – Monitoring mechanism of the Istanbul Convention – Flowchart

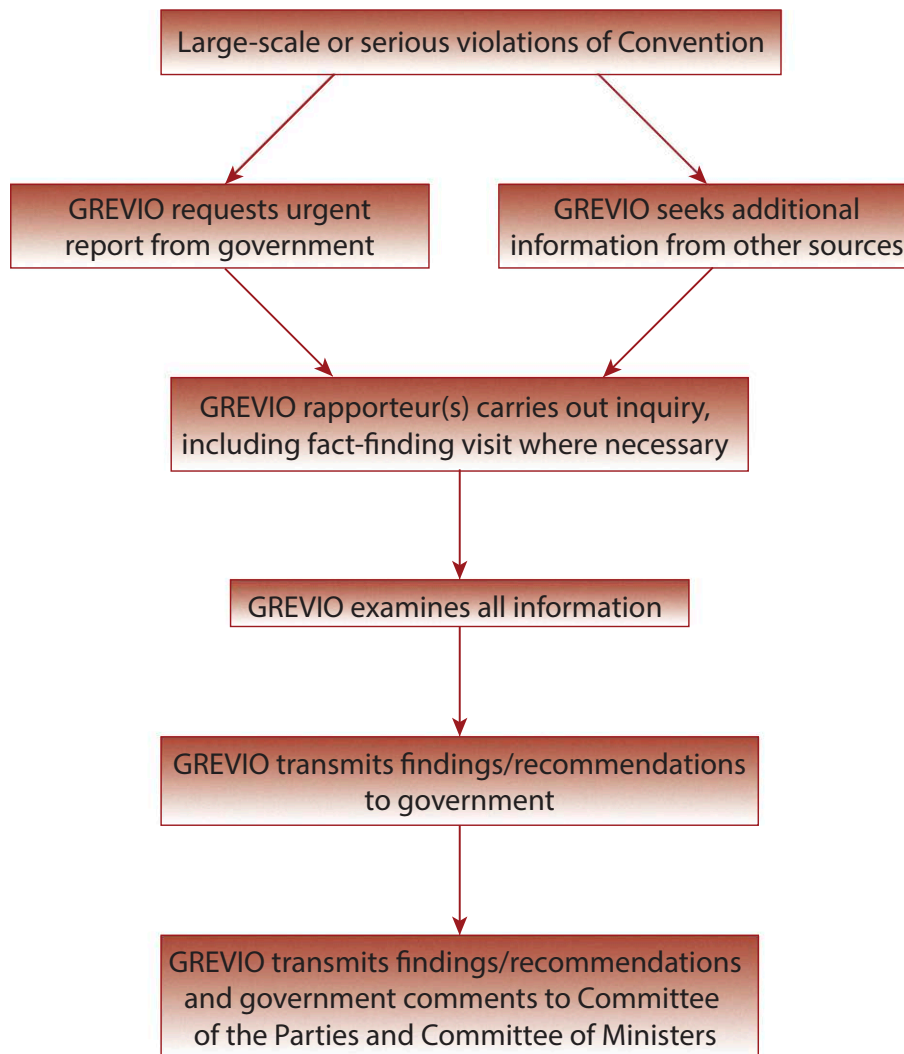
## Part 1 – Country-by-country evaluation procedure



1. Evaluation visits are carried out where necessary.

2. Parliamentary Assembly of the Council of Europe.

## Part 2 – Urgent inquiry procedure



## Appendix 3 – List of relevant international instruments and texts

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African Charter on Human and Peoples' Rights (the Banjul Charter) and its Protocol on the Rights of Women in Africa (Maputo Protocol)

African Charter on the Rights and Welfare of the Child

Beijing Declaration and Platform for Action of the Fourth World Conference on Women

Charter of Fundamental Rights of the European Union

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Para)

International Covenant on Civil and Political Rights

International Covenant on Economic, Social and Cultural Rights

Programme of Action of the International Conference on Population and Development

UN Convention on the Elimination of all Forms of Discrimination against Women

UN Convention on the Rights of the Child

UN Convention relating to the Status of Refugees and its Protocol relating to the Status of Refugees

UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

UN General Assembly Declaration on the Elimination of Violence against Women

UN General Assembly Resolution on intensifying global efforts for the elimination of female genital mutilations

# Appendix 4 – List of relevant Council of Europe instruments and standards

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Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)

Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention)

Recommendation CM/Rec(2008)1 on the inclusion of gender differences in health policy

Recommendation CM/Rec(2008)4 on strengthening the integration of children of migrants and of immigrant background

Recommendation CM/Rec(2007)9 on life projects for unaccompanied migrant minors

Recommendation CM/Rec(2007)13 on gender mainstreaming in education

Recommendation CM/Rec(2007)17 on gender equality standards and mechanisms

Recommendation Rec(2006)19 on policy to support positive parenting

Recommendation Rec(2002)5 on the protection of women against violence

Recommendation No. R (97) 13 concerning intimidation of witnesses and the rights of defence

Recommendation No. R (94) 14 on coherent and integrated family policies

Recommendation No. R (91) 9 on emergency measures in family matters

Recommendation No. R (90) 2 on social measures concerning violence within the family

2011 Guidelines on child-friendly health care

2010 Guidelines on child-friendly justice

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This guide, produced jointly by Amnesty International and the Council of Europe, aims at helping design policies and measures to better address female genital mutilation and to pave the way for change. It is based on the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (also known as the Istanbul Convention), which entered into force in August 2014.

The Istanbul Convention is the first treaty to recognise that female genital mutilation exists in Europe and that it needs to be systematically addressed (Article 38 of the Convention). It requires states parties to step up preventive measures by addressing affected communities, as well as the general public and relevant professionals. It entails obligations to offer protection and support when women and girls at risk need it most – and makes sure that their needs and their safety always come first.

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