Experience-sharing meeting

How can we improve asylum procedures and ensure that reporting obligations protect girls at risk of FGM? Exchange of challenges and good practices.

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Background paper

To help Member States end female genital mutilation (FGM), the European Institute for Gender Equality (EIGE) is estimating the risk of FGM in Austria, Denmark, Luxembourg and Spain and developing country-specific recommendations to eradicate the practice.

This online experience-sharing meeting will be an opportunity for government and civil society representatives, academics and other national stakeholders to exchange experiences from these four Member States, to discuss challenges faced in their countries, and to share good practices in preventing FGM and protecting girls at risk.

The discussion will focus on two of the key challenges explored in this research:

- How to support victims of FGM and those at risk through the asylum system
- How to ensure that reporting procedures for professionals are clear and serve to protect girls, women and their communities.

The themes identified were raised during interviews conducted with stakeholders across the four Member States, and included representatives from relevant public administrations – such as ministries (justice, health, equal opportunities, internal affairs) and/or asylum/migration authorities – as well as, for example, academics/researchers, hospitals, NGOs operating in the areas of FGM, migration, refugees, women rights, children rights.

Legislative context at the EU level

FGM[1] represents a violation of the rights of girls and women and is of global concern. The EU has been committed to eliminating FGM for many years[1].

- The 2014 Council Conclusions on preventing and combating all forms of violence against women and girls urge the European Commission and the Member States to undertake coordinated measures to eliminate FGM.
- In 2017, the Council of Europe Committee of Ministers adopted the Declaration on the need to intensify effort to prevent and combat FGM and forced marriage in Europe.
- In 2017, the EU signed the Istanbul Convention, a legal instrument to tackle several forms of gender-based violence, including FGM.
- The 2018 European Parliament Resolution on zero tolerance for Female Genital Mutilation urges Member States and the Commission to mainstream the prevention of FGM in all sectors, including health, asylum, child protection and justice.
- The European Commission's Gender Equality Strategy 2020-2025 includes specific measures to end FGM and other forms of gender-based violence.

1 Estimating the risk of female genital mutilation

To ensure FGM is tackled effectively, accurate estimations are required to gain a complete picture of the number of girls at risk. EIGE has developed a risk estimation methodology, which has allowed it to estimate the number of girls at risk in nine EU Member States so far since 2010 ([1]). Having been piloted in Ireland, Portugal and Sweden (EIGE, 2015), the methodology was revised in 2018 (EIGE, 2019) and applied to a further six Member states – Belgium, Cyprus, Greece, France, Italy and Malta (EIGE, 2018).

This fourth study will build on this work to generate estimates for an additional four Member States – Austria, Denmark, Luxembourg and Spain – and develop tailor-made recommendations to strengthen efforts to eliminate FGM. The study aims to improve policies to combat and eliminate FGM, taking into account patterns of migration. It will give the EU institutions and Member States more accurate qualitative and quantitative information on FGM and its risk among girls living in the EU.

2 Supporting victims of FGM and those at risk through the asylum system

Supporting asylum seekers affected by FGM is essential for the prevention of the practice and protection of women and girls at risk. Preliminary findings from this study have highlighted three key themes which have emerged in Austria, Denmark, Spain and Luxembourg:

- In Austria, Denmark and Spain, the need for FGM to be recognised as a ground for asylum. Of the four Member States, only Luxembourg explicitly recognises FGM as a ground for asylum and has introduced legislation to facilitate this.
- Provision of resources for asylum seekers affected by FGM, including medical consultations, counselling and ongoing care.
- Increased data collection on FGM-related asylum cases.
- Improvement of training for immigration officers and healthcare professionals who interact with asylum seeking women and girls who have experienced or are at risk of experiencing FGM.

Austria

FGM as grounds for asylum: FGM is not explicitly considered as a ground for asylum in Austria. In some cases, asylum seekers have been granted asylum or subsidiary protection on the grounds of FGM. However, systematic protection for asylum seekers on the grounds of FGM has not been achieved. To date, there have been 509 cases in the asylum court that mention FGM explicitly.[2]

Heath services are available for victims of FGM: Health counselling centres in Austria have worked in close coordination with three hospitals in Vienna to provide support for victims of FGM that are going through the asylum process, for example by providing defibulation services for women who have experienced FGM.

Better education is needed for interviewers in the asylum process: According to stakeholder interviews, little progress has been achieved regarding the GREVIO recommendation to ensure training on FGM for interviewers in the asylum process.[3] More work is needed to establish a common

[1] https://eige.europa.eu/gender-based-violence/female-genital-mutilation
[2] Austrian Legal Information System (2020). Available at: https://www.ris.bka.gv.at/Ergebnis.wxe?Suchworte=fgm%23&x=0&y=0&Abfrage=Gesamtabfrage
[3] GREVIO Baseline Evaluation Report Austria (2017). Available at: https://rm.coe.int/grevio-report-austria-1st-evaluation/16807596l9

language regarding FGM in the context of asylum applications and to ensure gender-sensitive procedures.

Denmark

FGM as grounds for asylum: In Denmark, asylum is granted based on an overall evaluation, and the risk that an asylum seeker may experience FGM is one of several factors considered in the process. According to stakeholder interviews, positive asylum decisions based on risk of FGM are highly unlikely in Denmark.

FGM-related asylum applications are rejected due to lack of credibility: Between 2019-2020, 17 cases related to both 'gender-related prosecution' and 'FGM' appear on the website of the Refugee Appeals Board. In 10 cases, the risk of FGM was deemed unfounded, and the request for a residence permit was denied. In 2014, the Danish Refugee Council found that the main reasons for the rejection of FGM-related asylum applications were: (1) the fear of FGM was based on a presumption; (2) the parents were perceived to be likely to reject the societal pressure for FGM; and (3) the fear of FGM was stated too late in the asylum process.

FGM-related questions are not standardised in immigration interview guides: A 2014 report from the Danish Refugee Council showed that questions regarding FGM and gender-related persecution do not appear in the standardised interview guide used by the Danish Immigration Service.

Spain

FGM as grounds for asylum: The legal framework for asylum does not specifically refer to FGM. A juridical analysis shows that there have been 20 asylum cases referring to female genital mutilation (prior to 2017), mostly from Nigeria.

FGM-related asylum applications are rejected due to lack of credibility: The reasons for refusing asylum applications include: (1) the claims of the asylum seeker were perceived to lack credibility; (2) the applicant did not sufficiently prove their identity or nationality; (3) a real risk of prosecution or risk of subjection to FGM was not demonstrated; (4) the practice was legally prohibited in the country of origin; (5) there was perceived to be a possibility to move the applicant to another part of the country where the law can be applied (or to a nearby country with less risk).

Luxembourg

FGM as grounds for asylum: Of the four Member States, only Luxembourg explicitly recognises FGM as a ground for asylum and has introduced legislation to facilitate this.[4]

Medical examination of asylum seekers can take place: Article 16 of the Law of 18 December 2015 establishes that the Minister responsible for Asylum and Immigration can decide to order a medical examination of asylum seekers (even though it requires the consent of the applicant) in case there are signs that the applicant has suffered persecution or serious harm, such as FGM.

Lack of data on the impact of legislation on migrant communities: There are no known cases of the prosecution of FGM in Luxembourg. Despite the legal framework in place, the impact on the relevant migrant communities is not known ([5]). One stakeholder suspected that there will be very little case law on this matter, due to the difficulty of instituting legal proceedings against one's own family.

[4] The Law of 18 December 2015 (Article 15) on international protection and temporary protection ([4]) sets forth that "the Director shall take into account the special reception needs of vulnerable persons such as minors, unaccompanied minors, the disabled, the elderly, pregnant women, single parents with minor children, victims of trafficking in human beings, persons with serious illnesses, persons suffering from mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, and in particular victims of female genital mutilation".

[5] The focus groups to be held at the end of September and early October will inform this further.

2 Reporting obligations

Ensuring that reporting obligations lead to the provision of support for women and girls at risk of FGM is essential. Preliminary findings from this study show three key themes in Austria, Denmark, Spain and Luxembourg:

- Reporting requirements in all four Member States require physicians to report crimes of bodily harm that have been caused by an illegal act.
- Legislative reporting requirements can cause fear within affected communities and can disincentivise women and girls at risk from seeking support.
- Training of healthcare professionals is required to ensure that reporting requirements are properly adhered to. In Denmark, awareness of FGM is part of the medical training of doctors and midwives.

Austria

FGM-Specific reporting requirements: In October 2019, an amendment of the Physicians Law entered into force, requiring medical doctors to report crimes of bodily harm that have been caused by an illegal act to police or the public prosecution authority under the Ministry of Justice. Section 54 stipulates the duty of confidentiality, obligation to notify, and reporting obligation of doctors ([6]).

Fear and reporting: While reporting requirements can help healthcare professionals respond proactively to cases of FGM, legislative reporting requirements can also cause fear within affected communities and can disincentivise women and girls at risk from seeking support services. Fear of detection by healthcare professionals can hamper trust between communities and support services.

Child protection requirements: In 2019, the National Children and Youth Services Law was amended. Section 37 (1a) states that, if during a professional activity concerning birth or registration of a birth in a health institution, the suspicion arises that the welfare of a child (whose mother is a victim of FGM) is in danger - and that this danger cannot be prevented otherwise - the health institution must make a written notification to the local child and youth welfare office immediately.[7]

Denmark

Health registry for FGM: There is a diagnosis code in the Danish Health Registry for FGM, which doctors can use to register a case of FGM. However, interview findings indicate that the code is not frequently used by healthcare professionals. This would therefore not provide a correct estimate of the number women living with FGM in Demark. At the local level, a small proportion of municipalities register FGM cases. A lack of consistent registration of FGM cases across all municipalities suggests that there is a lack of data to identify the prevalence of FGM and to inform the development of targeted prevention and protection policies.

Training of health professionals: FGM awareness is part of the medical training of Danish doctors and midwives. Pregnant women who are infibulated are referred to an obstetrician and guided through the pregnancy with a special focus on potential complications. The doctor is informed of the anatomical changes during the birth registry ([8]).

[6] Physicians Law 1998, § 54. Available at: https://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40217871/NOR40217871.pdf
[7] National children and youth services Law, § 37 section 1a. Available at: https://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40218041/NOR40218041.pdf
[8] Revised Appendix 4 on Female Genital Mutilation: https://www.sst.dk/-/media/Viden/Graviditet-og-f%C3%B8dsel/Svangreomsorgen/Graviditet-og-kvindelig-omsk%C3%A6ring/Revideret-bilag-4_Anbefalinger-for-svangreomsorgen_2013.ashx?la=da&hash=7356F54BE3129B1AC884FF254FE07C471F809E95

Child protection requirements: The Social Services Act of 2005 states that public officials and doctors who have knowledge of someone who intends to have their daughters undergo FGM have an obligation to report it to the authorities. The law states that children can be removed from their home in the case of maltreatment, such as abuse or criminal behaviour, which includes the practice of FGM.

Spain

Professional training: Regulated and continuous training of health service professionals should be the foundation for ensuring a correct application of FGM-related protocols. There is a need to improve the training and sensitisation of primary healthcare professionals on FGM (especially in pediatric services).

Lack of policies on prevention on FGM: There is a lack of policies focused on the prevention of FGM that explicitly target girls at risk of experiencing the practice. There is also a lack of policies to protect and provide care for women and girls that have experienced FGM.

Luxembourg

Professional secrecy: While healthcare professionals are bound to professional secrecy requirements, Article 458 of the Penal Code states that health professionals can be requested by courts to disclose information regarding FGM. The Code of Criminal Proceedings mandates public authorities and professionals to report suspicions of abuse or crime to law enforcement authorities.

3 Conclusions

The key themes regarding the **support of asylum seekers** affected by FGM include:

- The need for FGM to be recognised as a ground for asylum.
- The provision of resources such as health services for asylum seekers affected by FGM.
- The need to ensure that asylum seekers experience standardised reception conditions and support services.

The key themes that emerge regarding **reporting obligations** include:

- The existence of mandatory reporting requirements for health care professionals in all four countries.
- The fear of detection and punitive action within communities affected by FGM.
- The need for further training for healthcare professionals and immigration officials on topics of FGM.

Discussion questions

1. How can reception conditions be harmonised across the EU for asylum seekers affected by FGM?
2. What are the specific needs of asylum seekers at risk of FGM which need to be accommodated throughout the asylum process?
3. How can training for healthcare professionals and immigration officers be improved to ensure that asylum seekers affected by FGM received adequate support?
4. Are reporting obligations sufficient to support women and girls at risk of FGM?
5. In what ways can reporting obligations be revised to ensure that women and girls affected by FGM are not deterred from seeking support services?
6. How can outreach with FGM-practicing communities be framed so as to ensure that women and girls affected by FGM are not deterred from seeking support services?
7. Should reporting obligations be extended to other professions? If so, which professions should also have reporting obligations?
8. In what ways can the interview protocols of asylum procedures be improved to support women and girls affected by FGM?

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