

The Istanbul Convention: new treaty, new tool

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The new Istanbul Convention provides a powerful tool for more effectively guaranteeing the protection of asylum seekers at risk of gender-based persecution and at risk of FGM in particular.

The Council of Europe Convention on preventing and combating violence against women and domestic violence, also known as the Istanbul Convention, is the first European treaty specifically devoted to addressing violence against women, including female genital mutilation. FGM is a threat to women and girls around the globe, including in Europe – a fact that has remained unacknowledged for too long.

With its entry into force in 2014, the Istanbul Convention legally obliges States Parties to accelerate preventive measures to protect and support FGM-affected women and girls, or those at risk, and to ensure effective and child-sensitive investigations and prosecution. These obligations include improvements in the area of refugee determination procedures for asylum seekers.

“What I remember from the interview is that the person who received me did not seem to believe me. It is true that some people leave their countries for economic reasons. But when you tell someone “I do not want my girls to be cut”, I want that this person’s vision changes.

In Europe, when a child falls and breaks her arm in the playground, everyone comes to help. I want to see the same reaction when we speak of a little girl at risk of FGM.” (FGM survivor Aissatou Diallo who fled Guinea to protect her two daughters from the practice and is now an anti-FGM activist in Belgium)

International protection under the Istanbul Convention

Building on existing international human rights law obligations, the Istanbul Convention clearly acknowledges that women and girls who suffer from gender-based violence can seek protection in another state when their own fails to prevent persecution or to offer adequate protection and effective remedies. The Istanbul Convention calls 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 is recognised as a valid ground for claiming asylum.

The extent to which European states currently recognise refugee status for women and

girls at risk of gender-based persecution varies significantly. Possible reasons for such variations include the lack of explicit laws and guidance nationally, and inadequate provision of legal support and other services. In addition, 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.¹

The Convention provides a set of obligations for States Parties to better guarantee the protection of asylum seekers at risk of gender-based persecution and at risk of FGM in particular.² States Parties are required to:

Ensure a gender-sensitive interpretation of each of the 1951 Refugee Convention grounds (Article 60, paragraph 2): As is often the case in gender-based persecution, there is a trend to consider FGM as falling within the grounds of membership of a particular social group and to overlook other grounds. Parents who oppose FGM for their daughters may come under the grounds of political opinion. Similarly, where it 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 it performed on her children, she may have a well-founded fear of being persecuted for reasons of religion.

Develop gender-sensitive reception conditions and support services for asylum seekers (Article 60, paragraph 3): The identification of and response to the gender-sensitive reception needs of women affected by FGM require measures to address legal and social barriers that may prevent women and girls from accessing vital health or other services. Restrictions on freedom of movement in detention can hinder women from accessing specialist health-care or counselling services. Barriers may include language, 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 if 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. There is also a need to address its psychological consequences which may include fear of sexual intercourse, post-traumatic stress disorder, anxiety, depression and memory loss.³

Develop gender-sensitive procedures for asylum seekers (Article 60, paragraph 3): According to the Istanbul Convention, States Parties will need to put in place a refugee determination process that is respectful of cultural sensitivities, ensures that women and girls do not face further stigmatisation upon arrival in destination countries, and guarantees a supportive environment allowing women to disclose relevant information. In particular, gender-sensitive procedures should include:

- the provision of information on gender-specific aspects of the asylum procedure
- the opportunity to have a personal interview separately from their husband/partner and without the presence of family members (especially children)
- the opportunity for women to mention 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 sex of their interviewer and interpreter
- the development of gender guidelines on the adjudication of asylum claims, and training to ensure their implementation.



Photo by Lorenzo Colantoni, property of End FGM European Network

Respect the principle of *non-refoulement* (Article 61): The Convention creates 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 inhumane or degrading treatment or punishment. Such obligation should extend to abuses by individuals who perpetrate FGM when the authorities in the country concerned are complicit, fail to exercise due diligence or are negligent in preventing or redressing the abuse.

Conclusion

The Istanbul Convention gives hope for real change in how women and girls are protected from gender-based violence. Official monitoring and evaluation of these new obligations by governments ratifying the treaty will help 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.

The Istanbul Convention provides States Parties with a unique opportunity to lift the silence surrounding FGM in Europe. It is hoped that under the watchful eyes of civil society and national parliaments (both of which are allowed to contribute to the monitoring of the Convention), States

Parties will support women like Aissatou in realising their dream of being part of the last generation to have undergone the practice of female genital mutilation.

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The opinions expressed in this article are the responsibility of the authors and do not necessarily reflect the official policy of the Council of Europe.

1. Asylum Aid (UK) *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*, p41. <http://tinyurl.com/EU-Gender-asylum-claims-2012>
2. For detailed guidance on what the obligations of the Istanbul Convention in relation to FGM mean in practice, and how they can be put into practice, see Council of Europe and Amnesty International (2014) *The Council of Europe Convention on preventing and combating violence against women. A tool to end female genital mutilation*, Strasbourg. See box below re 'Promising practice'. <http://tinyurl.com/CoE-AI-2014-Istanbul-Conv-tool>
3. Irish Family Planning Association (2011) *Sexual health and asylum. Handbook for people working with women seeking asylum in Ireland*. <http://tinyurl.com/IFPA-2011-Asylum-handbook>
4. The End FGM European Network (END FGM) is a European umbrella organisation set up by eleven national non-governmental organisations to ensure sustainable, coordinated and comprehensive action by European decision-makers to end FGM and other forms of violence against women and girls. Its vision is of a world where women and girls are empowered and free from all forms of gender-based violence, in particular female genital mutilation, where their voices are heard, and where they can enjoy their rights and make informed choices about their lives. The principles of respect and promotion of human rights and gender equality are at the core of this work.

Promising practice

The Netherlands: In 2011, the Dutch government developed an official document – *Statement opposing female circumcision* – to help parents withstand pressure when visiting their families in their country of origin. This document outlines the health consequences of FGM and explains relevant Dutch legislation. Parents are given a copy by children's health-care centres and school doctors. www.pharos.nl/documents/doc/pp5056-verklaring-uk-2011_definitief.pdf

Germany: In 2013, the German government set up a national, free telephone helpline 08000 116 016 offering victims of all forms of violence against women – including FGM – advice on demand; around 60 trained counsellors provide confidential

support in 15 languages, around the clock, 365 days a year. www.hilfetelefon.de/en/about-us.html

United Kingdom: In 2008, London's Metropolitan Police issued standard operating procedures on FGM which provide police with an overview of FGM and 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. www.londonscb.gov.uk/fgm/

For more examples, see <http://tinyurl.com/CoE-AI-2014-Istanbul-Conv-tool>