

## Joint Shadow Report - PORTUGAL

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<b>Authors:</b>
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**Associação para o Planeamento da Família (APF):** [APF](#) promotes health, choices and rights based on gender equality in Portugal since 1967. Its mission is to "help people make free and responsible choices in their sexual and reproductive life". APF started working on female genital mutilation in 2000. The work was developed in three sections: advocating for women and children's rights, sexual and reproductive health, and cooperation and development with the United Nations Fund for Population, other UN agencies, research institutes and European NGOs from several countries. APF is the Portuguese member of the End FGM European Network.

**End FGM European Network (End FGM EU):** [End FGM EU](#) is a European umbrella network of 19 organisations working in 12 European Union Member States to ensure a sustainable European action to end female genital mutilation in Europe and beyond. Its vision is "a world free of all forms of female genital mutilation (FGM) where women and girls are empowered and can fully enjoy their human rights". Its mission is to be the driving force of the European movement to end all forms of FGM, joining the forces of communities and civil society organisations, and building synergies and cooperation with all relevant actors in Europe and globally.

## INTRODUCTION

The present Joint Shadow Report is produced by APF in coordination with End FGM EU, in order to highlight the current situation and propose concrete recommendations on the issue of prevention, protection, prosecution and integrated policies concerning FGM in Portugal. Despite this report focuses only on this harmful practice, its aim is not to single it out in isolation, but just to put emphasis on it while still seeing it in the *continuum* of gender-based violence against women and girls and in a holistic and comprehensive manner.

This report represents the Portuguese chapter of a wider coordinated effort of End FGM EU to engage all its members who are under GREVIO revision to present an **FGM-focused report** in order to bring to the experts' attention the topic, which is too often neglected by State authorities. This project somehow stems from the Guide on the [Istanbul Convention as a tool to end female genital mutilation](#) which was produced in coordination between the Amnesty International End FGM European Campaign (the predecessor of End FGM EU) and the Council of Europe. It puts in practice the Guide's holistic approach by considering the Istanbul Convention's full application to FGM as a form of violence against women and girls which needs to be addressed through prevention, protection, prosecution and integrated policies. It does not only analyse the application of the specific FGM Article 38 of the Istanbul Convention, but addresses the full range of articles in the Convention and how they are applied to tackle FGM in Portugal.

### 1. Legal Framework<sup>1</sup>

#### Criminal law

Following Portugal's ratification of the Istanbul Convention in August 2015, **FGM is a specified crime** under Law nº 83/2015 of the Portuguese Penal Code<sup>2</sup>. According to Article 144 A on Female Genital Mutilation, the perpetrator of FGM may be sentenced to a prison term of 2 to 10 years. All preparatory acts related to FGM, namely sending or arranging the travel of a

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<sup>1</sup> For more information please consult <https://uefgm.org/index.php/legislative-framework-pt/>

<sup>2</sup> Prior to 15 September 2015, Article 144 of the Portuguese Penal Code provided grounds for the prosecution of an act of FGM, referring to the crime of a serious offence against the physical integrity of an individual. Although the term FGM was not explicitly mentioned in the text of the law, FGM could be addressed as a form of "depriving or affecting someone's capacity for sexual fruition".

woman or girl abroad to be submitted to FGM, helping, incentivising or supporting the practice of FGM abroad or in national territory (e.g. by collecting money to pay for the procedure) is punishable by up to 3 years in prison. The principle of extraterritoriality is also applicable, making FGM punishable even if committed outside the country. With the new revision of the penal code (Article 144 A), the prescription period for qualified crimes has changed from 10 to 15 years). Moreover, if the victim was a minor, prescription cannot extinguish the criminal procedure before the offended is 23 years.

#### Child protection law

General child protection provisions could be used in cases of FGM, under Law 147/99 (Protection of Children and Young People at Risk Act). This law assigns the **National Commission for the Protection of Children and Young People at Risk (CPCJ)** a preventive and protective role in “situations that may affect the safety, health, formation, education and full development of children and youth”.

#### Asylum law

Law No. 27/2008 addresses grounds for asylum. Articles 3 and 5, which consider acts of persecution, contain two sections that can be applied in cases of FGM: §2a refers to acts of physical, mental or sexual violence and §2f refers to gender-based acts or those committed against minors. Law No 26/2014 introduced several changes to the previous law, including specifically referring to FGM as grounds for the granting of asylum.

#### Professional secrecy law

Portuguese healthcare professionals are generally required to adhere to norms of professional secrecy. However, the Code of Ethics allows for exceptions in certain cases, including the maltreatment of minors. Physicians should therefore alert the relevant authorities in the case of actual or planned FGM in a minor. Moreover, according to Article 242 of the Code of Criminal Procedures, health professionals, social workers, teachers, police officers and civil servants are obliged to report evidence of a crime they encounter in the course of their work. **Specific reporting mechanisms** concerning crimes committed against children are outlined in Law No. 147/99.

## 2. Policy Framework<sup>3</sup>

### National action plans

Portugal's **First Programme of Action for the Elimination of Female Genital Mutilation (PAPEMGF—2007-10)** was approved in 2009, in the context of the third National Plan for Equality, Citizenship and Gender (2007-10). An **Intersectoral Working Group of Support for PAPEMGF** was established in 2008 to implement, composed of governmental departments and national and international civil society organisations<sup>4</sup>, monitor and evaluate programme activities. The FGM programme entailed 30 activities, arranged around five goals: 1. to promote awareness and prevention; 2. to support and to integrate; 3. to train; 4. to gain knowledge and to research; 5. to advocate.

Portugal's **Second PAPEMGF (2011-13)**, announced in 2010, maintained the same five focal areas and working group as the first. The **Third PAPEMGF (2014-17)** was published in 2013. Three new diaspora community-led and community-based organisations were incorporated into the Intersectional Working Group<sup>5</sup>. All three FGM programmes have been systematically internally and externally evaluated.

At the end of 2017, **the government decided not to continue with a fourth one**. The reasoning behind this decision, which was communicated to the NGOs in a recent meeting, is that there was too much request for several different NAPs, therefore the Secretary of State for Gender Equality decided to concentrate all NAPs into a global strategy divided in 3 main areas: 1.

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<sup>3</sup> For more information please consult <https://uefgm.org/index.php/policy-framework-pt/>

<sup>4</sup> The working group included a number of departments under the Prime Minister's Deputy Minister, including the coordinating Portuguese Commission for Citizenship and Gender Equality (CIG) and the High Commission for Migration (ACIDI/ACM). Other working-group members were the Directorate-General of Health (DGS—Ministry of Health), the Directorate-General of Education (DGIDC/DGE—Ministry of Education), the Ministry of Internal Administration, the Mission for Cooperation and Language Institute (Camões—Ministry of External Affairs), as well as the National Commission for the Promotion of Rights and Protection of Children and Youth, the Employment and Vocational Training Institute (IEFP) and Social Security (all three from the Ministry of Labour, Employment and Social Security), and two international organisations (the International Organisation for Migration (IOM) and the Community of Portuguese Language Countries (CPLP). NGOs included APF and UMAR (the Women's Collective Alternative and Answer). In 2014, two public organisations under the Ministry of Justice were also added to the Working Group.

<sup>5</sup> Associação de Melhoramentos e Recreativo do Talude—AMRT, Associação de Intervenção Comunitária, Desenvolvimento Social e de Saúde—AJPAS, and Associação Balodiren.

Equality between women and men; 2. Violence against women (VAW), specifically domestic violence; 3. LGBTI. Reportedly, only the NAP on trafficking on human beings will remain as a separate programme. In this new framework, FGM is inserted into the second area on VAW, under a subsection on “harmful practices”. This also entails that the Intersectoral Working Group will be dismissed because its mandate will become void.

#### Multidisciplinary guidelines and protocols

A key output of the three FGM programmes has been sector-specific guidelines and protocols, developed by participating professionals.

- [National Guidelines on FGM for Clinical Practice](#), published by the Directorate-General of Health (DGS), Division for Sexual and Reproductive, Youth and Child Health in 2012, provide a description of FGM and its health consequences, practical instructions for the medical treatment of FGM and guidance on how to proceed in the case of an at-risk child.
- [Handbook of Procedures for Local Child and Youth Protection](#), published in 2014 by the National Commission for the Promotion of Rights and Protection of Children and Youth (CPCJ), provides detailed information on FGM, as well as practical steps for the professional faced with FGM, including identification, contacts and communication with families, and how to communicate with relevant departments, particularly the judiciary.
- [Procedural Guidelines for Criminal Police Organisations on FGM](#) published by the Criminal Police High School in 2012, providing information on FGM and its consequences, legal aspects of FGM in Portugal and practical guidance for police professionals.

However, it has to be noted that only the Handbook of Procedures for Local Child and Youth Protection has been reviewed in light of the new prescription rules, while the other two guidelines contain still the old language. There is a **need to update** the two other Guidelines for Clinical Practice and for Criminal Police Organisations on FGM.

## MAIN ISSUES AND RECOMMENDATIONS

### 3. Prevention

#### Article 14

FGM is not included within school curricula within the modules on gender equality and sexuality. Therefore, it is crucial that the Ministry of Education takes all the necessary steps to fill this gap. This could be done through allocating financial resources to enable NGOs to

conduct **projects in schools within the Lisbon Metropolitan Area**, which is the one at national level with the most concentration of FGM-affected communities. **National-scale programmes including training of teachers and children educators** on the issue are very much encouraged as well.

#### Article 15

A national centralized digital register was established that medical professionals have to fill in with data from their patients, in order to collect health data for the population benefitting from the Portuguese health system. In 2012, within the framework of the Health Data Platform, a specific registration field for FGM cases has been created, which health professionals are encouraged to fill in when they encounter a patient who has undergone the practice. However, following an analysis of the data gathered, the number is too low compared to the estimations (only 200 cases were registered in a few years), which means that not enough health professionals register cases of FGM. This can be due to several factors. First of all, and most importantly, lack of awareness on the issue of FGM can cause that genital examinations are not conducted at all during medical visits. Moreover, even when genital examinations are conducted, medical professionals might not be able to see the evidence of FGM, due to a lack of adequate training on how to recognise Type I FGM - the most frequently encountered type in Portugal -. Indeed, Type I FGM is not the most visible one, particularly to non-careful observation, and might be difficult to identify it without an appropriate training. Finally, some medical practitioners might still perceive their professional secrecy as more important than their reporting obligation, which might be another factor contributing to the lack of data reported in the digital registry.

Therefore, **more awareness on the importance of registering data on FGM within the health sector** in order to have adequate estimations, and **more technical and anatomical training for health professionals** in order to ensure a thorough exam and correct identification of the presence of the practice would both be key recommendations that we would like to put forward to the Portuguese government. This would make sure that the instruments in place are fully implemented and that prevention and treatment of FGM is taken very seriously by the health sector.

#### 4. Protection

##### Articles 27 & 28

According to Portuguese legislation, reporting a crime to law enforcement and judicial authorities is compulsory for professionals, particularly when the victim is a minor (see legislative framework above). However, this legal obligation is often not complied with, since, among other reasons, **professionals are not aware and fail to register the cases**. Therefore, we reiterate the recommendations made in the previous chapter, calling for a strong need of more awareness raising and training for health professionals, so that they can better detect FGM when they encounter it.

On this regard, the CPCJ has the mandate to register reported crimes committed against children through a digital system, which also includes FGM. However, such data are not made publicly available, which is a shortcoming as **having such data would increase the possibility to fine-tune more tailored actions and policies** to address the problem and better protect girl children.

#### 5. Prosecution

##### Articles 38, 44 & 45

**FGM is a specified crime** under Law nº 83/2015 of the Portuguese Penal Code (Article 144 A), including also preparatory acts to the commitment of the crime. The principle of extraterritoriality applies (see Legislative Framework section above).

Criminalization of FGM has brought so far to a public known case, which finally did not end in prosecution. It happened in 2016, when APF was made aware by the Commission for the Protection of the Child that a family was leaving the Portuguese territory with their girl child for holidays and there was the risk that she could be subjected to FGM in the family's country of origin. APF together with two border police officers talked to the parents and made them aware of the Portuguese legislation and of the prosecution risks that they would run into in case the girl upon return would result to have been cut. The parents signed a document stating that they were aware and that they would refrain from practicing FGM on their daughter. However, once back from the trip, after conducting a genital examination on the girl, it was established she had undergone the procedure during the holidays. Therefore, a court case started, the family was summoned to testify in front of the Prosecutor, who finally decided

not to go further and drop the case according to Portuguese legislation. No further measures have been taken to the knowledge of APF.

This case showed the importance of ensuring **in-depth mandatory training for prosecutors on the issue of FGM**. Currently, there is a training foreseen in the CEJ (Center of Judicial Studies), but unfortunately it is not mandatory, and it appears to be not enough.

#### Articles 50 & 53

With reference to the above case, it would be important to **strengthen preventive and protective measures**, including preventive operative measures, as well as restraining and protection orders, for women and girls at immediate risk of violence or further violence in the Portuguese legislation criminalizing FGM. These could be restraining orders from travelling in case a high risk of FGM is detected, as well as measures to protect other female siblings, if any, and keep monitoring the family within a fixed period to prevent any (further) acts of FGM and protect girls from it.

Putting focus and stressing more the prevention and protection side of FGM criminalization legislation can be very beneficial to the elimination of the practice while always considering the best interest of the child as a key priority when dealing with such cases.

## 6. Integrated Policies

#### Articles 7 & 10

The decision of the Portuguese government not to renew the multiannual NAP on FGM at the end of the Third PPEMGP (2014-17), but instead to include FGM in a much broader NAP tackling multiple issues, raises quite some concerns. While we definitely agree that FGM has to be considered in the *continuum* of violence as one of the forms of VAW, it is also important to ensure a specific focus on the issue, which has its own peculiarities that risk being easily overlooked within the broader spectrum of VAW and within a much more global NAP covering a vast range of very different issues. This will **risk putting in jeopardy all the impact and results achieved so far** benefitting FGM-affected communities and women and girls and will risk restricting substantially the ambitions and the scope of the previous NAPs.

Moreover, the **disappearance of the Intersectoral Working Group** – coordinating actions on FGM among government departments, international and national NGOs, and community-led organisations – risks representing a backslide. According to the information received, in the new Group of Experts and Counsellors which will monitor the implementation of the new

global NAP there is only one vacancy for an NGO. We are afraid that this is not sufficient to ensure a meaningful civil society scrutiny over the government programs, due to, first of all, the limited space given and, second, to the necessity of having a very broad expertise on all the issues included in the NAP.

Furthermore, it seems that the end of the FGM autonomous NAP will also entail ending the **'FGM - Changing the Future' prize**, which was a funding opportunity for associations and communities awarded every two years since 2012 that has already benefitted eight entities. We hope that such concrete help to organisations working towards the abandonment of FGM will be maintained, since, despite the limited amount granted, it has been a powerful tool for associations and people in the FGM-affected communities.

We call on the Portuguese government to reconsider this decision and **adopt a new NAP on FGM**, bringing forward the work done in the past and not scaling it down, to keep being beneficial for the FGM-affected communities. Moreover, we consider crucial to **allow the Intersectoral Working Group already in place to continue existing**, which will avoid losing expertise and coordination within the institutions and between them and a wider range of civil society organisations. Moreover, this will also ensure the crucial involvement of communities, since we regret to see that their participation is not foreseen into the new Group of Experts monitoring the new NAP. To ensure the elimination of FGM is achieved, affected communities cannot be overlooked, as every action towards this direction must meaningfully engage them.

Moreover, it would have been advisable to **meaningfully involve civil society** in advance into such a big and determining decision for their areas of work, instead of presenting to them an already taken decision while asking for input on small adjustments. Indeed, when they were notified of the creation of a new global NAP, it appeared clear to the Portuguese civil society, that the decision had already been approved and only small adjustments could be made at that point.

#### Article 11

In Portugal, there is the need to establish a **robust data collection system concerning asylum cases on grounds of FGM**, since at the moment, the extent of the phenomenon is unknown. Such a national registry on asylum cases, which should not be hard to establish, especially due to the fairly small numbers that the country receives, could inform future research on the topic which could further shed the light on the issue and inform potential policies that might be needed.

## CONCLUSIONS

In conclusion, APF and End FGM EU would like to call upon the Portuguese authorities to keep working towards putting an end to FGM, by taking the following measures:

- Integrate FGM in school curricula, within modules on gender equality and sexuality;
- Establish a national training programme for teachers and children educators on FGM;
- Promote more awareness and training for health professionals to ensure proper detection, registration and follow-up of cases of FGM;
- Make available data on FGM-related crimes against children gathered within the CPCJ digital system;
- Ensure in-depth mandatory training for prosecutors on FGM;
- Strengthen preventive and protective measures in the legislative framework of criminalization of FGM;
- Consider renewing the NAP on FGM beyond 2017;
- Ensure the maintenance of an intersectoral coordinated body among governmental departments, civil society and communities, for the implementation of actions to tackle FGM;
- Consider to keep funding the 'FGM – Changing the Future' prize, as a concrete financial help to organization working to end FGM;
- Ensure the meaningful involvement of civil society in policy making and implementation;
- Put in place a robust data collection system concerning asylum cases on grounds of FGM.

We thank the GREVIO for the opportunity given to civil society to provide our expertise and concrete recommendations to improve Portuguese authorities' actions to end FGM.