



LEGAL FRAMEWORK

International and European conventions

Spain 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). Spain has signed ('ad referendum') the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (CETS No. 210).

Criminal law

Since 2003, Spain has a specific criminal law provision on FGM. The Organic Act 11/2003 on concrete measures in the field of citizens' security, domestic violence and social integration of aliens amended Article 149 of the Penal Code, stating that: 'Anyone who causes another person to suffer any form of genital mutilation shall be punishable by imprisonment for a term of between six and twelve years. Where the victim is a minor or a person of limited capacity, parental custody or foster care will be withdrawn for a period of four to ten years.' The consent of an adult woman to the mutilation of her genitalia does not affect the legal qualification of the act, however it does reduce the penalties. The principle of extraterritoriality is applicable, making FGM punishable even if it is committed outside the country.

Child protection law

At the national level, the Organic Act 1/1996 on the Legal Protection of Minors regulates the obligation of state public agencies to intervene in case a minor's health or security is at risk, or when the minor has been abandoned. This norm might therefore be applied if there is risk of being subjected to FGM or when it has already been performed. Moreover, Article 158 of the Civil Code, modified by the Organic Law 9/2000, allows judges to adopt preventive measures, especially relevant in cases of impending risk of FGM.



Child protection laws have also been approved by all the Autonomous Communities and all norms have similar contents. All of these state that their respective public agencies have the duty to intervene in case of risk or neglect, as well as to take the minor into custody when necessary. The most recent regulations, approved in the regions of Valencia and Catalonia, include explicit references to FGM offences. Law 12/2008 for the integral protection of childhood and adolescence of the Community of Valencia states in Article 9 that FGM is a type of mistreatment that should be tackled by the regional authorities. In Catalonia, Law 14/2010 on the rights and opportunities during childhood and adolescence establishes specific measures to combat FGM.

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.

The data provided in this publication were collected through desk research conducted between December 2011 and April 2012. More information and references about the study are available at: 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
BELGIUM	✓	✓	✓	✓		✓
BULGARIA						
CZECH REPUBLIC						
DENMARK			✓	✓	✓	
GERMANY	✓	✓		✓	✓	
ESTONIA						
IRELAND	✓	✓	✓	✓		✓
GREECE				✓		
SPAIN			✓	✓	✓	
FRANCE	✓	✓		✓	✓	✓
ITALY	✓	✓	✓	✓	✓	
CYPRUS			✓			
LATVIA		✓				
LITHUANIA		✓				
LUXEMBOURG						
HUNGARY	✓	✓				
MALTA						
NETHERLANDS	✓	✓		✓	✓	✓
AUSTRIA		✓	✓	✓		
POLAND						
PORTUGAL				✓		✓
ROMANIA		✓				
SLOVENIA						
SLOVAKIA		✓				
FINLAND				✓	✓	
SWEDEN		✓	✓	✓	✓	✓
UNITED KINGDOM	✓	✓	✓	✓	✓	✓
CROATIA			✓	✓		

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.

Asylum law

The most recent law that is being used to grant/reject asylum on the grounds of FGM is the Organic Law 12/2009 that regulates asylum rights and subsidiary protection. However, it does not include any specific provision dealing with FGM.

Professional secrecy law

General laws with regard to professional secrecy and disclosure may be applied to report cases of performed or planned FGM. Article 450 of the Penal Code states that every person has the duty to impede, when possible, a crime affecting a person's life, integrity or health, liberty or sexual liberty and/or report it to the public authorities. In case of non-reporting, sanctions might be applied. For professionals, Articles 262 and 263 of the Criminal Procedure Law state that anyone who becomes aware of a committed crime in the course of their professional duties has a duty to report it. Organic Act 1/1996 on the legal protection of minors includes a specific provision referring to the protection of minors. It states that any person, especially anyone who due to their status or profession might have knowledge about a minor at risk or abandoned, has a duty to report it to the public authorities, as well as to assist the minor.

POLICY FRAMEWORK

The first (non-legal) proposal addressing FGM at the international level (not in Spain) appeared in 1997, while the first cases of FGM were detected in Catalonia in 1993. At the end of the 1990s, the FGM-relevant policies were mostly aimed at the abandonment of FGM in Africa. It was not until 2001, triggered by the increasing number of female residents coming from African countries where FGM is performed, that the first proposals were formulated regarding the necessity to undertake specific actions targeting women and girls at risk living in Spain. Because of the need to develop prevention and awareness measures at the regional level, FGM was included in an action plan for the first time in 2002 ('Canary Programme to Prevent and Eradicate Violence against Women', 2002–2006). This was followed by an inclusion of FGM in regional action plans on violence or equal opportunities in Madrid (2005), Valencia (2006), Catalonia (2008), Aragon (2009) and Andalusia (2010). In parallel, policies and legislation aimed at abandoning FGM sharply increased with the help of women's policy agencies, but also with the contribution of regional governmental departments dealing with health care, education, social services or immigration.

PREVALENCE OF FGM IN THE COUNTRY

Three studies, providing information about the number of females coming from FGM-practising countries and living in Spain, have been published every three to four years since 2002. The most recently published study (2010) indicates that there are 10,491 girls (0–14 years old) and 30,439 women living in Spain who come from a country where FGM is performed. Women aged between 24–34 years old represent approximately 55% of the women affected. The countries of origin of the girls and women identified in this study are: Gambia, Ghana, Guinea, Guinea Bissau, Mali, Mauritania, Nigeria and Senegal. The Autonomous Communities of Spain - Andalusia, Aragon, Catalonia, and Madrid - are the regions where women coming from countries where FGM is performed are mostly concentrated. The results of a new study will be released soon.

Facts

- The first study providing information on the number of females originating from FGM-practising countries and living in Spain was published in 2002.
- In the last decade, FGM has become a focus of attention in Spain. As of 2002, FGM has been part of six regional action plans on violence against women or equal opportunities, making resources available also for women victims of FGM.
- The Court Decision 26/2011 of the Audiencia Provincial of Teruel was the first case in Spain in which the parents of a girl who had been mutilated were sentenced to imprisonment (as established by Article 149.2 of the Criminal Code).
- The most common measures adopted by judges to protect a minor at risk of FGM include mandatory check-ups by forensics or doctors every six months until the girl turns 18 years old; withdrawal of the girl's passport; prohibition to leave the country; and a commitment by the parents not to mutilate their daughters.

Figures

- According to a 2010 study, it is estimated that 30,439 women originating from countries where FGM is performed were living in Spain. The same study estimates that 10,491 girls (0–14 years old) originate from countries where FGM is performed.
- In 2011, in the region of Catalonia, 25 cases of FGM were reported by the police or other judicial authorities and 36 girls were attended by the police.
- There are no registers or statistics regarding FGM-based asylum requests.

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.

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: eige.europa.eu

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