



Report

Knowledge-sharing seminar “Best Interests of the Child in FGM-related cases”

Date: 28th January 2016

Venue: La Tricoterie, Rue Théodore Verhaegen 158, Brussels 1060, Belgium



This event was co-funded by the European Commission’s Rights, Equality and Citizenship Programme, the Human Dignity Foundation and the Wallace Global Fund.



I. Agenda

8:30 Registration

9:00 Welcome by President of the Network, Naana Otoo Oyortey MBE

Policy and Legal Context

9:10 Ten Principles on Child Protection - Ellen Gorris, DG Justice, **European Commission**

9:30 Presentation of *Handbook on European law relating to the rights of the child* - Dr Maria Amor Martin Estebanez, **EU Agency for Fundamental Rights (FRA)**

10:00 Presentation of the study *L'intérêt de l'enfant dans le cadre des procédures protectionnelles et répressives en lien avec les mutilations génitales féminines¹* and **Q&A** - Maité Beague, Legal Expert Sos-Enfants Saint-Luc, Expert in family law at **UNamur**

10:40 Short video (3 minutes) animation on school safeguarding *My Body, My Rules* - **Forward UK**

10:45 – 11:00 Coffee break

11:00 Panel discussion 1: Prosecution

- What is in the best interests of the child in FGM-related cases? What can we, as stakeholders (professionals/CSOs/governments), do to change the status quo?

Contributors:

Anne-Marie Hutchinson OBE - Partner, **Dawson Cornwell**, UK

Natalie Reseigh - **Metropolitan Police**, London, UK

Q&A

11:45 Panel Discussion 2: Protection

- International and national Child protection systems in the EU and decision-making process for professionals

Contributors:

Andrea Vonkeman - Policy and Legal Support Unit, **UNHCR Bureau for Europe**

Christine Flamand - Coordinator of **Intact ASBL**: Presentation of Belgian Decision Tree

Q&A

12:30 – 13:30 Lunch

13:30 Panel Discussion 3: Prevention

- How to integrate the best interests of the child into prevention measures and training for professionals

Contributors:

Zahra Naleie – Programme Manager **FSAN**

Diana Geraci - **Pharos, Dutch Multi Agency Approach**

Fabienne Richard - Director **GAMS** Belgium

Seydou Niang - **Men Speak Out** Peer Educators Programme Coordinator (holistic approach to prevention)

14:30 Q&A

15:00 Conclusions

¹ *The best interests of the child in protection and prosecution related to FGM*

II. Objectives of the seminar

On the 28th of January, the End FGM European network organized **the first knowledge-sharing seminar on the best interest of the child with regard to FGM**, enabling members, stakeholders and experts in the field to share their experience and insight and evaluate opportunities for concerted action.

The seminar had also the objectives of:

- Signposting relevant resources and tools;
- Using discussions and outcomes to develop the END FGM Network position on the best interest of the child in relation to FGM.

The issue of best interest of the child was discussed through 3 main areas of focus:

- **Prosecution**
- **Protection**
- **Prevention**

III. Content of the seminar

1. Welcome by the President of the Network, Naana Otoo Oyortey MBE

Naana Otoo Oyortey welcomed everyone and highlighted the importance of more closely examining the issue of the best interests of the child in FGM-related cases.

She thanked the Network's funders: the European Commission, the Human Dignity Foundation and the Wallace Global Fund for their support.



2. Policy and legal context

Presentation n°1

Ten Principles on Child Protection - Ellen Gorris, DG Justice, European Commission

Ellen Gorris began her presentation by thanking the End FGM European Network for building a bridge between child rights and the issue of FGM.

She briefly covered the relevant laws on FGM. She mentioned in particular Article 19 of the UN convention of the Rights of the Child **on the child's right to protection from all forms of violence and the child's right to have her best interests taken as a primary consideration.**

The best interests of the child are one of the four overarching principles of the UN Convention on the rights of the child. Ellen Gorris also highlighted the important role of the **Istanbul Convention.**

Ellen Gorris then explained the **coordinating role of DG Justice on the rights of the child,** with other services across the Commission and colleagues from the gender equality unit. DG justice has one main area of focus, which is violence against children. DG Justice has focused on the **creation of an integrated child protection system.** She highlighted that Member States are under an obligation to protect children from violence, and hold primary responsibility to establish comprehensive child protection systems. Nevertheless, the EU has a key role to play as well in cross-border cooperation.

Ellen Gorris explained that “integrated child protection” has been the topic of discussion at the three latest European fora on the rights of the child.

She was glad to see that the EU approach is close to the End FGM Network’s approach focusing on prosecution, protection and prevention. She went through the 10 principles on child protection and then examined two fictional case studies to highlight how the ten principles apply to cases of FGM.

The 10 principles are holistic and based on the child rights approach and recognise children as rights-holders.

In short form, the 10 principles are:

1. Every child is recognised, respected and protected as a **rights-holder**, with non-negotiable rights to protection.
2. No child is discriminated against.
3. Child protection systems include **prevention** measures.
4. Families are supported in their role as primary caregiver (through for instance universal and targeted services, particularly through prevention)
5. Societies are aware and supportive of the child's right to **freedom from all forms of violence.**
6. **Child protection systems** ensure adequate care. This includes, amongst others:
 - a. standards, indicators and systems of monitoring and evaluation
 - b. child safeguarding policies and reporting mechanisms for organisations working directly and with children
 - c. **certification and training for all professionals** working for and with children.
7. Child protection systems have **transnational and cross-border mechanisms** in place.
8. The child has **support and protection** (for instance, no child should be without the support and protection of a legal guardian or other recognised responsible adult or competent public body at any time)
9. Training on **identification of risks** is delivered to a wide range of people working for and with children (including all teachers, health sector professionals, social workers, etc).
10. There are safe, well-publicised, confidential and accessible **reporting mechanisms** in place.

The case studies presented by Ellen Gorris confirmed the value of working on FGM from a child rights and child protection approach, where prevention, identification, follow-up and treatment of

(potential) FGM is integrated in the same channels as other forms of child abuse. For this to become a reality, persons who are in frequent contact with children and who may be able to identify and report potential FGM (teachers, health professionals, sports instructors, social workers, etc.) need to be aware of and trained on harmful practices. Vice versa, those working on FGM make the necessary links with "child protection mechanisms" such as child help-lines, child protection services, teachers' associations and so on.

Ellen Gorris stressed the importance of not only seeing children as subjects of protection, but as rights-holders. It is imperative that further work is done on **capacity-building for children** to claim their rights and to protect themselves. Children must be able to identify for themselves whom they should talk to, to get further help. For this reason, this is recognized in the very first Principle that the child is respected as a rights-holder, and **empowered to protect him or herself and to claim his or her rights**.



Presentation n°2

Presentation of Handbook on European law relating to the rights of the child - Dr Maria Amor Martin Estebanez, EU Agency for Fundamental Rights (FRA).

Maria Amor Martin Estebanez opened her presentation with the concept of the child as a **rights-holder**, which includes the child as a legal person. She stressed the role of parents, the best interest of the child according to UN CRC and how to establish the latter when there are conflicting interests.

In addition to the **fundamental right to life**, children have a **right to protection and care**. The State has duties, as do private actors **to protect from torture and degrading treatment**. Maria Estebanez also referred to the link to the Istanbul Convention, which is the first time that **FGM is referred to as a serious form of violence within Europe**. This gives a strong legal base to be operating on rights of children.

Maria Amor Martin Estebanez divided her presentation into three main topics:

1. Violence at home, in school and other settings

The State has the duty to enact criminal law provisions, backed up by the law enforcement machinery. The State has also the duty to adopt special measures and safeguards. Even when the state delegates the administration of public services to other actors, it still has a duty to protect children. There is a duty to be aware of potential risks and complaints procedures, which is pertinent to FGM cases.

2. Freedom of thought, conscience and religion

Maria Estebanez questioned how the best interests of the child could be determined. State has the duty to convey its school curriculum in an objective, critical and pluralistic manner. Parents have the rights and duties to provide direction to their child in the exercise of his/her freedom in a manner consistent with the child's evolving capacities.

3. Freedom of information and right to be heard

With regard to ECHR *Gaskin v UK*, the State has to provide independent authority. If not, there is a violation of human rights (on personal files). Maria Estebanez reminded the right to be heard: freedom of a child to express his or her views and obligation to take into consideration those views. In terms of Jurisprudence, it is up to the judge to decide whether to hear the child or not. EU Court has decided that there has to be legal procedures and conditions in place so that child can express his/her views freely.

Maria Estebanez went through the principle of **equality and non-discrimination**, rising up the issue of **intersex**, as FRA recently released a paper on this issue. She explained that male or female binary concept creates an environment where intersex persons are discriminated. The sexual characteristics of a person have nothing to do with sexual identity and are just physical characteristics. The legal requirement to register as male or female creates social expectations. Medical interventions to align the sex of a child often happen without the consent of a child. This kind of intervention has strong consequences on the mental and physical health of a(n intersex) person.

Presentation n°3

Presentation of the study *L'intérêt de l'enfant dans le cadre des procédures protectionnelles et répressives en lien avec les mutilations génitales féminines*² - Maïté Beague, legal expert at SOS-Enfants Saint-Luc, expert in family law at the University of Namur

The presentation focused on the child's best interests in the context **of protective and criminal proceedings related to female genital mutilation.**

Detailed legal analysis of the concept of best interests of the child in both international and Belgian law, using elements of comparative law.

From the perspective of international law, Article 3 § 1 of the International Convention on the Rights of the Child (CRC) stipulates that "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, **the child's best interests shall be a primary consideration**". This concept of best interests of the child has often been described as vague, blurry or even as a soft concept. The contribution made by the different authors who have written about this concept was discussed and the Children's Rights Committee defined the best interest of the child as a **substantive rule, a legal principle subject to**

² The best interests of the child in protection and prosecution related to FGM

interpretation and a rule of procedure. Following this analysis, Maite Beague discussed how a child's best interests must be assessed and determined.

Under Belgian law, Article 22bis of the Constitution as well as the position of the Belgian courts in relation to Article 3 § 1 of the International Convention on Children Rights was discussed. Article 22bis of the Constitution stipulates, "Every child has the right to **respect for his moral, physical, psychological and sexual integrity**. Every child has the right to speak on any matter concerning him/her; his/her opinion is taken into consideration, having regards to his/her age and understanding. Every child has the right to benefit from measures and services that contribute to its development. In every decision which concerns him/her, **the child's best interest is primarily taken into consideration.**"

The decree or rule referred to in Article 134 ensures these children's rights. Concerning the interpretation/application of article 3 § 1 of the CRC, the current position of the Belgian courts has been **to refuse to recognize the best interests of the child as a general principle of law**. However, the child's best interest must be taken into account for every decision that concerns them, including in the context of female genital mutilation. In addition, the child's best interests can be considered to dictate the respect of all rights enshrined in the CRC. When it comes to making decisions in respect of a **child at risk of undergoing female genital mutilation, several rights may come into conflict and it will then be a matter of balancing the rights available.**

Examination of the notion of children's best interests to protection and criminal proceedings related to female genital mutilation.



Under Belgium law, the child at risk of FGM and/or who has undergone it may be put under the **protection of the Youth Service Assistance** (Service d'aide à la jeunesse- SAJ). The SAJ negotiates assistance measures to be put in place, with parents and minors over 14 years old who must agree to them. Within those support measures available, the SAJ may consider the **placement of the child outside the home environment.**

In the most serious cases and when the urgency to intervene to protect the child from being subjected to the practice is pressing, a report can be made to the public prosecutor, who may decide to call in an **emergency Youth Judge**. The Judge has the authority to make a placement order (extract the child from its home) to avoid the child undergoing genital mutilation. In addition, since the law of the 28 November 2000, an article 409 was introduced into the Criminal Code **criminalising female genital mutilation**. FGM is reprehensible at criminal level, but there is clear evidence that criminal prosecution is rarely, if not never, taken.

A child at risk or a survivor of female genital mutilation can therefore be affected by a decision taken either from the angle of protection or prosecution. This part of the presentation analysed the criminal proceedings and protection procedures related to female genital mutilation in the light of the conclusions previously drawn in the analysis of the notion of best interests of the child. It has shown **the importance of systematically weigh in the various rights available**, rights that can oppose each other and to consider how to resolve this conflict.

Recommendations



- Draw up a concrete path destined for practitioners that have to position themselves when faced with a situation involving FGM;
- Help to guarantee the mainstreaming and consideration of children's best interests at all levels (social workers, lawyers, judges, etc.).

3. Panel discussions

Panel 1: Prosecution

Topic: What is in the best interests of the child in FGM related cases? What can we, as stakeholders (professionals/CSOs/governments), do to change the status quo?

Moderator: Claudia Hoareau, AkiDwA, Ireland

Panellists:

- Anne-Marie Hutchinson OBE, Partner, Dawson Cornwell, UK
- Natalie Reseigh, Metropolitan Police, London, UK

Presentation n°1

Natalie Reseigh, Metropolitan Police, London, UK



Natalie Reseigh explained that in the UK, **FGM is a child abuse and is against the law**. The Female Mutilation Act of 2003 makes it illegal to perform FGM in the UK and aid, abet, counsel or procure a non UK National to carry out FGM on girls who are British Nationals or permanent residents of the UK abroad, or to aid, abet, counsel or procure a girl to carry out FGM on herself.

The penalty is up to 14 years in prison or a fine. Last year was introduced the extension of extra-territorial liability to habitual UK residents, the possibility for the victims to stay anonymous and the parents' and guardians' liability for failing to protect a child from FGM.

Natalie Reseigh has presented the civil protection orders for FGM. The FGM protection orders (FGMPO) went live on 17th July 2015. They are designed to help safeguard girls under 18 who are at risk of FGM in the UK or abroad or even those who are already victims. Anyone who fears that someone is at risk of FGM can apply to a family court from an FGMPO.

In addition, as of the 31st October 2015, all regulated professionals have to report directly to the police any child under 18 that either has undergone an FGM or is at risk of FGM. Since the entry into force of the mandatory reporting, 20 reports were received and from those, 17 are from health professionals. In the UK,



there have been no convictions under FGM legislation and only one prosecution. Natalie Reseigh highlighted that **FGM prevalence is difficult to estimate** in the UK. Studies suggest that 6500 girls are at risk in London each year.

She presented all the **barriers to reporting** such as the **fear for children to « tell on their parents »**, the **immigration status**, the **lack of understanding of the law or of the consequences of FGM**.

Natalie Reseigh explained that **multy-agency approach is vital**.

Presentation n°2

Anne-Marie Hutchinson OBE, Partner, Dawson Cornwell, UK

Anne- Marie Hutchinson presented the existing law against FGM in the UK. She explained that there is an FGM specific legislation in England and Wales, which is used in order to prevent FGM from taking place or to protect a child who may have already been subject of FGM.

The Female Genital Mutilation Act of 2003 has been completed by the **Serious Crime Act in 2015** (SCA 2015). In addition to the protection of girls from FGM, the SCA inserted the **offence of failing to protect girls from risk of FGM**, the FGM protection orders (FGMPO) and the duty to notify police of FGM.

The SCA 2015 amendments affect every individual and organisation, as both have a duty towards an FGM victim. The current impact is that parents can be guilty of a criminal offence if they fail to prevent a girl from being subjected to an FGM.

There is also a **mandatory duty on healthcare professionals, teachers and social workers** in Wales to report FGM to the police, if they discover that a girl is at risk or has undergone the procedure.

An FGM Protection Order can be obtained to prevent an FGM from taking place or to protect a girl who has already been subjected to FGM. Professionals should not fear appearing culturally insensitive or racist and must ask girls those direct questions is they have reason to suspect FGM or risk of FGM.

Panel 2: Protection

Topic: International and national Child protection systems in the EU and decision-making process for professionals.

Moderator: Aurélie Desrumaux, Equipop, France

Panellists:

Andrea Vonkeman, Policy and Legal Support Unit, **UNHCR Bureau for Europe**

Christine Flamand, Coordinator **of INTACT ASBL**: Presentation of Belgian Decision Tree

Presentation n°1

Andrea Vonkeman, Policy and Legal Support Unit, UNHCR Bureau for Europe

Andrea Vonkeman presented the child protection system in the EU and the decision-making process for professionals in cases involving GBV and FGM.

She began her presentation explaining that the child protection systems need to be **holistic and integrated (knowledge and data, laws and policies, financial and human resources...)**.

Those systems face three main problems: the **lack of systematic data collection** on gender related claims, **the lack of harmonized decision-making process**, the **lack of gender sensitive asylum procedures**.

Andrea Vonkeman explained that statistical data or reports on the incidence of GBV might not be available due to **underreporting of cases or lack of prosecution**. In certain countries, the authorities may be **unwilling to issue documentation** to women regarding events that are considered private or placing a person at risk of serious harm. **Gender-specific country of origin information (COI)**, which could establish the person's fear of persecution or real at risk of suffering serious harm, is not always available. But, the absence or lack of COI does not mean there is no persecution.

Andrea Vonkeman highlighted **the lack of gender sensitivity by asylum authorities**. The research "Beyond Proof" has shown that the gender of the applicant can affect the way questions are raised by the case worker and thus the answers provided. In addition, women tend to be less believed than men when they claim refugee status on gender-related grounds.

In order to effectively harmonize decision-making, EASO (agency of the European Union that plays a key role in the implementation of the Common European Asylum System) has developed in 2014 an e-learning module on « gender, gender identity and sexual orientation » to help international practitioners and policy/decision makers deal with gender-related asylum claims. UNHCR was part of an expert group which provided comments on the module.

Regarding law and policy, Andrea Vonkeman explained that second generation of EU asylum legislation has brought **improvements in terms of standards and safeguards for children and claims related to GBV**. It reflects a greater sensitivity towards gender-related persecution and towards the best interest of the child.

Finally, Andrea Vonkeman presented the **critical role of the Istanbul Convention**. For the first time gender-related persecution is explicitly mentioned in an international Convention. The Istanbul Convention recognises in article 38a that FGM is a form of violence against women.

Presentation n°2
Christine Flamand, Coordinator of Intact ASBL

Christine Flamand presented the decision tree used in Belgium as an example of good practice to improve child protection.

Created in 2009, Intact is a Belgium association which takes legal action to fight FGM. It is a legal expertise centre on issues related to FGM and other harmful practices. Intact is closely working with GAMS.

Christine Flamand explained that in order to enhance the child protection against FGM, it is necessary to **improve a good knowledge about the practice** through capacity building of stakeholders in order to detect a situation at risk. A close collaboration and interaction of services and professionals is also required. Finally, it is critical to have and develop useful tools like the decision tree.

The **decision tree** is a uniform reference framework in preventing FGM for professionals in child protection. The decision tree is on line at: http://www.strategiesconcertees-mgf.be/wp-content/uploads/MGF-tryptique_final RTP.pdf

Christine Flamand identified three protection challenges:

- The tools need to be appropriated and implemented by professionals;
- The necessity of **interaction and collaboration** between professionals to ensure protection (everyone is liable);
- The need of a **long-term monitoring system** of a family and a situation at risk (the role of the End FGM Network could be to gather good practices on the monitoring process).

Panel 3: Prevention

Topic: How to integrate the best interests of the child into prevention measures and training for professionals?

Moderator: Clara Caldera, Aidos, Italy

Panellists:

Zahra Naleie, Programme Manager, **FSAN**

Fabienne Richard, Director of **GAMS** Belgium and Seydou Niang, **Men Speak Out** programme coordinator.

Presentation n°1

Zahra Naleie, Programme Manager, **FSAN**

Zahra Naleie presented the Dutch **multi-agency approach** as a good practice of prevention program. Zahra stressed that **awareness-raising is the basis for prevention**. There is a strong need to have **personalised material** for the target groups. It is also necessary to include **training for professionals**. How to deal and solve this problem are the answers that the professionals are in need of.

In the early nineties many refugees from practicing countries came to the Netherlands. Consequently, in 1993, the Dutch Government took a clear position to **prohibit all forms of FGM under child protection laws and considered FGM as a form of child abuse**. Since then, several projects have been implemented, aiming at preventing and educating African communities and the Dutch health sector.

The Dutch policy is based on:

- **Prevention:** training of key professionals from the communities and associations;
- **Awareness-raising campaigns** through information meetings, home visits, dialogue and debates (particularly for the youth);
- **Workshops** for **religious leaders**.

The Dutch Government developed the **health passport**. This is a document developed by the Ministry of Health and the Ministry of Security and Justice, launched in 2011 and which was signed by several organizations. In addition, protocols have been developed for child and youth health care, child protection institutions and health professionals.

Pharos, a Dutch organization, carried out an assessment of the situation of FGM in the Netherlands. In total, 29.120 women are living with FGM in the Netherlands. Annually, 40 to 50 girls living in the Netherlands are at risk of FGM.

Zahra presented the successes of the Dutch approach. FGM has become a topic to be discussed among the practising communities. Almost everybody knows that FGM is not allowed and punishable in the Netherlands. Multi-agency approach is more effective than a single approach. Several protocols, e-learning for professionals and materials/ tools for communities have been developed in different languages.

The biggest challenge is the persistence of a will from a number of people to circumcise their daughters in the name of **religion, tradition or honour**. The professionals have **difficulties to identify and report FGM cases**. Finally, there is an uncertainty for the continuation of FGM projects.

To strengthen the Dutch approach, FGM **should be integrated in the existing programs like child abuse**. There is a critical need of **giving information to the children themselves**. It is also necessary to provide **adequate medical and psychological care for girls** who have already been victims of FGM and to provide **more training** for the professionals. **Engaging youth people** in the fight against FGM is also a critical issue.

Zahra ended her presentation reminding that « as long as there is one child affected, there is too many, therefore, we have to end all forms of FGM ».

Presentation n°2

Fabienne Richard, Director of GAMS and Seydou Niang, Men Speak Out, Programme coordinator

Fabienne Richard, Director GAMS Belgium



Fabienne Richard started by introducing the GAMS. GAMS was created in 1996 and is a community-based organisation, which will celebrate its 20th anniversary this year. Its mission is to **support women living with FGM and prevent FGM on girls at risk**.

The team is composed of volunteers and workers. With Intact and the End FGM European Network, GAMS has developed a strategic consortium, « Stratégies concertées ».

GAMS' top priority is to continue to fight FGM, advocate and provide/ find funding for community work.

Seydou Niang, Men Speak Out Peer Educators Programme coordinator



Seydou Niang presented a holistic approach to prevent FGM through the **Men Speak Out project**. Seydou Niang reminded that every human being who is a parent hopes for the welfare of her child.

The project arose from the findings that there are many activities only directed towards women, which leads to believe that FGM is only a woman's problem. But **it is also critical to involve men in awareness-raising campaigns**. Indeed, one of the justifications for FGM is it is performed the name of men. But we do not give them the floor to see what it is. A recent study from Unicef has shown that **women think that FGM is what men want while men want it to stop**. In the framework of the project, the team project has conducted qualitative research through individual interviews and focus groups. At the same time, 15 men have been trained on gender issues and especially on how to talk with families or in public about FGM. A parallel study will assess the impact that migration has had on FGM.

In terms of prevention, the project has developed posters with men and sentences and/or testimonies, which will be translated into French, Dutch and English. Video clips of men's testimony will be also disseminated. Seydou Niang explained that it **is important to continue the prevention by involving parents**, which implies that **men should be fully included**. It is also **critical to find a way to make a connection with the social and cultural values of practising communities** (everyone aspires to human rights but most people do not have access to these principles).

Finally, Fabienne Richard highlighted three top priorities for FGM programmes:

- Focusing on getting **more funding for community work**;
- Improving the access to **specialized care for every migrant woman** with FGM (the best way to protect a child from FGM is to take care of the mother);
- Strengthening the **networking, coordination** between the different services to have more impact (national coverage, standardization of tools, better use of the resources).

IV. Conclusions

Liuska Sanna, Director of the End FGM European Network concluded the seminar highlighting the fact that the concept of **the best interest of the child remains a challenge**.

The seminar was an opportunity to hear about guidelines and tools that can help professionals in the field. **Prevention remains the main focus**, which reflects the position of the Network.

There is a **critical need for more and better data**. Liuska Sanna highlighted the importance of **working with communities and at community-level** and the necessity of multi-level agency cooperation.