

FGM: challenges for asylum applicants and officials

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Asylum authorities in the European Union need to establish better procedures to help address the specific vulnerabilities and protection needs of women and girls who have undergone or are at risk of female genital mutilation.

The asylum process examines whether an applicant has a well-founded fear of persecution based on one or more of the grounds in the 1951 Convention relating to the Status of Refugees or faces an actual risk of being subjected to serious harm. There are a number of grounds on which female genital mutilation (FGM) can support a claim for asylum. It is a form of gender-

based violence and a child-specific form of persecution. It also violates the principle of non-discrimination (as it only affects women and girls) and the right of the girlchild to be protected against practices that are harmful for her health. FGM has short- and long-term health consequences and is therefore considered as a continuous form of persecution and also as a form of torture.¹

FGM constitutes a form of gender-related persecution under the 1951 Refugee Convention that can be related to the grounds of political opinion, membership of a particular social group or religious beliefs. FGM is mentioned as an example of persecution based on membership of a particular social group in the EU Qualification Directive,² and also constitutes 'serious harm' in the context of the qualification for subsidiary protection under Article 15 of the EU Qualification Directive.³ However, FGM survivors (or persons at risk) experience various procedural challenges in establishing the facts of their account and securing protection.⁴

Reception and information

EU Member States are required to identify vulnerable asylum seekers at an early stage but some vulnerabilities can be hard to identify. FGM is usually a taboo subject which many survivors do not want to speak about; in addition, sometimes they do not realise that it is a form of violence against women nor realise the impact of FGM on their mental and physical health.

It is standard practice in many EU member states that asylum seekers undergo a medical examination; this could be an opportunity to ask women coming from countries where the practice is prevalent specific FGM-related questions. However, this requires reception centre professionals to be trained on the issue and to be well informed about asylum seekers' country of origin and ethnic background.⁵ Some countries use special tools to detect indicators of vulnerability, such as the Protect Questionnaire which is currently used by some Member States such as France, Bulgaria and the Netherlands.⁶

It is essential to provide asylum seekers with information about the asylum process in a language that they can understand, as the process is new to most of them and highly complex. They also need to be informed about specific aspects related to FGM, in particular its prohibition in the receiving country and the consequences

of FGM on health. This can help women understand that they have been victims of violence that may give rise to a ground for asylum. It can also help prevent FGM for other family members. Understanding the asylum procedure will prepare them for having to tell their story and to talk about the violence they have undergone.

Establishing the facts and assessing credibility

The asylum authority will interview the asylum seeker to gather the relevant facts related to their testimony and assess the credibility of their claim but asylum seekers often lack knowledge about the aim of the interview. FGM survivors may face additional barriers to communication such as discomfort in discussing the subject and disclosing traumatic experience, the desire to hide shameful experiences and mistrust in authority figures. Trauma and/or lack of education can also hinder disclosure of information. Communicating with an applicant is done through the filter of language and culture, and often through interpreters whose presence may further impede disclosure.

Gathering evidence is not required if the testimony is generally coherent and consistent. However, many asylum authorities require material evidence and will cite a lack of cooperation if the asylum seeker is not able to substantiate his or her testimony.

In general, victims of gender-related persecution face major difficulty in providing evidence of past persecution. A medical examination or a psychological report can be useful to prove sexual violence or trauma but this evidence should not be a condition of qualifying as a refugee. The burden of proof is lighter if the asylum seeker has been a victim of past persecution and if he or she is considered as belonging to a vulnerable group. However, for women and girls who are survivors or at risk of FGM, the principle of the benefit of the doubt should be applied liberally.

May 2015

In assessing credibility, the decision maker must look into the individual and contextual circumstances of the asylum seeker. An asylum officer may conclude that a woman claimant should be able to protect her child from FGM in the event of return but this overlooks the fact that the girl belongs to the community and that her mother is not necessarily in a position to protect her child from such harmful traditional practices.

Country of Origin Information

The individual situation of the asylum seeker needs to be assessed against objective information about the country of origin. The prevalence rate of FGM in the asylum seeker's home country is a very important indicator; Country of Origin Information (COI) also includes information on access to state protection for women who fear that their daughter will be subjected to FGM. If a law prohibits the practice of FGM in the home country, the implementation of the law in practice needs to be assessed. Is it possible to file a complaint for a survivor of FGM? Will the police react diligently if a woman asks for protection for her daughter?

COI should be gathered from different sources (both governmental and non-governmental), be child-specific and include a gender dimension; the European Asylum Support Office has committed to improving these aspects and is also developing a training module on gender and interviewing techniques for vulnerable groups.

However, if no corroboration of facts is found in COI, this cannot in itself challenge the claimant's overall credibility. This is particularly relevant regarding the issue of re-excision (re-cutting at a later date); as this is an even more taboo subject than the initial FGM, no corroboration of the practice is found in COI – but the absence of supporting facts does not mean it is not a reality.

Some asylum authorities consider whether applicants could relocate to another part of their country, where the practice of FGM is less widespread. In those cases, it is necessary

to determine whether such an alternative is both safe, relevant, accessible and reasonable.⁷

Child-specific persecution and family unity

As previously mentioned, FGM is a child-specific form of persecution. If an unaccompanied child applies for asylum on this ground, the asylum authorities need to ensure that the procedure, the interviewing techniques and the credibility assessment are appropriate for a child.

In some countries (such as France), when a family applies for international protection due to fear of FGM being performed on a child, protection is only granted to the girl. In these cases, asylum authorities consider that the parents do not have legitimate reasons for claiming asylum for themselves, because their opposition to the practice will not lead to persecution or serious harm for them. However, family unity and the best interests of the child are fundamental principles in international and regional human rights and refugee law, and should be prioritised in asylum claims related to FGM where the overarching objective is to protect women and girls from persecution or serious harm.

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1. Manfred Nowak (15 January 2008) *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* www.refworld.org/pdfid/47c2c5452.pdf
2. Consideration no. 30 <http://tinyurl.com/EU-QualificationDirective>
3. A complementary form of protection against torture and inhuman and degrading treatment that is not linked to the five persecution grounds of the 1951 Refugee Convention.
4. A 2012 report of a comparative analysis of gender-related asylum claims in nine EU Member States includes a range of examples of good (and bad) practice. See <http://tinyurl.com/EU-Gender-asylum-claims-2012>
5. See, for example, the e-Learning course 'United to END FGM/C': www.uefgm.org/
6. <http://protect-able.eu/resources/>
7. See UNHCR (May 2009) *Guidance Note on Refugee Claims relating to Female Genital Mutilation*, section C. www.refworld.org/docid/4a0c28492.html
8. INTACT is a legal expertise centre in Belgium, working on the issues of FGM, forced marriage and honour-related crime.