



## LEGAL FRAMEWORK

### International and European conventions

Malta has ratified various international conventions condemning FGM, including the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and the Charter of Fundamental Rights of the European Union (2010/C 83/02). Malta has signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210).

### Criminal law

General criminal law is applicable to FGM, in particular Article 214 of the Penal Code, which consists of the crime of bodily injury. Physical mutilation, as referred to in Article 54d (b), is punishable if it causes death or seriously endangers health. In Malta, there is no specific criminal law provision on FGM.

### Child protection law

General child protection law could be used in cases of FGM. The 'Commissioner for Children Act' (ACT VII of 2003, as amended by Legal Notice 427 of 2007) provides for the appointment of a Commissioner for Children with power to investigate any infringements of the rights of children and to promote special care and (legal) protection. According to the 'Domestic Violence Act' (ACT XX of 2005), domestic violence means any act of violence perpetrated by a household member on any other household member, including a child or parent, and includes any neglect that causes physical or moral harm on the other. Paragraph 10 (1) of the Subsidiary Legislation 285.01 entitled 'Children and Young Persons (Care Orders) Regulations' (Legal Notice 49 of 1985, as amended by Legal Notices 43 of 1999 and 102 of 2005), states that it 'shall be the duty of any person or



persons responsible for the home, hostel or institution with whom or in which a child or young person has been boarded out or accommodated in accordance with the provisions of article 10 (1) of the Act to ensure that such a child or young person is treated and brought up in an environment (...) which is conducive to psychological security as well as to physical well-being, so as to promote normal and healthy development'.

### Asylum law

The Subsidiary Legislation 420.02 'Asylum Procedures (Application for a Declaration) Regulations (Legal Notice 253 of 2001)' refers to the 'Children and Young Persons (Care Orders) Act' for those instances where a child under the age of 18 years, who is not in the custody of any person, is seeking asylum, in which case the said Act shall apply to that child.

## About the study

In order to contribute to identifying and filling the gaps in prevalence data collection and support the development of strategies for combating female genital mutilation (FGM), the European Institute for Gender Equality has commissioned the 'Study to map the current situation and trends of female genital mutilation in 27 EU Member States and Croatia'. The study was launched at the request of Viviane Reding, Vice-President of the European Commission. It was conducted by the International Centre for Reproductive Health (ICRH) of the Ghent University and Yellow Window Management Consultants (a division of E.A.D.C.).

The desk research in the 27 EU Member States and Croatia and the in-depth research in nine EU Member States brings about the first collection of information and data, legal and policy framework, actors, tools and methods in the area of FGM in the EU. The different national approaches to tackle FGM in the EU were analysed and compared in order to identify practices with potential in prevention, protection, prosecution, provision of services, partnership and prevalence.

More information and references about the study are available at: [www.eige.europa.eu](http://www.eige.europa.eu)

INDICATOR COUNTRY	FGM prevalence studies	Asylum granted on FGM grounds	Specific criminal law provision on FGM	National action plan covering FGM	FGM-related child protection interventions	Hospital/medical records of FGM
AUSTRIA		✓	✓	✓		
BELGIUM	✓	✓	✓	✓		✓
BULGARIA						
CYPRUS			✓			
CZECH REPUBLIC						
GERMANY	✓	✓		✓	✓	
DENMARK			✓	✓	✓	
ESTONIA						
GREECE				✓		
SPAIN			✓	✓	✓	
FINLAND				✓	✓	
FRANCE	✓	✓		✓	✓	✓
CROATIA			✓	✓		
HUNGARY	✓	✓				
IRELAND	✓	✓	✓	✓		✓
ITALY	✓	✓	✓	✓	✓	
LATVIA		✓				
LITHUANIA		✓				
LUXEMBOURG						
MALTA						
NETHERLANDS	✓	✓		✓	✓	✓
POLAND						
PORTUGAL				✓		✓
ROMANIA		✓				
SLOVAKIA		✓				
SWEDEN		✓	✓	✓	✓	✓
SLOVENIA						
UNITED KINGDOM	✓	✓	✓	✓	✓	✓

## What is female genital mutilation?

- Female genital mutilation (FGM), also known as female genital cutting, is a form of gender-based violence. It comprises all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons.
- Female genital mutilation has negative effects on the health of women in the short, medium and long term and may even lead to death. It is carried out for both cultural and social reasons. Religious arguments tend to be used to justify the practice but there is no religious mandate for it.
- According to UNICEF, FGM is practised in more than 20 African countries spreading between Senegal in the west and Somalia in the east.
- Although overall figures are difficult to estimate, thousands of women and girls residing in the European Union may have been genitally mutilated or are at risk of FGM.
- The EU institutions and the Member States are committed to fighting FGM, as it is shown in the Commission's 'Strategy for equality between women and men (2010–2015)'. The Daphne III programme has played a crucial role in putting FGM on the agenda in several EU countries and in providing financial support for the implementation of transnational projects in this field.
- The European Parliament resolution of 14 June 2012 on ending female genital mutilation clearly stipulates that 'any form of female genital mutilation is a harmful traditional practice that cannot be considered part of a religion, but is an act of violence against women and girls which constitutes a violation of their fundamental rights'. The European Parliament calls on the Member States to take a firm action to combat this illegal practice.

## Professional secrecy law

In the absence of specific legal provisions with regard to reporting cases of performed or planned FGM, general law with regard to professional secrecy and disclosure may be applied in Malta.

## POLICY FRAMEWORK

The National Sexual Health Policy (2010) refers to FGM as 'one of the realities arising around sexual health which needs to be addressed more comprehensively in Malta, as a result of the increase in numbers of residents originating from societies where such practices are known to be prevalent'. Until February 2012, there have been no policy documents dealing with FGM. FGM is tackled in the open (detention) centres through education by the Migrant Health Unit and the Jesuit Refugee Service, but no official guiding policies have been identified.

## PREVALENCE OF FGM IN THE COUNTRY

As of February 2012, there are no representative calculations of the number of women victims of FGM or girls at risk in Malta. An internal report of 2009 from the Migrant Health Unit on FGM claimed that 242 women

came from countries with a high prevalence of FGM, while another internal report about child spacing practices among Somali women residing in open centres in Malta stated that 262 women were living in such centres in 2011, and that 114 of these had small children. And finally, a study conducted between 2003 and 2007 showed that there were 566 births in Malta by mothers of African nationality. One hundred and seventy of these mothers came from sub-Saharan and Sahel regions.

## What is gender-based violence?

- Gender-based violence is a violation of human rights and a form of discrimination. It is defined as violence directed against a person on the basis of gender. Gender-based violence reflects and reinforces inequalities between men and women and results in physical, mental and sexual harm. It includes, among others: domestic violence, rape, sexual harassment, sexual violence during conflict, female genital mutilation, forced marriages, forced prostitution, forced sterilisation, female infanticide and prenatal sex selection.
- In the European Pact for Gender Equality (2011–2020) the Council of the European Union reaffirms its commitment to fulfil EU ambitions regarding gender equality as mentioned in the Treaty. In particular, it emphasises the need to combat all forms of violence against women in order to ensure the full enjoyment of human rights by women and girls and, as a consequence, to enhance gender equality with a view to creating inclusive growth and development in labour markets in Europe.
- The European Parliament Resolution on the elimination of violence against women of 26 November 2009 urges Member States to improve, among others, their national laws and policies to combat all forms of violence against women, in particular through the development of comprehensive national action plans to combat violence against women.
- The European Commission's Strategy for Equality between Women and Men 2010–2015 emphasises the importance of combating violence against women. The Stockholm Programme 2009 highlights the need for special support and legal protection for victims of violence against women. In addition, the Women's Charter 2010 envisages the implementation of a comprehensive and effective policy framework to combat gender-based violence as well as the strengthening of the measures to eradicate female genital mutilation and other acts of violence.

## Facts

- As of February 2012, there are no policy documents that address FGM.
- The National Sexual Health Policy (2010) refers to FGM as 'one of the realities arising around sexual health which needs to be addressed'.
- A few actors (civil society organisations and one public body) deal with FGM in their work with irregular migrants residing in open centres.
- Training on FGM for health professionals was organised in 2010.

## Figures

- Between 2003 and 2007, there were 566 births in Malta by mothers of African nationality; 170 of these mothers came from sub-Saharan and Sahel regions.
- Until 2009, an estimated 242 migrant women from countries where FGM is practised were living in Malta.
- There is a record of one case from an Ethiopian family where asylum was requested based on FGM, but not granted.



## About the European Institute for Gender Equality (EIGE)

The European Institute for Gender Equality is the EU knowledge centre on gender equality. EIGE supports policymakers and all relevant institutions in their efforts to make equality between women and men a reality for all Europeans and beyond, by providing them with specific expertise and comparable and reliable information on gender equality in Europe.

More information: [www.eige.europa.eu](http://www.eige.europa.eu)

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