



## **Rights of Women's and Asylum Aid's evidence to the Home Affairs Select Committee inquiry into Female Genital Mutilation**

### **Rights of Women**

1. Rights of Women works to secure justice, equality and respect for all women. Our mission is to advise, educate and empower women by:
  - Providing women with free, confidential legal advice by specialist women solicitors and barristers.
  - Enabling women to understand and benefit from their legal rights through accessible and timely publications and training.
  - Campaigning to ensure that women's voices are heard and law and policy meets all women's needs.

Rights of Women specialises in supporting women who are experiencing or are at risk of experiencing, gender-based violence, including domestic and sexual violence. We support other disadvantaged and vulnerable women including Black, Minority Ethnic, Refugee and asylum-seeking women (BMER women), women involved in the criminal justice system (as victims and/or offenders) and socially excluded women. By offering a range of services including specialist telephone legal advice lines, legal information and training for professionals we aim to increase women's understanding of their legal rights and improve their access to justice enabling them to live free from violence and make informed, safe, choices about their own and their families' lives.

2. Rights of Women operates three specialist legal advice lines on family, criminal and immigration law. The advice lines are staffed by women solicitors and barristers who have experience in the relevant areas of law; advisors may be either staff or volunteers. Advice is free and confidential and available regardless of the financial resources or immigration status of the caller. In 2012 we advised 1431 women.

## **Asylum Aid**

3. Asylum Aid is an independent, national charity working to secure protection for people seeking refuge in the UK from persecution and human rights abuses abroad. We provide free legal advice and representation to the most vulnerable and excluded asylum seekers, and lobby and campaign for an asylum system based on inviolable human rights principles.
4. The Women's Project at Asylum Aid strives to obtain protection, respect and security for women seeking asylum in the UK by providing specialist advice and research and campaigning on the rights of women seeking asylum. Five years ago Asylum Aid initiated the Charter of Rights of Women Seeking Asylum which brings together nearly 350 organisations in support of these rights.

## **This evidence**

5. Rights of Women and Asylum Aid wish to draw the Committee's attention to two separate, but related, areas of concern:
  - a. The lacuna in the current criminal law on FGM.
  - b. The failure of the Home Office to meet the needs of asylum-seeking women who are at risk of, or who have experienced, FGM.
6. It is submitted that these failures stem from the development of a flawed and discriminatory response to FGM that seeks to differentiate between actual and potential victims on the grounds of their immigration status.

## **Background**

7. FGM is defined by the World Health Organisation as:

*"all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural, religious or other non-therapeutic reasons."*<sup>1</sup>

8. FGM may take a number of forms ranging from procedures that involve pricking or piercing the clitoris and/or labia to infibulation (which involves the complete removal of the clitoris, the labia minora, some or all of the labia majora and then the two sides of the vulva being sewn together leaving only a very small opening for the passage of urine and menstrual flow).

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<sup>1</sup> WHO factsheet on asylum, number 241, updated January 2013  
[www.who.int/mediacentre/factsheets/fs241/en/](http://www.who.int/mediacentre/factsheets/fs241/en/).

9. The World Health Organisation estimates that the number of girls and women who have undergone FGM is between 100 and 140 million and that each year 3 million girls are at risk of undergoing FGM. FGM is practised in more than 28 countries in Africa and in some countries in Asia and the Middle East. The countries which have highest prevalence of FGM are Burkina Faso, Djibouti, Egypt, Eritrea, Ethiopia, The Gambia, Guinea-Conakry, Mali, Sierra Leone, Somalia and Sudan.<sup>2</sup> A statistical analysis conducted in 2006 by FORWARD (the Foundation for Women's Health, Research and Development), the Department of Midwifery at City University and the Department of Health indicates that there are 23,000 girls in England and Wales under 15 years of age who are at risk of FGM.<sup>3</sup>
10. In Rights of Women's experience, women and girls who have either undergone FGM or are at risk of having FGM carried out:
- have originally come from FGM practising communities in other countries but are in the UK as refugees, to work, study or marry; or are,
  - British citizens or residents whose parents or grandparents are from FGM practising communities.
11. Rights of Women and Asylum Aid's position on FGM is informed by international human rights law which universally condemns it as a form of violence against women that must be responded to with due diligence without discrimination:
- a. The *Universal Declaration of Human Rights 1948* states that "*all human beings are born free and equal in dignity and rights*". It protects the right to security of person and the right not to be subjected to cruel inhuman or degrading treatment.
  - b. Article 2 of the *UN Declaration of the Elimination of Violence against Women 1993* defines FGM as a form of violence against women while Article 5 requires states to work towards: "*the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes*".
  - c. Article 5 of the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2005* requires states to prohibit traditional practices that are harmful to women, including FGM, as well as to take all necessary measures, legal and otherwise to protect women from FGM.
  - d. *UN Convention on the Rights of the Child 1993* requires states to take all necessary measures to abolish traditional practices that are harmful to

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<sup>2</sup> *Female Genital Mutilation: Treating the Tears*, Haseena Lockhat Middlesex University Press, 2004.

<sup>3</sup> [A Statistical Study to Estimate the Prevalence of Female Genital Mutilation in England and Wales.pdf \(.pdf 222.2 KB\) FORWARD 2007.](#)

children's health. Similar requirements are in the *African Charter on the Rights and Welfare of the Child 1990*.

### **The criminal law on FGM in England and Wales**

12. The Committee will be aware that the Female Genital Mutilation Act 2003 (which came into force on 3<sup>rd</sup> March 2004) makes it a criminal offence to:
- a. Excise, infibulate or otherwise mutilate the whole or any part of a girl or woman's labia majora, labia minora or clitoris.
  - b. Aid, abet, counsel or procure a girl to mutilate her own genitalia; or
  - c. Aid, abet, counsel or procure a non-UK person to mutilate a UK national's or permanent resident's genitalia outside of the UK.
13. The Female Genital Mutilation Act 2003 (the Act) applies to England and Wales; Scotland has its own legislation on FGM (the Prohibition of FGM (Scotland) Act 2005). In its call for evidence the Rt Hon Keith Vaz MP, Chair of the Committee, rightly expressed concern that no one has yet been prosecuted under this legislation (although at the time of writing it appears that a prosecution(s) may be imminent). We would contrast this position with that of other jurisdictions, notably France and Sweden, when prosecutions have successfully taken place.<sup>4</sup>
14. The offences created by the Act extend to actions done outside of the UK by a UK national or permanent UK resident. It is therefore an offence to carry out FGM on any girl within England and Wales but it is also an offence to take a British child or a permanent resident out of England and Wales to have FGM carried out. The person will have committed an offence under the law of England and Wales even if FGM is not an offence in the country where it was performed. The legislation uses the term "girl" throughout but actually extends to protect women (over 18 year olds).
15. While the Act makes it an offence to carry out FGM in England and Wales or encourage a girl to mutilate her own genitalia, the extra-territorial provisions of the legislation only applies to girls who are British or permanent residents. The Act does not, therefore, fully protect children who are non-permanent residents. This includes the children of those who are in the UK lawfully, such as the children of students or workers, as well as the children of those who might be unlawfully present or have temporary admission.

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<sup>4</sup> For example, Women's Asylum News issue number 62 July / August 2006 reported on a Swedish case where a man was jailed for 4 years and ordered to pay his 13 year old daughter damages of £26,000 for forcing her to undergo FGM when she was 13. See also <http://www.theguardian.com/society/2014/feb/10/france-tough-stance-female-genital-mutilation-fgm>.

16. Rights of Women and Asylum Aid submit that this difference in treatment is unlawful discrimination that violates the principle of equal protection of the law. We remind Committee members that reservations to the UN Conventions on the Elimination of Discrimination Against Women and on the Rights of the Child that related to persons under immigration control have been removed. Other relevant human rights law, such as Article 3 of the *European Convention on Human Rights 1950* (the right to be free from torture, inhuman or other degrading treatment) are also engaged and must be secured without discrimination for everyone within the jurisdiction.
17. Legislation has a normative value. Any law that fails to protect *all* women and girls from a potentially life-threatening form of gender-based violence reinforces the position of those who view women and girls' bodies (and particularly the bodies of those who face multiple forms of discrimination, such as on the grounds of race or immigration status) as not worthy of protection.
18. We are concerned that this discriminatory 'double standard' also operates as a barrier to potential prosecutions by causing confusion as to the reach of the law in relation to a group who are at a heightened risk of experiencing this particular form of violence against women (see paragraph 10 above). Those involved in protecting children and young people most affected by this form of violence need to be able to offer clear advice and information and cannot be expected to differentiate their services according to the immigration status, or potential immigration status (as this might not immediately be clear, particularly in the case of a child at risk of imminent harm) of those they encounter.
- 19. Rights of Women and Asylum Aid therefore recommends that the Female Genital Mutilation Act 2003 be amended to protect all women and girls in the jurisdiction of England and Wales, regardless of immigration or other status.**

### **FGM and asylum**

20. In addition to the concerns raised above, Rights of Women and Asylum Aid are concerned that women at risk of FGM are failed by the asylum determination system.
21. Under the Refugee Convention asylum is to be given to those with a well-founded fear of persecution for one of the 'Convention reasons' (for example, race or political opinion) where the applicant is outside of her country of origin and that country is either unwilling or unable to protect them. FGM is considered a form of persecution in UK jurisprudence.<sup>5</sup> The Asylum Instruction on *Gender* notes that:

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<sup>5</sup> *Secretary of State for the Home Department v K; Fornah v Secretary of State for the Home Department* [2006] UKHL 46, 18 October 2006.

*“FGM, for example, is widely practised in some societies but it is a form of gender-based violence that inflicts severe harm, both mental and physical, and amounts to persecution.”<sup>6</sup>*

22. The Home Office does not keep statistics on the forms of persecution asylum applicants’ claims are based on. During the past four years, over 20% of women seeking asylum were from FGM practising countries of origin and this percentage is growing.<sup>7</sup> Not all these women cite FGM as a reason or a concern.

23. The UNHCR has made the following observations about these claims:

*“Asylum claims on FGM grounds are particularly complex and involve a growing variety of profiles at risk. In addition to the women and men activists persecuted for their opinions and commitment to end FGM in their countries of origin (political opinion) and/or their perceived threat to religious beliefs (religion), EU Member States have also been receiving claims from:*

- *girls and women who seek protection from FGM whether they come directly from FGM-practising countries or have lived most of their lives in the EU and face return at the time the claim is lodged;*
- *girls and women who have already been subjected to FGM and seek protection from re-excision for instance or infibulation, defibulation or reinfibulation, upon marriage or at child birth;*
- *girls and women who may suffer from a continuous form of harm and/or for whom there may be compelling reasons to seek protection arising from that past persecution;*
- *parents claiming international protection to protect their (baby) daughters from FGM;*
- *women who are under pressure from their families and communities but refuse to become excisers in light of the growing awareness generated by anti-FGM campaigns in countries of origin;*
- *women who had been subjected to FGM, have accessed reconstructive surgery (often while in the EU) and who fear being cut again upon return for instance at the time of marriage.*

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<sup>6</sup> Asylum Instruction on *Gender Issues in the Asylum Claim*, September 2010, para. 2.2.

<sup>7</sup> UN High Commissioner for Refugees (UNHCR), *Too Much Pain: Female Genital Mutilation & Asylum in the European Union - A Statistical Overview*, February 2013, available at: <http://www.refworld.org/docid/512c72ec2.html> [accessed 5 February 2014]. See also *Female genital mutilation, asylum-seekers and refugees: the need for an integrated UK policy agenda* Richard A Powell, Amanda Lawrence, Faith N Mwangi-Powell and Linda Morison, *Forced Migration Review*, 14, 2004.

*These claims often give rise to additional considerations involving fear linked to early and forced marriage and domestic violence.”<sup>8</sup>*

24. Rights of Women and Asylum Aid submit that the complexities identified receive an inadequate response from the Home Office and that as a consequence women and girls at risk of FGM are not offered sufficient protection in the UK. In the landmark case regarding FGM in the UK, the woman concerned (who claimed that if she were returned to Sierra Leone she would be subjected to FGM) had to go all the way to the House of Lords to gain refugee status. In a gender analysis of UK asylum law, policy and practice carried out by Asylum Aid it is noted that:

*“Generally, where a woman has already been subjected to FGM, the Home Office would not consider that she would face a risk of persecution on the basis of FGM in the future. However, this can be rebutted by objective evidence/expert reports in particular circumstances such as for example where FGM was part of a ritual for the applicant to become a soweï, [a woman who performs FGM] or where FGM has been performed but there is also a risk of forced marriage or where the applicant is at risk of having the procedure re-done after the birth of a child. Alternatively, where applicants have had FGM undertaken, this can be an indication of a risk of FGM to their daughters.”<sup>9</sup>*

25. Home Office statistics show that women are more likely to have their asylum refusal overturned than men. In women’s cases studied by Asylum Aid, “the assessment of credibility formed the core of the decision to refuse” and in all the cases allowed at appeal (half of the sample), the immigration judge accepted the credibility of the applicants’ claim.<sup>10</sup> This evidence regarding credibility and a culture of disbelief has been reiterated by Amnesty International UK and by the UNHCR.<sup>11</sup> Home Office decision makers using the wrong standard of proof has a disproportionate effect on women as they are more likely than men to fear persecution in the private sphere,

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<sup>8</sup> UN High Commissioner for Refugees (UNHCR), *Too Much Pain: Female Genital Mutilation & Asylum in the European Union - A Statistical Overview*, February 2013, page 32, available at: <http://www.refworld.org/docid/512c72ec2.html> [accessed 5 February 2014].

<sup>9</sup> Querton, C (2012) *“I feel like as a woman I’m not welcome”: a gender analysis of UK asylum law, policy and practice*, Asylum Aid, London [page 28]. Available at: [http://www.asylumaid.org.uk/data/files/ifeelasawoman\\_report\\_web\\_.pdf](http://www.asylumaid.org.uk/data/files/ifeelasawoman_report_web_.pdf) [accessed 6 February 2014]

<sup>10</sup> Asylum Aid (2011) *Unsustainable: the quality of initial decision-making in women’s asylum claims*, London: Asylum Aid, [page 51- 52] online. Available at: <http://www.asylumaid.org.uk/data/files/unsustainableweb.pdf> [accessed 6 February 2014]

<sup>11</sup> Amnesty International/Still Human Still Here (2013) *A question of credibility: why so many initial asylum decisions are overturned on appeal in the UK*, London: Amnesty International. Online. Available at: [http://www.amnesty.org.uk/uploads/documents/doc\\_23149.pdf](http://www.amnesty.org.uk/uploads/documents/doc_23149.pdf) [accessed 6 February 2014]; UNHCR (2013) *Beyond Proof, Credibility Assessment in EU Asylum Systems*, Brussels: UNHCR, available at <http://www.unhcr.org/51a8a08a9.html> [accessed 6 February 2014]

such as FGM, forced marriage and domestic violence, for which it is harder to provide documentary evidence and/or oral testimony.

26. In addition we are concerned that issues related to shame and stigma in relation to FGM are not sufficiently recognised and responded to by interviewers / decision-makers either in the Home Office, or, on appeal, at the Tribunal. Those making decisions about claims raising FGM often have incomplete or inadequate information about FGM in the country of origin and the reality of women's experiences there. This is particularly of concern when it is submitted that the applicant could return to her country of origin and relocate internally to avoid being subjected to the practice on the basis of no or little supporting evidence and without any detailed engagement with the specific circumstances of the applicant.<sup>12</sup> Similar decisions are also made on the basis of purported legal or other protections that in reality either do not exist or are inaccessible.

27. Refugee and asylum-seeking women who are failed in the ways described risk being refused asylum and becoming destitute and therefore vulnerable to further exploitation, including sexual exploitation in the UK. There is an irony that the Government's Strategy to *End Violence Against Women and Girls* has actions to protect women in the UK and abroad from FGM but misses out women who seek asylum in the UK from such abuses abroad.<sup>13</sup>

**28. Rights of Women and Asylum Aid, drawing on their own experiences and UNHCR research<sup>14</sup>, therefore recommend that:**

- a. Performance management for decision makers in the Home Office is enhanced to improve the quality of decision making, including making credibility assessments based on the correct burden of proof.**
- b. Decision makers in the Home Office are given better training to ensure that applicants raising gender-based claims, including FGM, are interviewed sensitively and appropriately in a manner designed to facilitate disclosure.**
- c. Gender-sensitive country of origin information is developed and is made available to decision-makers at all levels. Such information should specifically address the practice and prevalence of FGM in the country concerned, the position of women and the actual availability (rather than mere existence) of legal or other protections.**

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<sup>12</sup> Asylum Aid (2011) *Unsustainable: the quality of initial decision-making in women's asylum claims*, London: Asylum Aid, [page 64] online. Available at:

<http://www.asylumaid.org.uk/data/files/unsustainableweb.pdf> [accessed 6 February 2014]

<sup>13</sup> Singer, D (2013) *Women seeking asylum – failed twice over* in Rehman, Y. et al (eds) *Moving in the Shadows: Violence in the lives of minority women and children*, Ashgate, Farnham pp 225 – 243

<sup>14</sup> Ibid.



- d. An end-to-end asylum determination system must be developed and implemented to ensure that destitution forms no part of an asylum-seeker's experience. This is particularly important for applicants who are vulnerable, such as those at risk of FGM.**

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