



## **AMNESTY INTERNATIONAL'S CONTRIBUTION TO THE CONSULTATION ON AN EU STRATEGY FOR COMBATING VIOLENCE AGAINST WOMEN 2011-2015**

### **Introduction**

Amnesty International welcomes the consultation on the new European Union (EU) strategy combating violence against women. It is an important initiative and a necessary development following the adoption of the Women's Charter (5 March 2010), which provides that Europe does not tolerate gender-based violence as well as the Action Plan implementing the Stockholm Programme (20 April 2010), which provides that the EU will deploy all available policy instruments to respond to violence against women and girls including domestic violence and female genital mutilation (FGM). Furthermore it follows the Council conclusions on the Eradication of Violence Against Women in the European Union, calling for the Commission to devise "a European Strategy for preventing and combating violence against women by establishing a general framework of common principles and appropriate instruments".

Across Europe, violence against women and girls in the home remains pervasive for all ages and social groups despite exceptionally low official reporting rates. This is due to, among other things, women having lost confidence that relevant authorities would regard the violence as a crime, being deterred by fear of reprisals from abusive partners or known perpetrators and for reasons of financial insecurity. Conversely, in other regions of the globe, violence against women and girls remains endemic. In the Americas, the number of reported cases of domestic violence, rape and sexual abuse, and of women being killed and mutilated after having been raped is increasing. In the Middle East and North Africa, women and girls continue to face legal and other discrimination and are denied access to basic rights such as education, health and political participation. In many African societies, discrimination and violence against women and girls prevail: women and girls continue to be raped, particularly in situations of armed conflict such as in Chad, the Democratic Republic of Congo (DRC) and Sudan. Some countries record high levels of domestic violence without having a proper reporting or investigating system and traditional harmful practices continue, including early marriage and female genital mutilation.<sup>1</sup> In recent years

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<sup>1</sup> *Amnesty international Report 2010, The state of human rights in the world*, Amnesty International Publications, 2010, especially pp. 8, 16, 38 and 46.

Amnesty international has issued a number of reports on violence against women calling on states to eradicate gender discrimination, prevent violence against women and investigate and punish all such acts of violence.

This contribution reiterates the key dimensions outlined in previous Amnesty International reports and contributions on violence against women as well as the END FGM strategy paper (see attachment). END FGM is a European campaign, led by Amnesty International Ireland, working in partnership with a number of organisations in EU Member States. The campaign aims to put female genital mutilation (FGM) high on the EU agenda and to echo the voices of women and girls living with female genital mutilation and those at risk of it. To this end, the campaign launched 'Ending FGM, A strategy for the European Institutions' in early 2010, outlining a comprehensive and coherent EU approach towards ending FGM.

## **Definition of Violence against Women (VAW)**

Amnesty International recommends that the definition of violence against women (VAW) is be based on the definitions developed by the United Nations and the Council of Europe.<sup>2</sup> Violence against women is understood as any act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life. Such a definition includes violence taking place in the family or domestic unit or in the general community; perpetrated by state officials and non-state actors. It should further include acts of gender-based violence perpetrated on minors i.e. girls or teenagers.

## **1. Challenges for the new EU strategy combating violence against women**

### **1.1. Main challenges**

The UN Special Rapporteur on violence against women, its causes and consequences has highlighted a number of challenges<sup>3</sup>: “The current challenge in combating violence against women is the implementation of existing human rights standards to ensure that the root causes and consequences of violence against women are tackled at all levels from the home to the transnational arena. The multiplicity of forms of violence against women as well as the fact that this violence frequently occurs at the intersection of different types of discrimination makes the adoption of multifaceted strategies to effectively prevent and combat this violence a necessity.”

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<sup>2</sup> UNGA , Declaration on the Elimination of Violence Against Women, (A/RES/48/104)85th plenary meeting 20 December 1993, Recommendation Rec (2002)5 of the Committee of Ministers to Member States on the protection of women against violence.

<sup>3</sup> Integration of the human rights of women and the gender perspective: violence against women the due diligence standard as a tool for the elimination of violence against women E/CN.4/2006/61 20 January 2006.

One of the main challenges to violence against women in the European context is a misconception that domestic violence is not a real problem in indigenous European communities and that it is more pervasive in migrant or foreign communities. While proper consideration should be given to violence **against all women** and girls, the EU strategy on violence against women has to address domestic violence in mainstream European society.

There also seems to be an acceptance that serious physical violence in domestic violence situations, such as killings, should be addressed but that less obvious forms of control, such as humiliation and psychological abuse deserve less attention. The EU strategy therefore has to **address all forms of violence against women**.

Thus, the new strategy for combating violence against women needs to address the fact that a significant portion of violence against women is perpetrated by **non-state actors** and takes place in **private life** (home), prime examples being domestic violence and FGM. Prosecution of perpetrators who are family members causes additional distress and suffering to the victims. Furthermore, there is a greater challenge in protecting women and girls at risk of violence within the private sphere, as they themselves may be reluctant to seek protection. It is therefore essential that the strategy includes measures aiming to **prevent** violence against women.

Discrimination based on gender is prevalent throughout societies globally and it results in an underlining state of inequality and disempowerment that promotes and perpetuates violence based on gender. Ensuring active involvement of men is central to combating inequality and gender stereotypes that negatively impact the lives of women and girls. It is also important to bear in mind that women are not a homogenous group and while they suffer disproportionately from gender based violence, the causes and forms of violence differ. In order for the strategy to adequately address the various forms of violence against women, it needs to fully incorporate measures targeting **intersectional and multiple discrimination**. FGM is an example of intersectional discrimination as women and girls are subjected to it on several grounds including gender, ethnicity and age.

In addition to addressing mainstream society, the strategy needs to recognise the existence of groups with greater exposure to violence such as teenagers and young girls, lesbian, bisexual and transgender women, irregular migrant women and women living in poverty. Distorted attitudes towards the sexuality of women persistent in mainstream culture and society conceptualise young women and resulting in vulnerabilities to sexual violence and harassment. In outreaching to teenagers and young girls new forms of communication and social media could be explored.

Owing predominantly to language difficulties and cultural barriers, migrant women face distinct hurdles in accessing proper prevention and protection mechanisms, and are regularly denied access to public funds, health care and support.<sup>4</sup> In particular migrant women without regular status are often placed in situations where they

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<sup>4</sup> Amnesty International UK and Southall Black Sisters, No Recourse No Safety report, 2008.

cannot report violence to authorities due to fear of being exposed and further victimised by the police and state actors.

Deeply gendered and discriminatory attitudes persist particularly in relation to rape, sexual violence and harassment. Women may be mistrusted when reporting rapes, their defense lawyers may not have access to medical records, or their sexual history or behaviour is taken in as evidence in rape trials. In many countries the failure to prevent and protect women from rape and other forms of sexual violence and to ensure justice for all rape victims is one of the most serious challenges to women's human rights.<sup>5</sup> Concrete measures targeted at legal systems are necessary to improve the quality of investigations in order to enable a solid basis for prosecution and trial to be formed, and furthermore to improve the judicial handling of rape cases. In addition, discriminatory attitudes among law enforcement officials, defense lawyers and justice systems must be addressed.

Violence against women affects communities across Europe, for instance in Spain, despite some positive developments in eradicating violence against women in recent years, there continue to be cases of women being killed by their partners and former partners. Migrant women who are victims of domestic violence continue to face additional difficulties in obtaining justice and specialist services. The institutional response to other forms of gender-based violence, including human trafficking for sexual exploitation, remains inadequate. There is no institutionalized system for identifying victims of sex trafficking or referrals for required assistance. Victims of gender-based violence seeking redress face numerous obstacles, including lack of compensation for the psychological effects of violence.<sup>6</sup> In neighbouring Portugal, the Portuguese Association for Victim Support registered 15,904 complaints concerning domestic violence in 2009 of which included 16 murders.<sup>7</sup> In terms of the situation in Sweden, the UN Human Rights Committee expressed concern about the high prevalence of violence against women, the lack of shelters for women in some municipalities and the continuing occurrence of FGM within migrant communities.<sup>8</sup>

Although the scope of the strategy is encompassing all forms of violence against women, it must allow space and specific focus on particular forms of violence, such as FGM, and it must target men, women and children at community level. FGM is a form of violence against women that is highly contextualised and needs **specific measures** targeting the girls at risk as well as the communities in which they live. By allowing specificities in the strategy it would positively respond to the request by the European Parliament to the Commission and Member States to adopt an overall strategy and action plan to end FGM in the EU accompanied by educational programmes and national and international awareness raising campaign.

FGM is practiced within several communities residing in the EU, of which many have strong linkages both across EU Member State borders and with communities in the

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<sup>5</sup> See Case Closed, op.cit.

<sup>6</sup> Amnesty International, *Amnesty international Report 2010, The state of human rights in the world*, Amnesty International Publications, 2010, pp. 38, 289-299.

<sup>7</sup> Amnesty International, *ibid.*, p. 265.

<sup>8</sup> Amnesty International, *ibid.*, p. 311.

country of origin. The measures targeting FGM therefore should have a strong **cross-border dimension** – a dimension which presents both challenges and opportunities for an EU level strategy. Cooperation and collaboration between national authorities of various EU Member States, and with third country partners, would be a longer term endeavour. However the EU institutions would be well placed to initiate and coordinate such cross-border cooperation. At present there are varying levels of protection and access to services in the EU Member States. There are also varying levels of awareness of the different forms of violence against women in general and of FGM in particular within the Member States. In this regard the EU institutions can play a harmonising and unifying role in promoting exchange of best practices and raising awareness throughout the EU.

## **1.2. Main causes of violence against women**

Violence against women is not attributable to certain cultures or countries; it is universal and exists across the globe. The UN Secretary General examined structural causes of violence against women in an in-depth study and identified that there is no single cause but rather a **combination of individual factors within a broader context of inequality**.<sup>9</sup> The root causes are complex and may be identified in patriarchal society, other dominance and subordination of women, culture and economic inequality.<sup>10</sup> Violence may also be a cause and a consequence of poverty for women, violence keeps women poor, and poor women are most exposed to violence.<sup>11</sup>

Equality between men and women may be accepted as a principle in many societies, yet a number of obstacles to make equality a reality remain, for instance employment, education, and inheritance.<sup>12</sup> There is even resistance among some states to adopt 'temporary special measures' to eradicate discrimination against women. As long as such discrimination against women is accepted, so is violence against women. Serious problems also persist in societies that are traditionally seen as those with gender equality. Amnesty International has documented significant shortcomings in state responses to rape and sexual violence in countries that are often praised on gender equality, such as the Nordic countries.<sup>13</sup> The governments in these countries have long focused attention on equal opportunities for women and men in public life, work, education, political participation, representation and leadership but failed to adequately address violence against women.

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<sup>9</sup> In-depth study on all forms of violence against women, Report of the Secretary General, United Nations General Assembly, A/61/122/Add.1, 6 July 2006

<sup>10</sup> Ibid.

<sup>11</sup> The Gender Trap, Women, Violence and Poverty, Amnesty International, October 2009, ACT 77/009/2009

<sup>12</sup> Gender Equality Universally Embraced - but Inequalities Acknowledged, Pew Research Centre, 1 July 2010

<sup>13</sup> Case Closed, Rape And Human Rights In The Nordic Countries Summary Report, Amnesty International March 2010 ACT 77/001/2010.

## 2. Content of an EU strategy to combat violence against women

The strategy should be framed as a **coordinated** and **holistic** approach across all areas of work and across all Directorate Generals (DGs) within the European Commission. The strategy should include all forms of violence against women and have targeted measures to address domestic violence, sexual violence and FGM. It should also be coordinated and complement the upcoming strategy on **the Rights of the Child**. Areas that involve the protection of women from violence can also involve the protection of children from violence. Domestic violence, different forms of sexual violence and FGM are practices that violate the rights of both women and young girls. There are key synergies that can be explored if the two strategies are developed coherently. The EU strategy should also be developed to complement and strengthen the **new gender strategy** that will follow the EU Roadmap on Equality between women and men (2006-2010); the **Stockholm Programme** and the **EU guidelines** on Violence against women and girls and combating all forms of discrimination against them; and the new **EU Plan of Action** on gender equality and women's empowerment in development cooperation.

The **general objectives** of the strategy should be to

- Reflect international standards, in particular the **due diligence** obligations for **preventing**, responding to, **protecting** against and **providing** remedies for acts of violence against women whether such acts are committed by State or Non-State actors<sup>14</sup>
- Reflect **commitments** already made at the EU level and coordinate existing initiatives on violence against women and girls
- **Evaluate** existing mechanisms and policies **to assess** impact and identify **gaps** in implementation
- Outline measures that will **prevent** violence against women and girls including measures to challenge stereotypical attitudes in all parts of society education on mutual respect as a means of eradicating violence against women and girls and
- Promote concrete **protection** mechanisms and actions for women and girls who are at risk or subjected to violence
- Assess potential **harmonisation of legislation** to facilitate protection of women, prosecution of perpetrators and to provide access to just and effective remedies and specialised, including medical, assistance to victims; giving due regard to the need to tackle rape and other forms of sexual violence with a view to bring European legislation in line with international standards.
- Ensure adequate **provision of services** to women and girls who have been subjected to violence

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<sup>14</sup> The Declaration on the Elimination of Violence against Women adopted by the General Assembly in 1993 urges States, in its article 4(c), to “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons”.

**Specific objectives** to be addressed in the strategy are grouped under the following headings and followed by specific actions:

## 2.1. Data collection and dissemination

### *Human rights obligations*

“Establishing violence against women indicators is a human rights obligation, linked to both human rights jurisprudence and the due diligence principle, which calls upon States, among other things, to ensure that interventions designed to combat violence are based on accurate empirical data. This necessitates not just the compilation of accurate information, but also of indicators that make the data accessible for non-specialist decision makers and allow for public scrutiny of interventions.”<sup>15</sup>

State parties to the Convention on Elimination of All Forms of Violence against Women (CEDAW) are asked in General Recommendation no. 12 to report on *inter alia* the legislation to protect women against violence in everyday life, other measures to eradicate violence, the existence of support services for women and statistical data on violence against women. Furthermore, General Recommendation no. 14 requires state parties to take appropriate and effective measures to eradicate FGM, including the collection and dissemination of data on the practice.

In its resolution on combating female genital mutilation in Europe, the European Parliament has called on Member States to quantify the number of women who have undergone FGM or are at risk.<sup>16</sup> It further calls on the Fundamental Rights Agency and the European Institute for Gender Equality “to take a leading role in combating FGM; believes that these agencies could carry out priority research and/or awareness-raising actions, thus helping to improve understanding of the FGM phenomenon at European level.”<sup>17</sup>

### *Rationale*

The prevalence and forms of violence against women still need to be assessed in the EU. The creation of a Gender Based Violence Observatory located within the Gender Institute offers an opportunity to collect much needed data to provide evidence based advice to the EU institutions. In addition, the Fundamental Rights Agency is in the process of developing a survey on violence against women in the 27 Member States. Victim surveys should be combined with administrative data collection based on tools already designed by the Council of Europe.<sup>18</sup>

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<sup>15</sup> Report by Yakin Erturk, Special Rapporteur on violence against women, A/HRC/7/6 29 January 2008, Indicators on violence against women and State response.

<sup>16</sup> European Parliament resolution on combating female genital mutilation in the EU ([2008/2071\(INI\)](#)), point 8, 24 March 2009

<sup>17</sup> Ibid, Point 17.

<sup>18</sup> See for instance E Ruuskanen and K Aromaa, Administrative data collection on domestic violence in the Council of Europe Member states, Directorate General of Human Rights and Legal Affairs, Council of Europe, 2008.

Additional research is required on particular forms of violence, such as FGM. Consequently one of the fundamental and basic objectives of this strategy should be to initialise activities that aim to **measure** and **monitor** the prevalence of violence against women, including FGM. Data collection and the creation of relevant indicators and benchmarks are crucial, albeit complex, steps to undertake this endeavour. Appropriate methodologies should be developed in consultation with relevant stakeholders (including civil society organisations, community representatives, experts, women and girls affected by different forms of violence) with national surveys acting as a useful element of such research.

While there is available data on the prevalence of FGM in Africa, such information is less accessible in the EU context. EU related data is often underestimated and based on anecdotal evidence. This is due partly to the nature of FGM which remains very much underground. This also creates an invisibility of the issue amongst decision makers. Data on the prevalence of FGM in the EU is needed to uncover the extent of and the effect of the practice in the EU, to determine the type of programme and measures needed and to measure the impact of policies put in place to combat the practice. Qualitative data is important to properly understand the beliefs and stereotypes that act as causes and facilitators for gender-based violence. In combating a practice like FGM, data on the socio-cultural dimension is required to analyse whether the beliefs underlying the practice in the EU differ from the beliefs in the country of origin. Comprehension of this dimension is essential in order to design strategies for behaviour change processes. To this end, it would be useful to draw upon EU wide expertise for the design and development of research methodologies and tools for data collection. The EU institutions are well placed to initiate, fund and coordinate such research activities.

**Specific actions** to be included in the strategy:

- Facilitate the setting of a properly resourced Gender Based Violence Observatory and ensure that its recommendations are followed by policy change.
- Commit to analysing the FRA survey on violence against women in the EU and initiating necessary policy changes based on the findings of the survey.
- Develop and establish human rights-sensitive methodological tools that can be used for an EU wide approach to quantitative and qualitative data collection on FGM. This should be done in close collaboration with civil society organisations, community representatives, women and girls directly affected by FGM, and experienced sociologists and ethnologists.
- Coordinate and support the development of national surveys to assess FGM prevalence in the European Union. These surveys should be developed in close collaboration with all stakeholders to take into account the national context.
- Compile in an accessible format already collected data (acquired through the Daphne Programme and the recent study on Harmful Traditional Practices (HTP)). This compilation should be presented and discussed in a stakeholder meeting with civil society to ensure transparency and presented to Commission, Council and States representatives with a view to take concrete actions based on its recommendations.



## 2.2. Prevention, Protection and Prosecution

### *Human rights obligations: Due diligence obligation*

Gender-based and sexual violence is always a crime and a fundamental violation of human rights. Under international human rights law, states have a duty to prevent and protect women from violence, punish perpetrators of violent acts and provide reparations to the victims.

States are obliged to take all appropriate measures to change social attitudes and cultural patterns that underpin prejudices and discrimination against women, as well as stereotyped gender roles for men and women. Preventive work at all levels of society is vital if profound and sustainable change is to be brought about, and to ensure women's right to a life free from gender-based violence, including rape and other sexual abuse.<sup>19</sup>

Women who have been subjected to violence have the right to the same legal protection as victims of any other type of crime. Failing to provide that level of protection to women is discriminatory and a violation of the right to equal protection before the law. The obligation to provide full reparations under international human rights law includes the obligation to establish state institutions or to support other organizations that provide for the protection, support and assistance of victims of domestic violence, rape, sexual assault and other forms of gender-based violence.<sup>20</sup>

The vulnerable position of minority and non-national women who are victims of violence is recognised consistently throughout analyses of international standards, by experts, academics and international or regional courts or committees. They specify that such women should be accorded the same protection as nationals, which requires specific services allowing them access to the same protections and remedies. The due diligence measures recommended therefore apply equally to non-nationals as to nationals.<sup>21</sup>

Related human rights commitments at the EU level include Article 3 of the Treaty on European Union that stipulates that the Union shall promote equality between men and women and the protection of the rights of the child. Violence against women violates several rights and freedoms protected by the European Charter of Fundamental Rights in particular the right to dignity, to life, to the integrity of the person and the prohibition of torture and inhuman and degrading treatment. As an expression of gender discrimination it further contravenes the freedom from discrimination on any grounds and equality between women and men.

The Women's Charter provides that the EU does not tolerate gender-based violence and that it will strengthen its action to eradicate FGM and other acts of violence,

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<sup>19</sup> Case Closed

<sup>20</sup> Case Closed, op.cit.

<sup>21</sup> Amnesty International UK and Southall Black Sisters, No Recourse No Safety report, 2008.

including by means of criminal law. Indeed, to this end the EU would have an important role to play in promoting exchange of information and best practices amongst EU Member States and to the extent possible, coordinate efforts that are of a cross-border nature.

### *Rationale*

Adequate **preventive** measures should focus on the causes and consequences of violence against women. A two tiered approach should be adopted, targeting on the one hand the potential offenders and on the other, women and girls. The prevention of FGM should take the form of community based prevention, a collective approach which involves raising awareness on women's rights, on the impact of the practice on women and on the community as a whole with the aim of a collective abandonment of the practice. One example of preventive action taken in relation to FGM is the Project Azure, a UK based initiative in which the London Metropolitan Police Service joins forces with partner agencies to reach out to families from FGM practising communities.<sup>22</sup> Project Azure aims to educate parents and families about the health and legal implications of FGM while simultaneously empowering children at risk for the practice. It has also produced guidance to investigations in relation to FGM.

**Specific actions** to be included in the strategy:

- Put greater focus on the prevention of gender based violence through awareness raising campaigns of zero tolerance to violence against women and girls based on a holistic approach to violence and involving all stakeholders in society.
- Promote the call from the European Parliament for a European year for combating violence against women. This would also provide an excellent opportunity to raise awareness within the EU Member States and at the EU level on all forms of violence against women.
- Promote gender sensitive and empowering educational policy, programmes and processes which address the causes and consequences of violence against women and discrimination against women.

States have failed in preventing and protecting women from rape and other forms of sexual violence and **ensuring justice** for all rape victims.<sup>23</sup> Concrete legislative reforms are needed to improve the quality of investigations and the judicial handling of rape cases. States must ensure that legal procedures in rape cases are impartial and fair, and are unaffected by gender stereotypes about sexuality or by prejudices towards certain groups of girls and women. To address this, a number of measures are needed, including training and education to change discriminatory attitudes towards women. Protection of the right to sexual integrity and autonomy of each individual, regardless of gender or marital status, should be the basis of any criminal law regarding rape and other sexual violence.<sup>24</sup>

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<sup>22</sup> For more information see [http://www.met.police.uk/scd/specialist\\_units/fgm\\_reward.htm](http://www.met.police.uk/scd/specialist_units/fgm_reward.htm)

<sup>23</sup> See Case Closed

<sup>24</sup> Case Closed

When tackling justice for victims of violence against women there are a number of issues which should be taken into account. An assessment must address whether the existing laws are adequate, whether it is safe for a victim to report a crime of sexual or gender-based violence, whether the collection of forensic evidence and provision of medical care is appropriate and adequate, and whether there are specific obstacles which prevent a victim from accessing appropriate services in a timely way, as well as whether the investigation of crimes efficient and thorough and whether the trials are fair, competent and efficient.<sup>25</sup> Some of these areas fall within the competence of the EU, some fall within national competences. In any case, a comprehensive and holistic approach to violence against women needs to address these, be it through EU legislation where appropriate or through increased dialogue or sharing of best practices among Member States.

In relation to **protecting** women and girls from FGM and **prosecuting** perpetrators, implementation of both criminal law and child protection laws is obstructed by the lack of knowledge and attitudes of both professionals and communities confronted with FGM. Other factors that block implementation include the secrecy surrounding the practice within communities, the reluctance of girls to formally implicate parents and the reluctance of professionals to follow through on complaints and concerns. To facilitate the exchange of information and best practice and to shape a common EU approach to child protection policies, EU level cooperation is necessary. This cooperation should include Member State judiciaries as well as other competent authorities such as the police, social services, health services and school administrations. Additionally, the EU should facilitate cooperation and coordination between organisations and professional staff working in the EU and in countries of origin, to protect girls who may be at risk of mutilation when travelling abroad. One example of an initiative of protection is the launch of a FGM Resource Pack in November 2009 by the London Safeguarding Children Board, with the aim for it to be a key tool in the fight against FGM. The core audience consists of professionals who work with children, including midwives and other health professionals, social workers, teachers and police officers. The pack includes information on FGM, guidelines on how to detect abuse and girls at risk, and questions that midwives can ask women attending health clinics.

**Specific actions** to be included in the strategy:

- Host meetings to facilitate information exchange between competent authorities in Member States on best practices with a view to promote the knowledge and expertise in relation to sexual violence, violence against women and FGM cases, to promote cooperation, harmonisation and/or development of common standards in relation to FGM related judicial cases.
- In accordance with the 2009 European Parliament resolution on FGM which called on Europol to “coordinate a meeting of European police forces with a view to intensifying the measures to combat FGM, tackling the issues related to the low reporting rate and the difficulty of finding evidence and testimonies, and taking effective steps to prosecute offenders.”

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<sup>25</sup> Six-Point Checklist on Justice for Violence Against Women, ACT 77/002/2010, 8 March 2010.

- Examine possibilities for exchange on best practices among prosecutors and justice systems.
- Following the study on possible harmonising of Member State legislation relating to violence against women and children, hold a stakeholder meeting to discuss and elaborate on the findings of the study with stakeholders from civil society, promoting transparency in relation to a possible EU Directive.
- Take into account the specificities and internationally recognised rights of victims of gender-based violence and sexual violence in EU's future measures on the rights of victims.
- Develop an instrument to mainstream the rights of women and the specificities concerning violence against women into any future measures on criminal law and procedure and victims rights.
- Conduct studies on whether EU Member States have definitions of rape and sexual violence that are compliant with the corresponding international standards.
- Conduct studies to uncover whether there are gender related obstacles and deficiencies in the criminal justice systems across the EU.

### **2.3. International protection**

#### *Human rights obligations*

Women and girls who suffer from gender based violence in third countries can seek protection in the EU when their own states fail to prevent persecution, to offer adequate protection and effective remedy. The 1951 Geneva Convention outlines the definitions of refugees and the UN Refugee Agency (UNHCR) has further clarified when refugee status should be granted for these women and girls through their guidelines on gender related persecution<sup>26</sup>. “There is no doubt that rape and other forms of gender-related violence, such as dowry-related violence, female genital mutilation ... are acts which inflict severe pain and suffering – both mental and physical – and which have been used as forms of persecution, whether perpetrated by state or private actors.”<sup>27</sup>

FGM is a form of gender-based violence that inflicts severe harm, both mental and physical, and amounts to persecution. An additional clarification comes through the UNHCR Guidance Note on Refugee Claims relating to Female Genital Mutilation which states that FGM constitutes a form of gender-based violence amounting to gendered persecution and child specific persecution.

#### *Rationale*

Although gender related persecution is recognised as a ground for seeking international protection, there is great variation amongst Member States in the recognition of refugee status for women at risk of gender based and gender specific

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<sup>26</sup> Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees HCR/GIP/02/01 7 May 2002, UN website.

<sup>27</sup> Ibid.

persecution in their country. Gender sensitive measures are further needed for asylum interviewing and questioning techniques so that women and girls are spared additional stigmatisation upon arrival in the EU. Measures are also required to prevent violence against women and girls in the asylum procedures, the reception conditions, detention facilities and throughout the treatment of their applications.

In a 2004 comparative analysis of gender related persecution in national asylum legislation and practice in Europe, the UNHCR highlighted some issues with the recognition of FGM in asylum claims. “Although women or particular groups of women have been found to be members of a particular social group (PSG) in asylum decisions, an assessment of how cases involving FGM and failure to conform to religious mores indicate that there can be a tendency by decision makers to take a restrictive view of the PSG category.”<sup>28</sup> Data on the number of successful asylum claims based on FGM is not widely available in the EU.

The child specific nature of the persecution is not necessarily acknowledged at the time of considering the refugee status, as the child is considered to be unable to express fear or opposition to the practice.<sup>29</sup> The practice of mandatory gynaecological examinations prior to granting refugee status should be questioned even when justified by the duty to protect girls.<sup>30</sup>

**Special actions** to be included in the strategy:

- Ensure that the legal framework of the common European asylum system is properly transposed and implemented at national level and give due consideration to the UNHCR guidelines on Gender related persecution and guidance notes on FGM.
- In order to ensure this implementation, the Commission should set up a data collection mechanism disaggregated by gender and age, including number of applications and successful claims based on FGM.
- Ensure that gender is mainstreamed, gender experts are nominated and this dimension is properly resourced and include FGM as integrated dimension in the work by the European Asylum Support Office (EASO).
- Encourage the inclusion of the UNHCR guidelines and gender related persecution and guidance notes on FGM in the European Asylum Curricula.

## 2.4 Support and health services

### *Human rights obligations*

Violence against women affects individuals and society in often serious and far-encompassing ways. Abuse may lead to permanent physical injuries, poor mental health, suicide attempts, post-traumatic stress and central nervous disorders. Women who have been subjected to violence are also more likely to abuse alcohol and drugs.

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<sup>28</sup> “Comparative analysis of gender-related persecution in national asylum legislation and practice in Europe”, UNHCR website

<sup>29</sup> *Mlle Hélène Awa Kouyate*, CNDA, No 639907, 12 March 2009.

<sup>30</sup> Verbrouck, C and Jaspis, P. “Mutilations Génital Féminines/ Quelles protection? », *Revue du droit des étrangers* - 2009 - n° 153, 133-150.

Violence against women also affects their children, community and finally society as a whole.<sup>31</sup> Women and girls who are subjected to FGM are exposed to short and long-term effects on their physical, psychological, sexual and reproductive health. As a result, violence against women is a violation of the right to enjoyment of the highest attainable standard of physical and mental health, enshrined in Article 12 of the International Covenant of Economic, Social and Cultural Rights.

International human rights obligations require the state to set up or to support other bodies that provide systems of protection, support and assistance for victims of domestic violence, rape, sexual assault and other forms of gender-based violence. Furthermore, international human rights standards regulating state responsibility towards victims of gender-based violence call on states to provide appropriate support services to promote the safety as well as the physical and psychological rehabilitation of victims. These rights should be guaranteed regardless of whether the perpetrator is prosecuted and convicted, and regardless of the relationship between the perpetrator and the victim. Specially trained healthcare staff should be available and rehabilitation and counselling provided. Women in rural areas should also have access to support services. Protection, support and assistance should also be provided to refugees escaping gender-based violence. The right to an effective remedy is a basic element of states' obligation to fulfil their treaty obligations. All victims of crime have the right to necessary material, medical, psychological and social assistance through governmental or voluntary, community-based means. These rights should be guaranteed regardless of whether the perpetrator is identified, apprehended, prosecuted and convicted and regardless of the relationship between the perpetrator and the victim.<sup>32</sup>

As provided by the Committee on Economic, Social and Cultural Rights (CESCR) the right to health requires that health care facilities, goods and services and the underlying determinants of health be available, accessible, acceptable and of good quality. It further requires States to adopt effective and appropriate measures to abolish harmful traditional practices affecting the health of children.<sup>33</sup> The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has explained that within the context of sexual and reproductive health, the right to control one's health and body is an important freedom. FGM constitutes a "serious breach of sexual and reproductive freedoms" and is "fundamentally and inherently inconsistent with the right to health."<sup>34</sup> Concerning the realisation of the right to health, the Rapporteur also emphasised the fact that the realisation of the rights to sexual and reproductive health as relating to FGM are "subject to neither progressive realisation nor resource availability" and therefore should be implemented without delay.<sup>35</sup>

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<sup>31</sup> UN Secretary General Report

<sup>32</sup> Case Closed

<sup>33</sup> General Comment 14 of the UN Committee on Economic, Social and Cultural Rights, The right to the highest attainable standard of health: 11/08/2000. E/C.12/2000/4. (General Comments). Paragraph 22.

<sup>34</sup> Report of the UN Special Rapporteur, Paul Hunt E/CN.4/2004/49 16 February 2004

<sup>35</sup> Ibid

General Recommendation 19 of the Committee on the Elimination of All Forms of Discrimination against Women states in Article 24(b): “Appropriate protective and support services should be provided for victims.” In Article 24(t)(iii) it spells out the need for: “Protective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence;”

The Declaration on the Elimination of Violence against Women (paragraph 4g) calls on states to: “Work to ensure, to the maximum extent feasible in the light of their available resources and where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children, have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structure, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;”

In accordance with Article 168 of the Treaty on the Functioning of the Union, the Union should complement national policies to improve public health as well as encourage and support cooperation between Member States. In addition, Article 35 of the Charter of Fundamental Rights of the EU states that “Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.” Furthermore, Article 1 of the Charter of Fundamental Rights of the EU provides that “Human dignity is inviolable. It must be respected and protected.”

### *Rationale*

Health services should be physically and geographically available and accessible to all survivors of violence against women. The patient should be reimbursed for travel costs if she cannot afford them. If the health facility charges user fees, the inability to pay the fee should not preclude treatment. Fees should be waived for anyone who otherwise would not be able to access the services. Victims seeking health services after an act of sexual or gender-based violence should be able to see a medical practitioner of their choice (female or male). Health services should provide a woman or girl who has been raped with appropriate medical care, such as emergency contraception; HIV postexposure prophylaxis; gynaecological care for injuries sustained in the assault, as well as general medical care for other injuries; and initial psychological support.

Medical professionals attending survivors immediately after an act of sexual or gender-based violence should be trained to deal with survivors’ needs professionally and supportively, and treat them confidentially and with no discrimination. Health service providers should be able to refer patients to other appropriate services such as psychological counselling and legal services. Accessible and appropriate services including abortion should be available to women and girls who have become pregnant

as a result of rape or incest.<sup>36</sup> In addition, there are specific requirements for services to victims and witnesses of criminal offences.

A lack of awareness of FGM amongst health professionals can lead to emergency caesarean sections that pose an unnecessary risk and are costly in financial terms. A general sensitisation to FGM is also important for all gynaecological examinations as they could be very painful and also stigmatising for women and girls living with FGM. Furthermore, the current framework in place to give refugees and other migrants' entitlements to health care within the EU may not adequately address social barriers that hinder marginalised groups from accessing vital health services. These social barriers include language, lack of competent interpreters, different ways of understanding and viewing illness and also lack of awareness of health care services that are available. Targeted approaches to reach these marginalised groups include programmes with "health mediators". This approach has been used to improve the Roma people's health status in the EU Member States where the mediators reached out to the Roma communities on behalf of the public health system. A similar approach has been used by IOM in Switzerland to promote understanding FGM with communities from the Horn of Africa.

The EU and its Member States must seek to enhance the capacity of the health care sector to meet the specific needs of the women and girls living with FGM. While the provision of health care is a domestic issue for Member States, the EU can coordinate and compliment the work of the Member States by facilitating the exchange of information and best practices, initiate development of health protocols and curricula and fund feasibility studies and research projects that contribute to the pool of knowledge in the EU.

**Specific actions** to be included in the strategy:

- Ensure reference to and calls for implementation of the minimum standards for support services developed in the Council of Europe<sup>37</sup>
- Promote the exchange of information and best practices on dealing with survivors of violence against women and addressing FGM among EU Member State representatives from the health and social services sectors.
- Develop indicators relevant for women and girls living with FGM to assess, monitor and evaluate their access to health care services and the availability of acceptable and good quality health care.
- Promote cooperation between EU Member States to shape targeted policies, guidelines and initiatives that can improve the quality of life and the health of women and girls living with FGM.

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<sup>36</sup> Six-Point Checklist on Justice for Violence Against Women, Amnesty International, 8 March 2010 ACT 77/002/2010

<sup>37</sup> L Kelly, Combating violence against women: minimum standards for support services, Directorate General of Human Rights and Legal Affairs, Council of Europe, 2008.



## 2.5. EU as a global actor

### *Human rights obligations*

The obligation to combat FGM through development cooperation has several foundations, including: Article 3 in the Treaty stating that all Community activities, including development cooperation, should aim to promote gender equality and to further eliminate inequalities; the Cotonou agreement<sup>38</sup> which outlines the EU-ACP partnership makes specific reference to the goal of preventing FGM in Article 25 (c) on Social Sector Development; the European Instrument for Democracy and Human Rights (EIDHR)<sup>39</sup> states that measures which combat FGM should be supported by community assistance; the EU guidelines on “Violence against women and girls and combating all forms of discrimination against them” (2008) includes FGM in the definition of violence against women and girls and further states that the “EU reiterates the three indissociable aims of combating violence against women: prevention of violence, protection of and support for victims and prosecution of the perpetrators of such violence”<sup>40</sup>. Furthermore the EU Plan of Action on Gender Equality and Women’s Empowerment in Development has as an overarching objective to promote the achievement of the Millennium Development Goals (MDGs), particularly MDG 3 on Gender Equality and MDG 5 on Maternal Health. It is also committed to the goals set out by CEDAW, the Beijing Platform for Action and the Cairo Agenda. Simultaneously, combating gender-based violence is set out as a specific objective for development cooperation.

### *Rationale*

Significant complementarities and synergies can be achieved by ensuring greater policy coherence across the **internal** and **external** dimension of EU policy through close inter-DG cooperation and possibly also with an internal coordination mechanism on all issues relating to VAW. As an example of VAW that connects the internal-external dimension, FGM is prevalent across a multitude of countries, predominately in Sub-Saharan Africa but also in Egypt, Yemen and Iraq (among the Kurdish population). FGM is also practiced among Diaspora communities living in Europe, with an estimated 500,000 women and girls living with FGM. Through its development cooperation instruments, the European Commission has funded projects to combat FGM in several countries - including Egypt and Sudan. The EC is also a member of the Donors Working Group on FGM together with the UN family and several national aid agencies. Simultaneously there has been EC funding to combat FGM within the EU, through the Daphne budget line managed by DG JLS. Hence, the European Commission’s efforts to combat FGM have entailed both an internal and an external dimension. It does not appear however that there is a common strategic approach that transcends the internal/external boundaries. Eradicating FGM is a

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<sup>38</sup> The revised version that entered into force in 2008 can be found on European Commission website

<sup>39</sup> Regulation (EC) No 1889/2006 of the European Parliament and the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide

<sup>40</sup> Guidelines available on Europa website

human rights issue that obliges the EU to take concrete - and coherent - steps to ensure the protection of women and girls globally, as well as within EU borders.

The EU has a number of mechanisms to address violence against women in its relations to third states, but its legal basis and instruments are limited in its internal policy. There is an incoherence existing in the addressing of violence against women which affects not only the EU's impact as an actor to combat violence against women globally but internally as well. The development of this strategy provides an opportune time to address this discrepancy and ensure coherence between internal and external policies on violence against women.

**Special actions** to be included in the strategy:

- Create an inter-DG service group to address VAW in the external and internal work dimensions of the EU.
- Address the issue of FGM in the framework of the political dialogue and policy dialogue with partner countries and regional organisations and discuss how to best implement the commitments taken in international and regional treaties as well as in partner countries' national legislation
- Include in the annual country reviews an assessment of FGM prevalence and efforts to end this practice, and where applicable (i.e., in coordination with other donors and in partnership with third countries) include measures to combat FGM in Country Strategy Papers (CSPs) and in National Indicative Programmes (NIPs)

### **3. Complementarities and synergies**

The current study launched by the Commission to research possibilities of **harmonising national legislation** in the field of violence against women provides additional opportunities for Commission leadership within the EU – including an active role of individual Member States.

Civil society actors are important stakeholders in the fight against gender based violence but they often operate with limited funds and resources. It is also of great importance that civil society actors, in particular grass root organisations, be involved in the design and delivery of actions targeting violence against women. The Commission should therefore hold regular consultations and discussions on how to implement the new strategy combating violence against women, possibly by creating a **forum** allowing for regular meetings with a wide range of stakeholders. This would promote transparency, inclusion and non-discrimination while promoting active participation by right-holders.

Involvement of the European Parliament in this work would further ensure democratic oversight and accountability. One possible avenue would be for the European Commission to present annual reports on violence against women /gender related progress to the Committee on Women's Rights and Gender Equality (FEMM) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE).

In relation to international and European processes, the Commission should build and maintain close **linkages** with relevant counterparts to avoid duplication of efforts, to exchange information and promote collaboration where possible. Particular allies would include the newly formed UN Women, the Council of Europe and the Special Rapporteur on Violence against Women. It would be useful to arrange regular meetings and consultations where current reporting, publication and activities could be beneficial for all parties and focus efforts through division of labour and competitive advantages.

FGM is an example of how one particular form of violence against women is context specific while also prevalent in several parts of the world. As it is cross-border in nature and linked inherently to the idea of womanhood and social status, actions aiming to promote abandonment of the practice must target both the country of origin and the Diaspora. As an international actor and as part of the Donor's Working Group on FGM, the Commission can benefit from the years of expertise and experience accumulated by organisations such as UNFPA and UNICEF.

#### **4. Evaluation and monitoring**

Preventing violence against women, providing adequate protection and combating impunity through prosecution and other measures are all human rights obligations. It is essential for the effectiveness and impact of the strategy to include adequate accountability provisions through well resourced monitoring and evaluation. An appropriate monitoring mechanism would be transparent, well funded and in line with human rights standards. The objectives of this mechanism would include:

- Data collection at regular intervals to measure progress and impact of policies in the field of violence against women and FGM
- Quantitative and qualitative analysis of data collected to shape reports and assessments that can provide a basis for policymaking at EU and national levels
- Development of indicators - in line with current international assessments and human rights standards – that can form part of a measurement matrix in which policies and projects can be appraised to be utilised by both the Commission and individual Member States
- The data and research could be compiled in a harmonised data base to be made available to EU level stakeholders and Member State authorities

In addition to establishing this monitoring mechanism, regular stakeholder meetings should also be held with civil society to promote transparency, inclusion and accountability at all levels.

## **ANNEX 1:**

### **Amnesty International Reports and documents on violence against women relevant for the consultation:**

**Six-Point Checklist on Justice for Violence Against Women**, ACT 77/002/2010, 8 March 2010

**Case closed:** Rape and human rights in the Nordic countries: Summary report, ACT 77/001/2010, 8 March 2010

**The Gender Trap:** Women, Violence and Poverty, ACT 77/009/2009, 25 November 2009

**Bosnia & Herzegovina:** 'Whose justice?' : The women of Bosnia and Herzegovina are still waiting, EUR 63/006/2009, 30 September 2009

**United Kingdom:** 'No Recourse' No Safety - The Government's failure to protect women from violence, Amnesty International UK, March 2008

**Macedonia:** Summary. "Little by little we women have learned our rights": The Macedonian government's failure to uphold the rights of Romani women and girls, EUR 65/003/2007, 6 December 2007

**Greece:** Uphold the rights of women and girls trafficked for sexual exploitation, EUR 25/002/2007, 12 June 2007

**Hungary:** Health Professional Action: Rape and sexual violence in the home, EUR 27/007/2007, 4 June 2007

**Hungary:** Cries unheard: The failure to protect women from rape and sexual violence in the home, EUR 27/002/2007, 10 May 2007

**14-Point Programme for the Prevention of Domestic Violence**, ACT 77/012/2006, 31 August 2006

**Spain:** More rights, but the obstacles remain (Summary), EUR 41/006/2006, 23 June 2006

**France:** Violence against women: a matter for the State, EUR 21/001/2006, 6 February 2006

**Spain:** More than words. Making protection and justice a reality for women who suffer gender based violence in the home, EUR 41/005/2005, 11 May 2005

**Stop Violence Against Women:** 'It's in our hands', ACT 77/001/2004, 5 March 2004

**Making rights a reality:** The duty of states to address violence against women, A guide to states' obligation to make women's rights a reality - to implement their obligations under treaties and customary international law to respect, protect and fulfil human rights in law and practice, ACT 77/049/2004, 2 June 2004

## **Briefings to international organizations on European states:**

**Bosnia and Herzegovina:** Submission to the UN Universal Periodic Review: Seventh session of the UPR Working Group of the Human Rights Council, February 2010, EUR 63/007/2009, 8 September 2009

**Finland:** Submission to the UN Universal Periodic Review: First session of the UPR Working Group 7-18 April 2008, EUR 20/001/2007, 21 November 2007

**France:** Submission to the UN Universal Periodic Review: Second session of the UPR working group, 5-16 May 2008, EUR 21/001/2008, 8 February 2008

**Montenegro:** Amnesty International's Concerns in Montenegro: January - June 2009, EUR 66/004/2009, 1 September 2009

**Portugal:** Submission to the UN Universal Periodic Review. Sixth session of the UPR Working Group of the Human Rights Council: November - December 2009, EUR 38/001/2009, 20 April 2009

**Romania:** Submission to the UN Universal Periodic Review: Second session of the UPR working group, 5-16 May 2008, EUR 39/001/2008, 8 February 2008

**Serbia:** Amnesty International's Concerns in Serbia, Including Kosovo: January - June 2009, EUR 70/016/2009, 1 September 2009

**Spain:** Briefing to Committee against Torture, November 2009, EUR 41/011/2009, 1 November 2009

**United Kingdom:** Briefing to the Committee on Economic, Social and Cultural Rights, EUR 45/004/2009, 1 April 2009