



**UNHCR's Contribution  
to the  
European Commission's  
Consultation on  
Female Genital Mutilation  
in the EU**



**May 2013**

## Question 1 – About you

This contribution of the Office of the United Nations High Commissioner for Refugees (UNHCR) to the European Commission's Consultation on Female Genital Mutilation in the EU is made in the context of UNHCR's supervisory responsibility which is set out under its Statute,<sup>1</sup> and Article 35 of the 1951 Convention relating to the Status of Refugees.

UNHCR's specific role is reflected in European Union law. The European Union Declaration 17 on Article 73k of the Treaty establishing the European Community<sup>2</sup> provides that "*Consultations shall be established with the United Nations High Commissioner for Refugees ... on matters relating to asylum policy.*" This role is also reflected in secondary European Union legislation, in particular Recital 22 of the 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) (EU Qualification Directive (Recast)), and Article 8 of the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (EU Asylum Procedures Directive).

This contribution is therefore limited to the mandate of UNHCR, i.e. to female genital mutilation (FGM) as it relates to the protection of women and girls who are refugees, asylum-seekers, and those otherwise potentially in need of international protection, and the need for durable solutions for these persons. UNHCR also endorses the submission of the UN Team in Brussels jointly prepared by OHCHR, UNHCR, UNICEF, UNFPA, WHO, UN Women and IOM.

## Question 2 – Do you think FGM is an issue that should be tackled at European level?

Female genital mutilation (FGM) is recognized internationally as a violation of the rights of women and girls. The practice also violates a person's rights to health, security and physical integrity; the right to be free from torture and cruel, inhuman or degrading treatment; and the right to life when the procedure results in death. FGM is also a form of sexual and gender-based violence (SGBV). Gender inequality and discrimination are the root causes of SGBV. When members of communities flee, they bring with them their customs and traditions. These may include harmful traditional practices, such as FGM, early or forced marriage, killing or maiming in the name of honour and denial of education for girls and women. FGM reinforces the subordination of girls and women in the communities where it is practised. FGM therefore needs to be placed in the wider context of equality between women and men, as well as that of child rights.

The European Union has competence to legislate and initiate actions in the area of asylum, and the responsibility to monitor the implementation of the European Union asylum *acquis*. In the context of the Common European Asylum System (CEAS), to which EU Member States remain committed under the terms of Article 78 of the Treaty on the Functioning of the European Union,

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<sup>1</sup> Statute of the Office of the United Nations High Commissioner for Refugees, General Assembly Resolution 428 (V) of 14 December 1950.

<sup>2</sup> European Union, Treaty establishing the European Community, OJ C 340/134, 10.11.1997.

the Council has expressed the aim that “*similar cases should be treated alike and result in the same outcome.*”<sup>3</sup> The important role of the European Asylum Support Office (EASO), in this regard, is regulated in EU Regulation 439/2010.

UNHCR considers FGM to be a form of gender-based violence that inflicts severe harm, both mental and physical, and amounts to persecution or serious harm<sup>4</sup> as defined under Article 2 of the EU Qualification Directive (Recast) justifying the grant of international protection. To expel or return a girl or woman to a country where she would be subjected to FGM may thus amount to a breach of state obligations under international human rights law, and specifically a breach of the principle of *non-refoulement*. FGM is specifically mentioned in the EU Qualification Directive (Recast) Recital 30. The European Union thus has a responsibility to ensure that Article 18 and Article 19 (2) of the European Union Charter of Fundamental Rights are upheld with regards women and girls at risk of FGM.

Around 20,000 women and girls from FGM-practising countries of origin seek asylum in EU Member States every year, including 9,000 potentially already mutilated. With an estimated 2,000 asylum claims directly related to FGM per year in the main asylum countries for these women and girls,<sup>5</sup> the European Union has a responsibility to contribute to and support the efforts of Member States for the protection of women and girls seeking international protection in relation to FGM. This includes contributing to and encouraging the provision of assistance and support to women and girls living with FGM, including those in asylum reception centres and communities while awaiting a decision on their asylum applications.

The European Union also has a responsibility to uphold its values and fundamental rights by contributing to and complementing the efforts of Member States to ensure the abandonment of the practice of FGM in the European Union, and global progress towards ending the practice in countries of origin and third countries of asylum where communities from FGM-practising countries live.

As such, the European Union must foster a coherent response by European Union institutions, relevant agencies and Member States, as well as a harmonized approach in the field of asylum. A European Union plan of action would ensure a coordinated, comprehensive and integrated approach at the level of the European Union and would further support Member States in their commitment under the UN General Assembly Resolution A/RES/67/146 on ‘*Intensifying global efforts for the elimination of female genital mutilation*’.

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<sup>3</sup> European Council, The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens, OJ C 115/1, 4 May 2010, section 6.2, Asylum: a common area of protection and solidarity.

<sup>4</sup> UNHCR, *Guidance Note on Refugee Claims relating to Female Genital Mutilation*, May 2009, para. 7, available at: <http://www.refworld.org/docid/4a0c28492.html>.

<sup>5</sup> UNHCR, *Too Much Pain: Female Genital Mutilation & Asylum in the European Union - A Statistical Overview*, February 2013, available at: <http://www.refworld.org/docid/512c72ec2.html>.

### **Question 3 – What should be done to improve knowledge about FGM in the EU?**

With its publication '*Too Much Pain – Female Genital Mutilation and asylum in the European Union*,' UNHCR has compiled unique statistical data from Eurostat on FGM and asylum-seeking and refugee populations in the European Union. The publication highlights remaining data gaps, and in particular the need for more qualitative data in this field. Further research is needed to understand how women and girls seeking asylum from FGM-practising countries of origin are treated in the European Union asylum systems, how their applications are dealt with, and how their integration proceeds in the communities in which they eventually settle. The European Commission has a responsibility to monitor the implementation of the European Union asylum *acquis*, in particular the recast instruments; it could as such play an active role in helping bridge some of the knowledge gaps in this sector.

Likewise, asylum adjudicators in the European Union asylum systems have varying levels of knowledge about FGM. The European Union, through the European Commission-chaired Contact Committee for the transposition of the second generation EU asylum instruments, and EASO have a shared responsibility to raise awareness about FGM, enhance the knowledge of decision-makers and other practitioners, promote the exchange of good practices. EASO, in addition, with its mandate to support Member States, *inter alia* through practical cooperation, quality initiatives, the provision of expertise and country of origin information (COI) and the European Asylum Curriculum (EAC), can play a specific role in fostering a harmonized approach to the examination of asylum applications related to FGM.

With regards the knowledge needed by health workers in the reception centres and communities where asylum-seeking and refugee women and girls live, UNHCR calls for the mainstreaming of responses in the asylum system into those devised generally speaking in the health sector at national and European Union level. Health practitioners working with asylum-seekers and refugees must be part of the wider efforts to build capacity; they should benefit from training programs for health professionals as well as initiatives to build a pool of knowledge and share good practices.

### **Question 4 – To raise awareness on female genital mutilation, which specific messages should the EU convey? What should be the target groups and means of communication?**

UNHCR strongly cautions against a wide general public communication campaign against FGM in the European Union. In addition to the cost of such a campaign, UNHCR highlights the real risks of stigmatization, discrimination and further marginalization such a campaign may trigger at a time when positive messages are much needed to support the successful integration of migrant and refugee communities.

Rather, UNHCR encourages the European Union to consider tailored messages targeted at specific communities and audiences through appropriately adapted means of communication.

Starting with the FGM-practising communities in the European Union, harmful traditional practices, and FGM in particular, are not a uniform phenomenon across the various FGM-practising countries of origin. The reasons why FGM is practised, the social, religious and cultural mores, as well as the gender norms and the community behaviours that underpin the practice

vary in each country of origin and ethnic community. The UNHCR publication *'Too Much Pain'* provides an unprecedented level of statistical detail regarding the FGM-practising countries of origin from which asylum-seeking and refugee women and girls in the European Union come. The statistical data also provides a clear map of the EU Member States where these women and girls reside. As such, the messages the European Union should convey must be adjusted to each of the EU Member States where these refugee women and girls reside, and most importantly tailored to the specific FGM-practising communities in each Member State.

As for asylum policy- and decision-makers, child social workers, health authorities and practitioners in areas where migrant and refugees reside, as well as national and local authorities working on migrant and refugee integration, these should also be the target audiences of tailored messages by the European Union.

The messages of the European Union should be human rights-based; they should promote the participation of the communities and empower women and girls but also men, young and older, as well as boys to act for the abandonment of the practice in their respective communities. The messages should foster gender equality and child rights in a culturally respectful and community-sensitive approach. They should contribute to informing and raising awareness about this harmful traditional practice.

**Question 5 – Taking into account the instruments available to the EU and the principle of subsidiarity, which specific measures should the EU take to combat FGM in the field of gender equality, children’s rights, civil and criminal justice, health, asylum, integration and development policy?**

Within the framework defined by existing instruments and the principle of subsidiarity, European Union measures in the fields of gender equality, children’s rights, civil and criminal justice, health, asylum, integration and development policy should be comprehensive, addressing the 4Ps of Prevention, Protection, Prosecution and Partnership.

These measures should be multi-disciplinary, supporting the mainstreaming of FGM in relevant European Union legal and policy instruments, guidelines, budget lines and other tools. The measures should also be supported by appropriate funding.

The measures should be clearly coordinated by a designated European Union institution. Their implementation and follow-up should be informed by experts from academia, European Union institutions and relevant state authorities, community-based organisations, NGOs and international organizations.

These measures should adopt a human rights- and child rights-based approach, with gender- and child-sensitive dimensions, strengthening the participation of FGM-practising communities in the European Union and the empowerment of women and girls. These measures should contribute to upholding the principle of the best interest of the child, including when a Best Interest Assessment and/or Determination is carried out.<sup>6</sup>

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<sup>6</sup>UNHCR, *Field Handbook for the Implementation of UNHCR BID Guidelines*, November 2011, available at: <http://www.refworld.org/docid/4e4a57d02.html>: “Individual casework with children at risk, including

These measures should be announced with the European Commission Communication on FGM planned for the second part of 2013.

Please refer to the Annex for a summary of all measures the European Union could take in the fields of asylum and child rights, integration and development policy to address the needs outlined above and in UNHCR's publication *'Too Much Pain'*.

### **Question 6 – Which specific measures should the EU take in its relations with non-EU countries?**

Though some steps have been taken with regard to funding projects aiming at curbing the practice of FGM in some targeted non EU-countries, the European Union still has an important role to play to further support actions for the abandonment of FGM. In particular, the European Union could increase its support to protect victims as well women and girls at risk, in FGM-practising countries. Referring to people on the move, whether forcibly or voluntarily, the European Union should also engage its assistance in countries of transit and asylum where practising communities live so that migrants, asylum-seekers and refugees can also benefit from this support.

Addressing FGM practices at the global level requires international and transnational cooperation. Dialogue and cooperation with international organizations, governments of countries where FGM is practised, and competent civil society organizations should be further developed. As a first step, the European Union could develop FGM policy guidelines that would help raise awareness within the European institutions and the European Union delegations about FGM. Regional meetings could also be convened for the exchange and promotion of good national and local practices.

Policy options need to be supported and strengthened by appropriate funding. Activities such as education, awareness raising, and empowerment for community stakeholders (religious leaders, health and medical professionals) could be integrated in relevant European Union funded projects in non-EU countries, as well as relevant sectors such as livelihood and capacity building. This has been the case for example in the phase II of the Regional Protection Programme of the European Union implemented in Kenya and Djibouti in 2013 and 2014 with regard to the Somali population.

In short, the European Union should adopt a more comprehensive approach to addressing FGM in non-EU countries. Analysis, studies, research and information gathering on FGM practice as well as accurate data (e.g. on the European Union work on FGM worldwide; its funding support,

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unaccompanied and separated children, must be based on an assessment of protection needs with recommendations for interventions and referrals. UNHCR's assessment tool for protection of individual children is referred to as a Best Interests Assessment (BIA). A BIA is essential before any action affecting an individual child of concern to UNHCR is taken, unless a BID is required.[...] Best interests determination (BID) describes the formal process with strict procedural safeguards designed to determine the child's best interests for particularly important decisions that affect him or her", pp. 7-8.

etc.) will help to ensure that the policies developed are comprehensive and that the resources mobilized are adequate.

**Question 7 – How should the EU effectively support and promote the involvement of specific groups that could make a difference in convincing the communities practicing FGM/C to abandon the practice? For example men (husbands, fathers, brothers), women practicing FGM/C, community leaders, FGM ambassadors or women who have suffered from FGM/C?**

A community-based participatory approach is critical to achieve a social norm change in practising communities living in EU Member States. The UNHCR Age, Gender and Diversity Policy aims to ensure that refugees are able to participate fully in the decisions that affect their lives and the lives of their family members and communities.<sup>7</sup> In line with the UNHCR Executive Committee's call on UNHCR to promote to partners, including state partners, the Age, Gender and Diversity Policy, UNHCR encourages the European Union to adopt a participatory process by which communities are actors and drivers of the behavioural changes required to achieve the abandonment of FGM.

A budget line that makes funding accessible to small grass-roots organisations unable to otherwise access existing funding because of their limited capacities, but with a track record for action against FGM and working in networks with other community-based organizations and non-governmental organizations, should be considered.

The European Union should particularly support empowerment programmes for youth, including male migrants and refugees, to speak out against FGM. The Dutch Chain Model initiative, which includes awareness raising in asylum reception centres by young Somalis living in the Netherlands, with the support of the State, is a model worth sharing with other EU Member States.

The European Union should foster ambassadors, champions and role models against FGM from within the communities. Given the multi-disciplinary and varying nature of the practice of FGM across communities, these ambassadors should belong to different migrant and refugee backgrounds, and come from different sectors of society (health, education, culture, sports, religion etc.). Among these, victims of FGM should benefit from special support to ensure they do not suffer from additional trauma as they testify to their stories, and some refugees may require particular assistance to ensure their identity is protected.

In addition, the European Union should also facilitate the involvement of groups active in FGM-practising countries of origin for the various migrant and refugee communities settled in the European Union, to facilitate the exchange of experiences and learning across regions.

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<sup>7</sup> UNHCR, *Age, Gender and Diversity Policy*, available at: <http://www.unhcr.org/4e7757449.html>.



## ANNEX

### Summary of the specific measures the EU should take to combat FGM in the field of asylum, child rights, integration and development policy

Measure		Responsibility
<b>Asylum and child rights</b>		
1.	Mainstream gender and build capacity for gender-sensitive asylum systems, including on FGM, through Gender Coordinator	EASO
2.	Develop an EAC module on gender-based asylum claims, including FGM, offer training and support MS to implement training	EASO
3.	Develop gender-sensitive, including FGM-specific, COI and support the capacity of MS COI Units (practical cooperation, COI specialist networks and COI guidelines)	EASO
4.	Organize workshops to share good practices, support common frameworks and guidance at national level, and discuss various and complex aspects of gender-based claims, including in relation to FGM-specific risk profiles	COM/EASO
5.	Strengthen child protection systems and policy frameworks for girls at risk and victims of FGM, in line with the principle of the Best Interest of the child	COM/MS
6.	Strengthen awareness and capacity of health practitioners in asylum systems	COM/MS
7.	Develop information provision for asylum-seekers on gender-based violence, including FGM	COM/EASO/MS
<b>Integration</b>		
8.	Review all EU-funded projects on FGM, identify and address gaps	COM
9.	Develop tailored funding for community-based organizations	COM
10.	Develop tailored communication messages for FGM-practising communities and professionals	COM
11.	Develop EU expert platform of professionals, academic, community-based organizations, NGOs to inform and support the implementation of FGM measures	COM
<b>Development policy</b>		
12.	Mainstream gender-based violence, including FGM, in gender equality and women empowerment in development cooperation	COM/EEAS
13.	Mainstream FGM in existing EU Delegation Guidelines on violence against women, and related capacity building initiatives	COM/EEAS
14.	Fund projects on FGM and development in third countries, including advocacy and remedial programmes on FGM for refugees in protracted situations	COM/EEAS