



# The EU Mutual Learning Programme in Gender Equality

## Combating female genital mutilation and other harmful practices

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### Comments Paper - Hungary



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# Prevalence and policy background of FGM and other harmful traditional practices in Hungary

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## 1. Introduction and relevant country context

### 1.1. Female Genital Mutilation

In Hungary, the probable prevalence of female genital mutilation is quite low. The only research on this issue<sup>1</sup> estimated that “the number of migrant women affected by FGM in Hungary is between 170 and 350”. The calculation was based on the data (disaggregated by sex and country of origin) provided by the Office of Immigration and Nationality (Bevándorlási és Állampolgársági Hivatal) from 2011 and WHO's FGM prevalence data by countries.

According to an expert on refugee and migration issues:

*“There is no tradition of female genital mutilation in Hungary. Another reason why the issue is not well-known and the media do not give it that much attention is because few people live in Hungary who have been or are directly affected by it. There are no large migrant communities, and most immigrants come from countries where female genital mutilation is not practiced: from the neighbouring countries or China, for example. The number of refugees is not very high either, and a lot of people stay in Hungary only temporarily. It should also be mentioned, however, that among refugees arriving in Hungary the proportion of Somalis, and among them women, is relatively high: this is important because in Somalia more than 90 % of women are affected by FGM.”<sup>2</sup>*

The phenomenon of FGM among refugee communities has been addressed by the following NGO initiatives so far:

- the Hungarian Helsinki Commission (Magyar Helsinki Bizottság) organised a professional seminar for refugee experts on the issue of FGM in 2009, within the framework of a professional meeting and training course in Sarlópuszta (Sarlópusztai menekültügyi továbbképzés és találkozó, 2009), supported by the EU Refugee Fund and the Ministry of Justice and Law Enforcement (Igazságügyi és Rendészeti Minisztérium);

<sup>1</sup> Hungary, Kőszeghy, L. PhD (2012): 'FGM prevalence in Hungary – estimation', available at: <http://mona-alapitvany.hu/wp-content/uploads/2012/11/fgm-prevalence-in-hungary-estimation.pdf>.

<sup>2</sup> Hungary, MONA Foundation (2011) 'A más kultúrák iránti nyitottságért dolgozunk, de ragaszkodunk az emberi jogi értékekhez' (Interview with Gábor Gyulai, head of the refugee programme of the Hungarian Helsinki Committee), available in Hungarian at: <http://endfgmhungary.blogspot.hu/2011/03/mas-kulturak-iranti-nyitottsagert.html>, and in English at: [www.endfgm.eu/content/assets/Interview\\_Gabor\\_Gyulai\\_HHC\\_Eng.pdf](http://www.endfgm.eu/content/assets/Interview_Gabor_Gyulai_HHC_Eng.pdf).

- MONA Foundation for the Women of Hungary (MONA Magyarországi Női Alapítvány) participated in a European campaign “End FGM”<sup>3</sup> between 2010 and 2013: organised awareness raising events for the general public, and seminars for professionals (NGO representatives, health care assistants and social workers working with refugees).<sup>4</sup>

Female genital mutilation is not addressed specifically by Hungarian legislation, and there is no information on any reported instances of female genital mutilation performed in Hungary. However, Hungary has ratified a number of international conventions that condemn FGM, such as the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and the Charter of Fundamental Rights of the European Union (2010/C 83/02). Hungary has signed but not yet ratified the Council of Europe’s Convention on preventing and combating violence against women and domestic violence.

According to information provided by the Ministry of Justice, female genital mutilation would be prosecuted in Hungary as a form of grievous bodily harm causing permanent disability or severe deterioration of health, and according to Article 164 (6), section d) of the Criminal Code it may be sanctioned with imprisonment, from one up to five years.<sup>5</sup> In order to decide on the severity of an injury, typically a medical officer would need to be involved. If the victim gets into a life-threatening condition or dies as a result of FGM, the perpetrator can be made responsible for inflicting life-threatening or fatal bodily harm, which is punishable with two to eight years of imprisonment according to Article 164 (8) of the Criminal Code.<sup>6</sup> According to the Criminal Code, anyone who engages in preparations for the above criminal acts is also guilty of a misdemeanour punishable by imprisonment of up to one year.<sup>7</sup> This is applicable independent of the relationship between the perpetrator and the plaintiff, so if a parent makes preparations for the criminal act, he or she may also be made liable for it. Furthermore, anyone who is identified as playing the role of an abettor or an accomplice in the perpetration of FGM is also punishable according to Article 14 of the Criminal Code.<sup>8</sup> If FGM is committed against a minor, a cumulation of penalties should be applied, in which abuse – endangering the physical, intellectual, moral or mental development – of a minor is punishable by imprisonment between one and five years.<sup>9</sup> The principle of extraterritoriality may be applied, should FGM be committed outside the country.

The Hungarian Asylum Act specifies FGM as a basis for application for asylum. According to Article 60 (2) b of the Asylum Act (Act 80 of 2007), ‘persecution can

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<sup>3</sup> See at: [www.endfgm.eu/en/](http://www.endfgm.eu/en/)

<sup>4</sup> Hungary, see: <http://endfgmhungary.blogspot.hu/>

<sup>5</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), Article 164 (6), available at: [http://thb.kormany.hu/download/a/46/11000/Btk\\_EN.pdf](http://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf).

<sup>6</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), Article 164 (8), available at: [http://thb.kormany.hu/download/a/46/11000/Btk\\_EN.pdf](http://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf).

<sup>7</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), Article 164 (7), available at: [http://thb.kormany.hu/download/a/46/11000/Btk\\_EN.pdf](http://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf).

<sup>8</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), Article 14, available at: [http://thb.kormany.hu/download/a/46/11000/Btk\\_EN.pdf](http://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf).

<sup>9</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), Article 208, available at: [http://thb.kormany.hu/download/a/46/11000/Btk\\_EN.pdf](http://thb.kormany.hu/download/a/46/11000/Btk_EN.pdf).

take the form of gender-based actions'.<sup>10</sup> The explanatory text on the justification of the Asylum Act specifically names FGM as a form of gender-based persecution. The Office of Immigration and Nationality assesses claims based on future FGM or future severe health consequences based on FGM type III.

## 1.2. Forced marriage/child marriage

According to the National Social Inclusion Strategy (Extreme Poverty, Child Poverty, the Roma) for 2012–2020, “it is essential that health protection should form an integral part of the educational process already in elementary school in order to prevent disadvantaged Roma children most exposed to risks from becoming the victims of harmful phenomena with an impact on their physical and mental health ... To this end, we must also launch prevention and information programmes; it is important that children should be aware of victim protection services, the rights of young girls in marriage, etc.”<sup>11</sup> However, the Action Plan of the Strategy for 2012–2014<sup>12</sup> does not give any specific provision aimed at targeting the phenomenon of early (or possibly forced) marriages.

According to information provided by the department of the Ministry of Human Capacities responsible for national inclusion, the government initiated a programme in 2015 which identified Roma girls/women as a group suffering multiple disadvantages who are particularly vulnerable to early pregnancy, prostitution and human trafficking. The programme aims to decrease the early school leaving (without school qualification) of Roma girls in a disadvantageous position, and to increase their chances to continue education. The target group of the programme are girls – primarily Roma girls – between 10 and 18 years of age who go to primary or secondary school and who are characterised by a risk of early school leaving. There is 150 million HUF (480,000 EUR) foreseen for the implementation of the programme available to different stakeholders working in the field. The programme is funded by the State, but the ministry is planning to continue it in 2017 from European funding sources.

Forced marriage is not addressed specifically by the Hungarian criminal law; it may only be punishable under the general offence of ‘coercion’ (‘kényszerítés’) (Art. 195).<sup>13</sup> Women’s rights NGOs raised concerns during the public consultation on the

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<sup>10</sup> Hungary, Act LXXX of 2007 on Asylum (2007. évi LXXX. törvény a menedéjogról), Article 60, available at: <http://helsinki.hu/wp-content/uploads/Asylum-Act-and-GvtDecree-2007-in-January-2013.pdf>.

<sup>11</sup> Hungary, Ministry of Public Administration and Justice, State Secretariat for Social Inclusion (2011), National Social Inclusion Strategy – Extreme Poverty, Child Poverty, the Roma – (2012–2020) November 2011, p. 76. (Nemzeti Társadalmi Felzárkózási Stratégia – Mélyszegénység, gyermekszegénység, romák – (2011–2020), 2011. november), official English translation is available at: <http://romagov.kormany.hu/download/5/58/20000/Strategy%20-%20HU%20-%20EN.PDF>.

<sup>12</sup> Hungary, Resolution No. 1430/2011. (XII. 13.) of the Government Regarding the National Social Inclusion Strategy and Governmental Action Plan for the Implementation Thereof in the Years 2012 to 2014 (A Kormány 1430/2011. (Xii. 13.) Korm. határozata A Nemzeti Társadalmi Felzárkózási Stratégiáról, valamint végrehajtásának a 2012–2014. évekre szóló kormányzati intézkedési tervéről), official English translation is available at: <http://romagov.kormany.hu/download/6/58/20000/Strategy%20Action%20Plan.PDF>

<sup>13</sup> Hungary, Act C of 2012 on the Criminal Code (2012. évi C. törvény a Büntető Törvénykönyvről), Article 195, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1200100.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1200100.TV).

draft Criminal Code in 2012 regarding the fact that the draft does not contain specific provisions on forced marriage.<sup>14</sup> The bill has not been modified.

In Hungary, minors of both sexes above 16 years of age are allowed to marry with the permission of the Guardianship Authority.<sup>15</sup> Married persons under 18 are considered to be major in the context of the Civil Code.<sup>16</sup> Marriages involving a minor (up to 18 years of age) which were conducted without the permission of the Guardianship Authority are to be considered invalid, however, these marriages become automatically valid in a retroactive mode, 6 months after the affected spouse's 18<sup>th</sup> birthday, unless the validity of the marriage is contested by someone before this deadline.<sup>17</sup> Apart from the fact that child marriage is formal marriage, there is anecdotal evidence that in certain Roma communities there is the practice of custom marriage in which families agree on the marriage of two minors who are often under 14 years of age. These 'marriages' are invalid and have no legal effect.

According to the joint report of the Hungarian Women's Lobby (Magyar Női Érdekérvényesítő Szövetség) and the European Roma Rights Centre, submitted to the UN CEDAW Committee: "In response to the recommendation of the CEDAW Committee about raising the age limit for marriage, the government has argued that it should happen only in the interest of the child that s/he is given permission to marry. Contrary to this claim, there is anecdotal evidence that pimps/traffickers withdraw minors from the framework of the child protection system through marriage.... A recent proposal ... aiming to simplify the process of giving permission to minors to marry does not only disregard the Committee's recommendation, but goes against it. According to the proposal, 'the number of marriages in Hungary is continuously declining, thus it is a fundamental social interest to slow down or reverse this trend. To this end, it is still justified to provide the legal background for the marriage of minors.'"<sup>18</sup>

According to information provided by child welfare department of the Ministry of Human Capacities, the training of professionals working in the child protection system in the 2014-2020 period highlighted by the EFOP ("Human Resources Development Operational Programme") project code 3.8.2 "Social development of human resources" and VEKOP (Competitive Central Hungary Operational Programme) with the same title, code 7.5.1-16 provides the framework for free-of-charge training at various locations in the country. The priority projects are planned

<sup>14</sup> Hungary, PATENT Association of People Opposing Patriarchy (PATENT – Patriarchátust Ellenzők Társasága), NANE Women's Rights Organisation (NANE – Nők a Nőkért Együtt az Erőszak Ellen Egyesület), MONA Foundation for the Women of Hungary (MONA – Magyarországi Női Alapítvány), Hungarian Women's Lobby (Magyar Női Érdekérvényesítő Szövetség) (2012) 'Nőszervezetek észrevételei a Büntető Törvénykönyv tervezetének a nők elleni erőszak különböző formáit érintő részeinek vonatkozásában', available at: <http://nokjoga.hu/sites/default/files/filefield/2012-btk-javaslatmarc-9-nane-patent-mona-ne-benyujtva.pdf> .

<sup>15</sup> Hungary, Act V of 2013 on the Civil Code (2013. évi V. törvény a Polgári Törvénykönyvről), Article 4:9 (1)-(2), available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1300005.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1300005.TV)

<sup>16</sup> Hungary, Act V of 2013 on the Civil Code (2013. évi V. törvény a Polgári Törvénykönyvről), Article 2:10 (1), available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1300005.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1300005.TV) .

<sup>17</sup> Hungary, Act V of 2013 on the Civil Code (2013. évi V. törvény a Polgári Törvénykönyvről), Article 4:9 (4); 4:16 (1), available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1300005.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1300005.TV) .

<sup>18</sup> Hungary, Hungarian Women's Lobby and the European Roma Rights Centre (2013) 'Alternative report submitted to the UN CEDAW Committee for consideration in relation to the examination of the combined seventh and eighth periodic reports of Hungary', January 2013, p.3, available at: [http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/HWLandERRC\\_Hungary\\_ForTheSession\\_Hungary\\_CEDAW54.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/HWLandERRC_Hungary_ForTheSession_Hungary_CEDAW54.pdf)

to include training programmes for recognition and prevention of sexual exploitation (e.g. sexually abused children, different sexual identities, minor prostitution) among others.

## 2. Policy debate

A large group of migrant people fleeing war-affected countries in the Middle East, such as Syria, Afghanistan or Iraq, moved through Hungary and neighbouring countries and headed towards Western European states in 2015. The Hungarian government took measures, e.g. set up physical barriers on the country's borders to prevent refugees from travelling through or settling in Hungary in great numbers. The government has also taken steps to initiate a referendum on the EU's quota scheme for settling a certain number of refugees in EU countries.<sup>19</sup> In this context, it is uncertain whether or how many refugees from FGM-affected countries may settle in Hungary in the future. It is probable that women and girls affected by FGM were also among refugees from the Kurd region in Iraq; however, the relatively short period of time that they spent in Hungary did not make it possible to research this issue.

Interviews made with female refugees<sup>20</sup> whose number has gradually grown during the refugee crisis show that they have been especially vulnerable to violence during their journey. They have faced harsh treatment, threats and acts of violence, sexual violence and sexual exploitation during their journey perpetrated by other refugees as well as representatives of authorities. It was cited that in some countries, including Hungary, authorities sometimes failed to pay attention to the special needs of female refugees and did not provide separate spaces or services for women travelling on their own from male refugees. This draws attention to the fact that authorities must take the gender-specific needs and vulnerabilities of female refugees more into account.

## 3. Transferability aspects

The probable number of migrant and refugee girls and women who are affected by or are at risk of FGM is currently relatively small in Hungary, although it might increase in the future due to hitherto unforeseen trends in migration. Forced marriage and child marriage is a phenomenon that has probably risen due to the worsening trend in the sexual exploitation of girls for the purposes of prostitution, and due to the permissible legislation. A holistic approach to both phenomena and to their treatment, as it is the good practice that could be applied to other forms of violence against women, should be followed by Hungary as well. This process would be greatly aided by the country's ratification and implementation of the Council of Europe's Convention on preventing and combating violence against women and domestic violence.

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<sup>19</sup> <http://www.theguardian.com/world/2016/feb/24/hungary-viktor-orban-will-call-referendum-on-eu-refugee-quotas>

<sup>20</sup> <https://www.amnesty.org/en/latest/news/2016/01/female-refugees-face-physical-assault-exploitation-and-sexual-harassment-on-their-journey-through-europe/>

## 4. Recommendations for action

In order for professionals who get in connection with affected girls and women to be better prepared to fulfil the specific health and social needs of these girls and women, the following measures are recommendable:

- ratification on national and European level of the Council of Europe's Convention on preventing and combating violence against women and domestic violence, which classifies female genital mutilation and forced marriage as forms of human rights violation and violence against women;
- more comprehensive data collection on the magnitude and characteristics of the phenomena of female genital mutilation and forced marriage or child marriage in Hungary, legal prosecution in cases where such illegal conducted is suspected;
- sensitisation and training of professionals in order that they are more aware of the unique, gender-specific needs of female refugees who have undergone or are at risk of undergoing FGM;
- awareness-raising among the general population about the right to seek asylum of girls and women at risk of FGM or who have been subjected to FGM.