

Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)

Female Genital Mutilation

Introduction

- The Istanbul Convention is the first European legally-binding instrument specifically devoted to violence against women and an important step towards greater gender equality. It covers various forms of gender-based violence, which is defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately” (Article 3 d).
- In Europe, many girls and women are affected or threatened by Female Genital Mutilation (FGM) – a fact that for long has remained unacknowledged. They either run the risk of being taken to their parents’ country of origin or of undergoing the procedure in a Council of Europe member state. For those who have been affected, FGM will lead to serious physical and psychological suffering, most likely causing long-term health consequences. Those at risk of undergoing the practice are often very young and lack the means to say no.
- Most Council of Europe member states do not have specific legislation on FGM. Moreover, awareness among professionals is generally low, including that of teachers, social workers, and health professionals who are often the only ones in a position to identify a girl at risk.
- The Istanbul Convention recognises that FGM exists in Europe and that it needs to be sufficiently and systematically addressed. It is hoped that the entry into force of the Convention and its implementation at national level will greatly increase the standards of protection for victims of FGM, provide them with the support they need, and bring more perpetrators to justice.

Female genital mutilation as a criminal offence

- The Istanbul Convention recognises FGM as a form of violence against women and defines it as “excising, infibulating or performing any other mutilation on the whole or any part of a woman’s labia majora, labia minora or clitoris” (Article 38 a). Introducing national legislation on FGM is the first step in recognising the severity of this practice and ensuring that such acts are appropriately prosecuted. For this reason, the Convention requires all states parties to introduce FGM as a criminal offence when such an act is committed intentionally, whether or not it is performed by medical professionals. This includes the act of pressuring or coercing a girl or a woman to undergo the procedure “voluntarily”.
- To ensure the prosecution of FGM cases in a state party to the Istanbul Convention, the Convention requires the lifting of the rule of dual criminality. This means that states parties shall assume jurisdiction over FGM committed in a third country by or against one of their nationals or residents even if FGM is not a criminal offence in that country (Article 44).
- Although introducing the criminal offence of FGM is essential, sanctions need to be effective, proportionate and dissuasive (Article 45 paragraph 1). Justifications on the basis of culture, religion or tradition may not be used in order to lessen punishment (Article 42). This not only sends a strong message that such acts will not be tolerated, but also ensures that perpetrators are brought to justice. Given that FGM is deeply rooted in cultural and religious customs and traditions, persons who commit FGM are likely to reoffend. As such, the Convention includes the obligation for sentences to be longer for repeat offenders and in cases where the victim is a child (Article 46).

Preventing female genital mutilation

- In Europe, there is widespread ignorance as to what constitutes FGM and the devastating impact it has on women's lives. Tackling attitudes, prejudices, gender roles and stereotypes that make this practice acceptable is an integral part of the Istanbul Convention (Chapter III). It calls for a series of measures - oriented at the public at large but also at affected communities - that include running awareness-raising campaigns on FGM, providing educational material in formal and informal facilities, and encouraging men and boys to contribute actively to its prevention.
- In many cases, lack of knowledge directly translates into the inability of support and health services, law enforcement agencies and the judiciary to fully address the needs of victims. Consequently, states parties are obliged to ensure that professionals in regular contact with victims or girls-at-risk are properly trained on FGM so that they know what it is and how to help. This does not only include police officers, but teachers, social workers and professionals working in child protection services (Article 15). Consequently, the Istanbul Convention aims at encouraging the reporting to the competent authorities and removes any barriers to such a step (Articles 27 and 28).

Protection and support

- Women and girls affected or threatened by FGM must have access to help and support when they need it most; their needs and safety should always be a priority. As such, the Convention requires states parties to set up specialist FGM support services (Article 22), offer legal and psychological counselling, and information on available support services, and to assess and manage risks appropriately (Article 51). Protection also includes measures such as the setting up of free of charge round-the-clock telephone helplines (Article 24) and introducing restraining and protection orders for women and girls threatened by FGM (Article 53). In addition, the Convention seeks to enforce international co-operation (Chapter VIII). This is particularly important due to the transnational dimension of FGM. Ensuring effective cross-border co-operation is not only essential in keeping women and girls safe, but also in facilitating investigations and the prosecution of perpetrators.
- Girls are particularly vulnerable to FGM, and usually have less possibilities to seek help and support. In cases of FGM, it is usually the parents or close relatives that are willing to subject their daughters to this practice. For this reason the Convention places particular emphasis on the best interest of the child and requires that sanctions include the withdrawal of parental rights if deemed necessary (Article 45 paragraph 2).

Fear of Female Genital Mutilation as grounds for asylum

- In many cases, the fear of being subjected to FGM forces some women and girls to flee their country and apply for asylum in a state party to the Convention. Articles 60 and 61 require states parties to interpret the 1951 Refugee Convention in a more gender-sensitive manner, to recognise persecution on the grounds of gender and not to expel anyone to a country where their life or freedom is under threat. Given the gender specificity of FGM, states parties are required to recognise that - as a form of gender-based violence - it may amount to persecution and may give rise to refugee status or international protection.

Understanding the scope of Female Genital Mutilation

- One of the biggest challenges in preventing and combating FGM is the limited understanding of its extent and evolution in Europe. Mapping the extent of the problem is important in order to ensure that measures addressing FGM are based on evidence and reflect the needs of victims. Article 11 of the Istanbul Convention requires states parties to collect the necessary data and to support research in this field so that the prevalence and trends of FGM are fully understood.