

JOINT CONTRIBUTION TO THE ROADMAP FOR THE EVALUATION OF THE EU VICTIMS RIGHTS DIRECTIVE

End FGM European Network - Middelburg Human Rights Law Consultancy

1. Introduction

The End FGM European Network (End FGM EU) and Middelburg Human Rights Law Consultancy welcome the occasion of the evaluation of the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (hereafter ‘Victims’ Rights Directive’). We particularly appreciate the opportunity given by the European Commission to different stakeholders, including civil society, to provide a contribution around **whether (and to what extent) the Victim’s Rights Directive has achieved its objectives in terms of its implementation and practical application in European Union (EU) countries since its adoption in 2012.**

Unfortunately, an issue of inconsistency of provisions within the text of the Victims’ Rights Directive creates in practice **an exclusion of certain victims in its scope and applicability undermining access to equal standards of protection and support in the EU** (para. 2 below). In addition, another issue is the unclarity whether persons who are under the **threat of a crime** fall within the scope of the Victims’ Rights Directive and thus have the right to protection (para. 3 below).

2. Inconsistency in practical applicability and scope of the Directive

There is a clear **inconsistency and contradiction** in the Victims’ Rights Directive text in relation to the **practical applicability and scope** of the Directive. This has negative implications for the rights that it enshrines for all victims affected and is especially problematic for **victims of Female Genital Mutilation (FGM)**.

More specifically, Art. 8(5) of the Victims’ Rights Directive states *that “Member States shall ensure **that access to any victim support services is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.**”*

While paragraph 13 of the preamble states that the Directive *“confers rights on victims of extra-territorial offences only in relation to criminal proceedings that take place in the Union. Complaints made to competent authorities outside the Union, such as embassies, do not trigger the obligations set out in this Directive.”*

These two provisions contradict one another since for formal proceedings to take place within the Union, one must make a formal complaint regarding an extraterritorial criminal offence to start criminal proceedings and fall within the scope of the Directive. The requirement that the offence must either be committed within territory of a party of criminal proceedings regarding that crime must take place within the territory of a party for rights to be conferred is **not found** within the Council of Europe Convention on preventing and combating violence against women and domestic violence (better known as the Istanbul Convention).

Victims of FGM are for the large majority victims of extra-territorial crime. Usually, women and girls undergo FGM outside the EU, while they are visiting their country of origin, for instance during a holiday, or before they arrived in Europe. Women and girls seldomly file a formal complaint in the EU country where they live¹. Research has shown that this has to do, on the one hand, with the specificity of FGM as a practice that is deeply rooted in social and gender norms widely accepted in the countries of origin and, on the other hand, with the fact that girls do not want to subject their parents to criminal proceedings (or are pressured not to do so). Since a formal complaint is almost never made, criminal proceedings regarding FGM committed abroad seldomly take place.

Thus, since the crime is committed outside the EU, and no proceedings take place in the EU, **the large majority of victims of FGM are not covered by the practical scope of the Victims' Rights Directive**. This results in an exclusion, which presents a *de facto* discrimination against victims of FGM. To illustrate this: when a girl undergoes FGM in an EU country (for example when the family invites a cutter to their home), the Victims' Rights Directive would be applicable without the need for a complaint. However, when a girl is brought to her country of origin with the specific aim to undergo FGM, the Victims' Rights Directive does not automatically confer any rights upon the girl regarding support. At the same time, it is widely documented that FGM can cause short-term and long-lasting physical, psychological and sexual consequences and that victims of FGM need support. To fall within the scope of the Victims' Rights Directive, victims of FGM would have to file a complaint, so that criminal proceedings may be started, to access the rights to support described in Victims' Rights Directive. However, this seems contradictory to Art. 8(5) which clearly states that access to any victim support services must not be dependent on a victim making a formal complaint with regard to a criminal offence.

In this regard, it is important to note that EU institutions have been actively engaging in designing policies and programmes to prevent FGM, protect and support survivors both in Europe and worldwide, starting with the [2013 European Commission Communication Towards the elimination of Female Genital Mutilation](#). The EU also proudly refers to the Victims' Rights Directive as one of the key tools for the protection of FGM victims in Europe, while in reality, as shown, most of them are excluded from its scope.

¹ In the EU only around 50 court cases have taken place (see European Commission (2015), [Female Genital Mutilation in Europe – An analysis of court cases](#)), while it is estimated that around 600.000 women and girls living in Europe are victims of FGM and further 180.000 are at risk in 13 countries alone (see European Parliament, [Resolution on An EU strategy to put an end to female genital mutilation around the world](#), 12 February 2020).

Key Recommendations:

In light of the aforementioned, we urge the European Commission within the evaluation of the Victims' Rights Directive to **rectify the exclusion (presenting a *de facto* discrimination)** by:

- a. Removing all together the condition that a criminal proceeding regarding extraterritorial crimes must be taking place within an EU Member State for the Victims' Rights Directive to be applicable, as is the case with the Istanbul Convention, or;
- b. Alternatively - if a. is not feasible - including victims of extraterritorial crimes, specifically victims of 'harmful practices' in the scope of the Victims' Rights Directive, without the need for criminal proceedings to take place;

3. Threat to a crime is not covered

Another issue arises when analysing the material scope of the Victims Rights' Directive in light of 'protection measures'. Art. 18 of the Victims' Rights Directive describes the right to protection and has the goal to protect the physical integrity of victims. This could potentially be a strong tool to protect the physical integrity of girls at risk of FGM. However, it is **unclear whether girls at risk also have the right to such protection** under the Victims' Rights Directive, since they have not yet become victims of the actual crime of FGM.

Again, the Istanbul Convention seems to have a broader approach. When we look at the text of the Convention, 'victims' are defined by art. 3(e) in conjugation with art. 3(a) as "*any natural person subject to*" *i.a.* "*gender-based violence... including threats of such acts.*" Thus, girls at risk are clearly protected as victims under the Istanbul Convention.

On the other hand, in the Victims' Rights Directive, 'victims' are defined by art. 1(a)(i) as "*a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence.*"

Since a girl at risk is likely to suffer (psychologically) under the knowledge of her upcoming FGM, she could be considered the victim of the crime of preparing FGM, because mental and emotional harm is done to her by that crime. This would qualify her as a victim under art. 2(1)(a)(i) of the Victims' Rights Directive and confer rights regarding protection on her.

However, theoretically sound as that argument may be, this **does not really become clear in the Victims' Rights Directive**. Thus, victims of the threat of crime and how the physical execution of the prepared/planned crime may be prevented are likely to be overlooked in the implementation of the Victims' Rights Directive.

Again, we would like to reiterate the stance of the EU regarding the Victims' Rights Directive being a key instrument in supporting victims of gender-based violence, including FGM, this potential and this status could be strengthened if the victims of crimes that are looming over them would be acknowledged too. This is specifically so regarding crimes as peculiar as FGM, which mostly entails a degree of planning and preparation.

Recommendation:

We urge the European Commission with the evaluation of the Victims' Rights Directive to **include persons who are under the threat of a crime** by:

- a. Including "threats of crime" under Art. 2(1)(a)(i) of the Victims' Rights Directive, or;
- b. Alternatively - if a. is not feasible - Including the prevention of crime as an objective of the protection measures in Art. 18 Victims' Rights Directive.

About us

End FGM European Network

The End FGM European Network (End FGM EU), which is an umbrella network of 27 national organisations working in 14 European countries who are expert on Female Genital Mutilation (FGM). End FGM EU operates as a meeting ground for communities, civil society organisations, decision-makers and other relevant actors at European level to interact, cooperate and join forces to end all forms of FGM in Europe and beyond. We put at the heart of our work grassroots voices to influence European governments and policy-makers to work towards the elimination of FGM. We build our members' capacity, offer spaces to share expertise and develop partnerships. While dedicated to being the driving force of the European movement to end FGM, we are equally committed to build bridges and cooperation with all relevant actors in the field of FGM both in Europe and globally. In this sense, we actively promote and foster cooperation between the European movement and movements in other regions of the world.

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Middelburg Human Rights Law Consultancy

Dr. Annemarie Middelburg is the founder and director of Middelburg Human Rights Law Consultancy. She is a passionate consultant with unique expertise on women's rights and the practice FGM. She has a background in International and European law and obtained her PhD with a thesis entitled 'Empty Promises? Compliance with the Human Rights Framework in relation to Female Genital Mutilation/Cutting in Senegal' at the International Victimology Institute Tilburg (INTERVICT) at Tilburg University, the Netherlands. She has assignments for the United Nations, international organizations, NGOs, research institutes and universities. She frequently travels to the field do conduct research, to design programs or monitor projects aiming to end FGM. She was also a core team member of a study in the EU to map the current situation and trends of FGM in 27 EU member states and Croatia (2013). She has authored and co-authored numerous academic and UN publications on the topic of FGM, other forms of Violence Against Women (VAW) and Sexual and Reproductive Health and Rights (SRHR). She is also a lecturer at the University of Amsterdam where she teaches various courses in the field of international human rights law. At this website, you find more information about Middelburg Human Rights Law Consultancy: <https://www.annemariemiddelburg.com/>.

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