

# Female Genital Mutilation/Cutting as a Ground for Asylum in Europe

"I've heard that during the procedure [of FGM], four women spread your legs wide apart and hold you down so that you can't move. And then, the eldest woman takes a knife that is used to cut hair and scrapes your women parts off. There are no painkillers, no anesthesia. The knife is not sterilized. [...] This would have happen to me if I stayed in Togo. It happens to girls all over the world. But with the help of my mother I ran away, far from my home, family and country. Eventually I made it to America where I thought I'd be taken in, where I thought I would be safe. But instead of finding safety, I'd found a jail cell – or actually a series of cells. I had been beaten, teargassed, kept in isolation until I nearly lost my mind, trussed up in chains like a dangerous animal, strip-searched repeatedly and forced to live with criminals, even murderers."

confession by F. Kassindja - "Do they hear you when you cry?"

FP: 50k girls and women have been subjected to FGM/C & 100k are at risk every year  
UNHCR: 25k girls and women were seeking asylum in Europe (2014), 71% already underwent FGM/C

## AIM OF OUR RESEARCH:

- to gain more understanding of the legal protection offered in Europe to asylum seekers on FGM/C related grounds

## HOW?

- in four stages

## I. FGM/C is a human rights violation

- the right to the highest attainable standard of health
- girls' and women's right to security and physical integrity, incl. freedom from violence
- the right to non-discrimination on the basis of sex
- the rights of the children
- the right to freedom from torture and cruel, inhuman or degrading treatment
- the right to life

## II. FGM/C as a ground for asylum

1951 Refugee Convention (art. 1 A (2)) - refugee:

"person who has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion, owing to such fear, is unwilling to avail himself of the protection of that country".



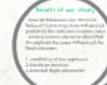
## III. Legal and policy asylum framework in Europe

- Council of Europe (CoE) and European Union (EU) have adopted both non-binding and legally binding documents



## IV. Judicial protection at the European level

- European Court of Human Rights (ECtHR) - the only court at the European level which raised the possibility of offering protection to asylum seekers on FGM/C related grounds
- Court of Justice of the European Union (CJEU) - Opinion of Advocate General Bot that when "a woman is at risk of being subjected to forced genital mutilation [...] there is plainly and unambiguously an act of persecution"
- to date, 13 cases have been brought before the ECtHR on these grounds, whilst no case has been brought before the CJEU.



## Conclusions

- significant legislative efforts with regard to FGM/C and asylum were undertaken by both CoE and EU in the past decades, BUT...
- limited awareness in Europe regarding gender dimensions in general and FGM/C in particular;
- due consideration to cultural and gender dimensions needed when deciding on asylum decisions;
- more emphasis should be placed on the responsibility of States to protect those who want to escape FGM/C.



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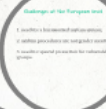
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# as a Ground for Asylum

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### Well-founded fear of persecution

- UNHCR recognized FGM/C to be a form of persecution
- (non-exhaustive) list of risk profiles who may qualify for refugee status under the 1951 Refugee Convention:
  - women and men activists persecuted for their opinions and commitment to end FGM/C in their home and/or their perceived threat to religious beliefs
  - women and (unaccompanied and separated) girls who seek protection from being subjected to FGM/C whether they come directly from FGM/C-practising countries or have lived most of their lives in Europe and may be at risk of being cut upon return;
  - women and girls who have already been subjected to FGM/C and seek protection from re-excision, defilement or reinfibulation upon marriage (including child marriage) or at childbirth;
  - parents who claim international protection to protect their daughters from FGM/C;
  - women who are under pressure from their family and community but refuse to become 'cutters' in countries of origin;
  - women who had been subjected to FGM/C, have accessed reconstructive surgery (often while in Europe) and who fear being cut again upon return.

### Convention grounds

- most commonly invoked grounds with regard to FGM/C are:
  - membership of a particular social group;
  - political opinion;
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#### CoE legally binding documents

Istanbul Convention (2011) was adopted;

- It recognized FGM/C as a form of gender-based violence (GBV);
- It requires States:
- to ensure that GBV against women may be recognized both as a form of persecution within the meaning of article 1A(2) of the 1951 Refugee Convention and as a form of serious harm giving rise to complementary/subsidiary protection;
- to ensure that a gender-sensitive interpretation is given to each of the five 1951 Refugee Convention grounds;
- to develop gender-sensitive reception procedures and support services as well as gender-sensitive asylum procedures;
- It lays down the obligation to respect the principle of non-refoulement.

European Convention on Human Rights (ECHR), art. 3, provides for the principles of non-refoulement.

#### EU legally binding documents

- Charter of Fundamental Rights - protects all rights jeopardized by FGM/C;
- Lisbon Treaty - provides that third nationals (women fleeing FGM/C), seeking asylum, may find protection, and be spared of expulsion to the home country;
- Victims' Directive - specifies that FGM/C is a form of GBV;
- Common European Asylum System (CEAS) - includes Directives and Recast Directives.

#### Challenges at the European level

1. need for a harmonized asylum system;
2. asylum procedures are not gender sensitive;
3. need for special protection for vulnerable groups.

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**EU**

## **legally binding documents**

- **Charter of Fundamental Rights** - protects all rights jeopardized by FGM/C;
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### Cases before the ECtHR

[illegible]

## Results of our study

- Interim Measures (art. 39 of the Rules of Court) may have influenced positively the outcome of some cases
- some common elements identified throughout the cases influenced the final outcome:

1. credibility of the applicant
2. family protection
3. internal flight alternative

## Cases before the ECtHR

ECtHR case	D country	O country	status	reason	proposed solution
Abraham Lunguli	Sweden	Tanzania	struck out	residence permit eventually granted	none necessary
Agbotain&Osakpolor	Sweden	Nigeria	struck out	residence permit eventually granted	none necessary
Ameh and others	UK	Nigeria	inadmissible	ill-founded	IFA
Bangura	Belgium	Sierra Leone	pending	credibility challenged	
Collins & Akaziebie	Sweden	Nigeria	inadmissible	ill-founded	IFA
E.S.	France	Nigeria	inadmissible	ill-founded	IFA
Farouk Mohamed	Netherlands	Sudan	struck out	residence permit eventually granted	none necessary
Izevbekhai	Ireland	Nigeria	inadmissible	ill-founded	IFA
Murama	Netherlands	Guinea	struck out	residence permit eventually granted	none necessary
Omeredo	Austria	Nigeria	inadmissible	ill-founded	IFA
R.W. and others	Sweden	Kenya	inadmissible	ill-founded	IFA
Sow	Belgium	Guinea	admissible	no violation of art. 3 & art. 13	removal to O country
Y.K.	UK	Sierra Leone	inadmissible	struck out	none necessary

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### Recommended sources

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M.J. Middelburg, Empty Promises? Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal

<http://www.uefgm.org>

<http://www.annemariemiddelburg.com>

### Questions?

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twitter: @Alina\_D\_Balta

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