

## Joint Shadow Report - SWITZERLAND

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### Authors:

**Network against Female Genital Cutting Switzerland:** the Network against FGC Switzerland is a national network which aims at protecting girls and women from female genital mutilation and ensuring medical care for those who have been subjected to it. The network operates an information portal/website on FGM for communities and professionals in different languages; offers counselling to women and girls concerned and their families as well as to professionals; engages in community based prevention, awareness raising and capacity building among professionals and their institutions as well as developing regional contact points and advocacy work. It also aims at coordinating and developing a network of stakeholders working on the issue all over Switzerland and ensures easy access to information. The Network consists of Caritas Switzerland, Brava (formerly Terre des Femmes Switzerland), Switzerland Sexual Health and the Swiss Centre of Expertise in human rights SKMR.

**End FGM European Network (End FGM EU):** [End FGM EU](#) is a European umbrella network of 30 organisations working in 14 European countries to ensure a sustainable European action to end female genital mutilation in Europe and beyond. Its vision is “a world free of all forms of female genital mutilation (FGM) where women and girls are empowered and can fully enjoy their human rights”. Its mission is to be the driving force of the European movement to end all forms of FGM, joining the forces of communities and civil society organisations, and building synergies and cooperation with all relevant actors in Europe and globally.

## INTRODUCTION

The present joint shadow report is produced by the Network against FGC Switzerland and the End FGM European Network, in order to highlight the current situation and propose concrete recommendations on the issue of prevention, protection, prosecution and integrated policies concerning female genital mutilation in Switzerland. Despite this report focuses only on this harmful practice, its aim is not to single it out in isolation, but just to put emphasis on it while still seeing it in the *continuum* of gender-based violence against women and girls and in a holistic and comprehensive manner.

This report represents the Swiss chapter of a wider coordinated effort of End FGM EU to engage all its members who are under GREVIO revision to present an **FGM-focused report** in order to bring to the experts' attention the topic, which is too often neglected by State authorities. This project somehow stems from the Guide on the [Istanbul Convention as a tool to end female genital mutilation](#) which was produced in coordination between the Amnesty International End FGM European Campaign (the predecessor of End FGM EU) and the Council of Europe. It puts in practice the Guide's holistic approach by considering its full application to FGM as a form of violence against women and girls which needs to be addressed through prevention, protection, prosecution and integrated policies. It does not only analyse the application of the specific FGM Article 38 of the Istanbul Convention, but addresses the full range of articles in the Convention and how they are applied to tackle FGM.

### 1. Legal Framework

#### Criminal law

In Switzerland FGM is criminalised through [Article 124](#) of the Criminal Code around "Any person who mutilates the genitals of a female person, impairs their natural function seriously and permanently or damages them in some other way. In addition, [Article 260](#) even refers to 'Acts preparatory to the commission of an offence' regarding FGM, meaning that the sole preparations are liable to be prosecuted. When it comes to the penalty, committing FGM entails up to ten years in prison or a fine whereas undertaking preparations to commit it is punished with a custodial sentence of up to five years or a fine. It should also be mentioned that committing FGM is one of the charges that can lead to expulsion from the country for up to 15 years according to [Art 66 \(1\)\(b\)](#).

The Penal Code clearly references the extraterritorial nature of the crime stating that FGM is a punishable offence in Switzerland even if it is, or was, carried out abroad, regardless of whether the country in question has prohibited FGM. It is also not necessary for the accused to have legal domicile in Switzerland to be prosecuted. Under Swiss law, a person who perpetrates or arranges for the perpetration of the offence before entering Switzerland must also automatically be prosecuted.



### Child Protection Law

The child protection authorities (KESB) are primarily responsible for protecting minors from the risk of FGM or FGM that has already occurred and for supporting them. The authorities are required to take protective measures when a child's welfare is at risk. Child protection under [Art 307-315b](#) of the Civil Code, provides for scaled interventions that curtail parental custody rights to a degree determined by the severity of the endangerment. These range from counselling, the issuance of official parental reminders or the appointment of a deputy in order to advise and support, right through to the withdrawal of the parents' right to decide where a child should live and, in some cases, to the complete withdrawal of parental custody.

### Law on asylum

FGM is not explicitly mentioned in the Swiss Asylum Act as a ground for refugee status, however the State Secretariat for Migration (SEM) has identified that FGM can be taken into consideration as a form of gender-specific persecution for granting refugee status.

To be granted asylum, Swiss authorities analyse whether the survivor's country of origin provides effective protection against a threat of FGM such as criminalisation of FGM, whether it is effectively implemented to protect women and girls from the harmful practice or if there is a region in the country which offers the necessary protection (called the 'internal flight alternative'). In order to qualify, the country of origin must not provide effective protection against FGM. The principle of non-refoulement also applies under [Art 83\(4\)](#) of the Federal Act on Foreign Nationals and Integration (FNIA). If asylum has not been granted, under [Art 83\(8\)](#) FNIA temporary admission can be provided. However, Switzerland recognises FGM as ground for asylum only for those at risk of FGM and not women and girls who have already undergone FGM (unless they are at risk of reinfibulation).

## **2. Policy Framework**

There is no National Action Plan (NAP) as such in Switzerland, but the Federal Office of Public Health (FOPH) has funded awareness-raising and prevention measures aimed at combating FGM through the national program Migration and Health since 2003. The State Secretariat for Migration (SEM) has been involved in these activities since 2010 as well. In 2015, the Government decided to support the Network against FGC Switzerland for the 2016–2019 period. The governmental support has expanded several times up to 2023. Moreover, the Swiss Government has funded in large part the community-based prevention work implemented by civil society.

Even though the Confederation has agreed to continue its financial support of the Network against FGC Switzerland<sup>1</sup>, there is still a **great need for systematic, comprehensive and sustainable action against FGM and a coordinated multi-agency mechanism should be put in place.**

## MAIN ISSUES AND RECOMMENDATIONS

### 1. Prevention

#### **Art. 12: Putting prevention in the center - community work.**

##### **Analysis of the current situation:**

Community-based prevention work with diaspora communities is essential to reach the affected population, to bring about behavioural change and to adequately inform them about available support services. In Switzerland, this prevention work is carried out by the Network Against FGC Switzerland in close cooperation with trained peer educators, who mediate between the affected communities, counselling centres and professionals. Coming from the affected communities themselves, their involvement ensures that change comes from within the communities themselves. Caritas Switzerland accompanies more than 50 peer educators<sup>2</sup> who actively raise awareness in their own social environment and develops programs for the communities together with them.

However, prevention work in the communities is time-consuming and costly. Due to limited and short-term resources, it is not possible for the Network Against FGC Switzerland to conduct awareness-raising events in all cantons on a regular basis and over a longer period of time. To this aim, we request that:

##### **Demands:**

- The cantons must implement the measures of cooperation with affected communities as recommended by the 2020 Federal Report on Measures against FGM. Their commitment to prevention regarding FGM must be strengthened<sup>3</sup>.
- The cantons must define responsibilities and provide adequate and long-term financial resources so that community work can be carried out in all regions of Switzerland and for all

<sup>1</sup> Rapport du Conseil fédéral donnant suite au postulat 18.3551 Rickli Natalie du 14 juin 2018, Mesures contre les mutilations génitales féminines, Novembre 2020, p. 61-62.

<sup>2</sup> In the years April 2016 - October 2020, around 1676 people were reached in 139 prevention events within affected communities. Over 60 peer educators were trained and educated on the topic of FGM between 2016 and 2020.

<sup>3</sup> Rapport du Conseil fédéral donnant suite au postulat 18.3551 Rickli Natalie du 14 juin 2018, Mesures contre les mutilations génitales féminines, Novembre 2020, p. 60-61.

communities affected by FGM. This should be done in a comprehensive and sustainable manner (including by ensuring integration into already existing prevention programs).

- Existing regional services should be used; FGM should therefore be included in already ongoing community work on other related areas such as sexual health and gynaecological questions.

#### **Art. 15 – Investing in education and training of professionals**

##### **Analysis of the current situation:**

Health, asylum, social, educational, child protection and law enforcement professionals are in contact with vulnerable or affected individuals. Increasing awareness among professionals is essential to protect girls at risk and to guarantee adequate care for affected women. However, it is unclear to what extent professionals working in different areas (health, asylum/migration/integration, child protection, social services, education, care, law enforcement) in Switzerland are trained and sensitised regarding FGM. Based on our experience, overall awareness varies but tends to be insufficient.

Particularly concerning the health sector, there are professionals in Switzerland who are sensitised and experienced in dealing with FGM. However, a large majority has inadequate knowledge and competence. The topic is not or only inadequately addressed in training and further education (some undergraduate medical school partially but mainly insufficiently cover FGM, but it doesn't appear in paediatrics and gynaecology specialisations). Midwifery training deals with the issue, but its scope depends on each university. Furthermore, FGM is insufficiently taught in training courses in the areas of asylum, education, social affairs and child protection. As was also evident in the Federal Report on Measures against FGM, the need for information and awareness-raising among the child and adult protection authorities (KESB) is particularly high. The definition of specific procedures in connection with FGM is still lacking<sup>4</sup>.

##### **Demands:**

Professionals from relevant occupational areas (health, asylum, child protection & social services, education and law enforcement) must be increasingly sensitised and trained regarding FGM. Furthermore, health institutions such as hospitals, but also institutions in the field of child protection, must institutionally and systematically address FGM by establishing binding and standardised procedures and responsibilities.

The measures demanded by the Federal Report on Measures against FGM regarding the deepened awareness-raising as well as education and training of professionals<sup>5</sup> must be implemented. In concrete terms, this would mean:

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<sup>4</sup> *Ibid.*, p. 61.

<sup>5</sup> *Ibidem.*

- Training and awareness-raising of health professionals on FGM (medical studies and relevant specialist training, nursing studies and midwifery training).
- Regular training on gender-based violence for caregivers, nursing staff and reception centres doctors in the asylum sector.
- Training for staff of the child and adult protection authorities (KESB) and child protection groups on FGM as a possible risk to children's wellbeing. That will allow them to identify possible cases of FGM in ongoing child protection procedures and protect and support those affected/at risk. In this context, it is essential that professionals are aware of the services offered by the Network Against FGC Switzerland <sup>6</sup>.
- Raising the awareness of social workers and other professionals in the social/educational, integration and migration sectors so that they are able to recognise persons affected and/or at risk and to provide adequate help.

## 2. Protection

### Art. 20 General support services - Ensuring access to support services for those affected.

#### **Analysis of the current situation:**

The fact that a large number of the girls and women concerned have been subjected to FGM before entering Switzerland - without having been resident in Switzerland when they underwent FGM - means that the persons concerned are currently not entitled to benefits under the Victim Assistance Act. The Federal Council has announced an extension of the entitlement - but only for those who have the prospect of staying in Switzerland. Until now it remains unclear how and when this extension is put into practice. Moreover, the issue of access to general support services currently varies greatly depending on the canton, the health professional and the residence status of the affected woman or girl.

#### **Demands:**

The Istanbul Convention must be implemented in a non-discriminatory manner. With regard to the goal of improving the care situation of girls and women who have already undergone FGM before coming to Switzerland, access to survivor assistance services must be improved. In particular, they must be entitled to assistance services regardless of where they were subjected to FGM and regardless of their residence status (asylum seekers and undocumented migrants).

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<sup>6</sup> *Ibidem.*

In concrete terms, this means: psychological, psychiatric, psychosocial, sexological and medical services must be adapted to FGM survivors; there must be always coverage of co-payments for medical interventions related to FGM, since health insurance<sup>7</sup> does not cover all costs, depending on the kind of health insurance and amount of treatment cost<sup>8</sup>; and translation services must be made available for all survivors.

### **Art. 22 Specialised support services - ensure protection and support at national and regional level**

#### **Analysis of the current situation:**

At the *national level*, the Network Against FGC Switzerland is **the only agency to offer a nationally available, specialised support and counselling services** on FGM. It offers free counselling services for girls and women affected or at risk, as well as for professionals. It provides them with contacts to specialised professionals in their region if necessary and if available. The counselling includes psychosocial and health aspects of FGM and legal issues, but also risk assessment of girls.

At *regional level*, only a few cantons have institutionalised healthcare and counselling services on FGM. The Network is mandated by the federal government to establish regional contact points in the areas of healthcare and psychosocial counselling, but the sustainable financing of the services by the cantons is proving difficult (especially with prevention work). As a result, access to specialised medical and counselling services varies greatly depending on the canton and is therefore not guaranteed for all women and girls affected or at risk.

#### **Demands :**

- FGM is a very specific issue that only a few professionals deal with on a regular basis. Therefore, in addition to integrating it into existing regional structures, there is an urgent need for sustainable financing for services for FGM services to be provided in all cantons. Access to services should be harmonized throughout the whole state. Moreover, the coordination and exchange between the support services on FGM as well as its data collection needs to be strengthened.
- Furthermore, it is necessary to have the Network Against FGC Switzerland as a national competence centre which is responsible for specific and complex issues relating to FGM (child protection cases, transnational issues, asylum and immigration law issues) and intervenes in regions where there are no adequate psychosocial counselling services.
- In addition to a national competence centre, there is also a need for appropriate counselling and medical care services in the regions. FGM is a taboo subject and easy access to specific

<sup>7</sup> Although in Switzerland health insurance is mandatory for all people independent of their status, there are people who do not have health insurance (e.g. undocumented migrants)

<sup>8</sup> For more information see here <https://en.comparis.ch/krankenkassen/info/glossar/franchise>

support services is therefore crucial. As the Federal Report on Measures against FGM also shows, only a few cantons are actively committed to combating FGM in the long term. In order to improve the concrete situation of girls and women at risk and who have undergone FGM, cantons must ensure health, counselling and prevention services. The demand for a stronger incorporation of the topic at cantonal level<sup>9</sup> should be implemented.

### 3. Prosecution

#### **Art. 38 – Criminalisation of Female Genital Mutilation**

##### **Analysis of the current situation:**

Switzerland has taken the necessary legislative measures to punish FGM and in 2012 created a criminal offence specifically for this purpose (cf. Art. 124 StGB). Since Article 124 of the Penal Code came into force in 2012, there has been only one court case: the ruling was delivered on 12 July 2018 by a regional court in the canton of Neuchâtel and confirmed by the Federal Supreme Court in 2019. A woman was given an eight-month suspended sentence for genital mutilation of her two daughters in Somalia. This was carried out in Somalia in 2013 before entering Switzerland (2015). In its ruling, the Federal Supreme Court confirmed that the universality clause in Article 124 paragraph 2 SCC must be interpreted broadly. According to the Federal Supreme Court, the fact that the perpetrator had never been in Switzerland at the time of committing the crime should not play a role. Thus, even persons who had no connection to Switzerland at the time of the offence are to be held responsible.

However, while being clearly in favour of criminal prosecution, we are rather critical of such a broad interpretation of the law<sup>10</sup>. On the one hand, the punishment of FGM committed before entering into Switzerland could lead to a violation of Art. 7 of the European Convention on Human Rights: The court ruling failed to discuss the question of the applicability of the universality principle respectively in regard to the principle « No punishment without law » (Art. 7 of the European Convention on Human Rights). Furthermore, it is counterproductive that women seeking asylum from famine and war in Switzerland are punished for an act committed years ago. It must be taken into consideration that the social pressure to perform FGM is often extremely high in the countries of origin. The principle of universality is linked to the problematic fact that it is hardly possible to record the circumstances of the offence and to provide evidence when it is committed abroad in a legally sound manner and that this would require time-consuming investigations. There are also fears that the husband or other family members and relatives could use a complaint in Switzerland as a reprisal against women.

<sup>9</sup> Rapport du Conseil fédéral donnant suite au postulat 18.3551 Rickli Natalie du 14 juin 2018, Mesures contre les mutilations génitales féminines, Novembre 2020, p. 60

<sup>10</sup> See the reaction of the Network against Female Genital Cutting Switzerland to the 2019 Court case here:

[2019\\_Bundesgerichtsurteil\\_Kommentar\\_DE.pdf \(maedchenbeschneidung.ch\)](https://maedchenbeschneidung.ch/2019-Bundesgerichtsurteil_Kommentar_DE.pdf)

Ultimately, the ruling could also discourage girls and women from seeking help from health and counselling centres.

**Demands:**

- The challenges associated with the application of the principle of universality must be adequately taken into account when assessing individual cases, especially with regard to the correct clarification of the circumstances of the offence and the presentation of evidence in accordance with the rule of law.
- With regard to the convictions, the courts should give due consideration to the principle of proportionality and the overall circumstances under which FGM was carried out (namely the situation in the country of origin, social pressure, unawareness of the legal situation in Switzerland, etc.). In addition, the consequences for the family, in particular for uncircumcised (younger) sisters, must be considered and taken into account in the sentencing, also in connection with the question of whether a possible expulsion from the country is justified.
- Furthermore, the fundamental question arises as to whether Art 124 StGB should be reviewed with regard to the universality clause and adapted if necessary. The penal provision is very broad and goes further than those of other European states. In particular, it should be examined whether to introduce a minimum connection to Switzerland at the time of the offence (e.g. residence of offender/survivor in Switzerland, planned entry into Switzerland, etc.). A detailed legal comparison with the legislation of other European states is needed, as well as a review of compatibility with Art. 7 of the European Convention on Human Rights.

**Art. 60 Refugee status and Residence Permit for Girls at Risk and Survivors**

**Analysis of the current situation:**

A credibly presented threat of FGM is recognised as a ground for asylum, provided that no effective protection against this procedure is granted in the country of origin. However, in practice, the State Secretariat for Migration (SEM) only grants protection in order to avoid an imminent FGM (including reinfibulation), but not in the case of trauma due to a FGM already suffered. This practice is contrary to the recommendations of the Office of the United Nations High Commissioner for Refugees (UNHCR), who considers the latter to be also eligible for refugee status<sup>11</sup>. In addition, the Swiss Federal Administrative Court has treated cases of imminent reinfibulation unequally: the Federal Administrative Court made a distinction between whether reinfibulation was imminent because a

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<sup>11</sup> "Furthermore, even if the mutilation is considered to be a one-off past experience, there may still be compelling reasons arising from that past persecution to grant the claimant refugee status. This may be the case where the persecution suffered is considered particularly atrocious, and the woman or girl is experiencing ongoing and traumatic psychological effects, rendering a return to the country of origin intolerable" ([UNHCR, Guidance Note on refugee claims relating to female genital mutilation, 2009, Page 9](http://www.unhcr.org/505795984.pdf)).

woman had undergone defibulation due to childbirth (cf. ([BVer E-1425/2014, 6.8.2014](#))) and whether reinfibulation was imminent because a woman had undergone defibulation for any other reason than childbirth. In the first case, asylum was granted, in the latter case, the woman was only granted temporary admission. The court justified its decision by saying that: "8.3. since the highly probable threat of persecution is due to the complainant's conduct in Switzerland and thus to a subjective reason for seeking asylum, she is denied the right to asylum in application of Art. 54 [BVer E-3512/2019, 27.7.2020](#).

Finally, in cases where parents have fled to Switzerland and their daughters who stayed in the country of origin are threatened with FGM and no local protection is possible, it is very difficult to obtain a residence permit for them in Switzerland. Due to the existing legal provisions in asylum and migration law, these cases are mostly hopeless: the conditions for family reunification or humanitarian visas are very restrictive in such cases and ignore urgent risk situations - e.g. in the case of a country of origin with a very high prevalence of FGM.

**Demands:**

In addition to criminal law, child protection and prevention work in the communities, granting of refugee status and of a residence permit in Switzerland can also protect against FGM. Therefore, jurisdiction of State Secretariat for Migration (SEM) and the courts need to change as follows:

- Having suffered FGM should also be a reason for asylum (even without the threat of reinfibulation). If reinfibulation is imminent, refugee status should be granted, regardless of the reasons for deinfibulation.
- Access to humanitarian visas for girls at risk should also be facilitated.
- Moreover, applications and decision-making regarding FGM asylum and humanitarian visa cases should be statistically recorded and reported by the SEM.

#### 4. Integrated Policies

### **Art. 10: Coordinating body to coordinate, implement, monitor and evaluate all policies and measures taken to address FGM**

**Analysis of the current situation:**

In Switzerland so far there is little government-led multi-agency coordination mechanism tackling FGM and gathering several ministries, civil society organisations, professionals and affected communities.

This undermines a comprehensive and integrated approach at national level to address FGM and support survivors. In Switzerland in particular this national mechanism should also ensure connection between federal and regional level to be truly effective. According to the Federal Report on Measures against FGM, a government-led multi-agency coordination mechanism is envisaged.

**Demands:**

The recommendations of the Federal Report on Measures against FGM must be implemented: the exchange and interdisciplinary cooperation of all agencies affected by the topic at the federal and cantonal levels must be continued and expanded.

**Art. 11 Data collection**

**Analysis of the current situation:**

At the moment, the number of the potentially endangered and affected girls and women in Switzerland is only indirectly estimated (calculated by multiplication of the resident population from 30 affected countries of origin with the corresponding prevalence rates in the countries of origin). This calculation only allows a statement about the potential risk or affected women and girls but does not take into account any changes in behaviour that go hand in hand with integration in the country of destination (acculturation factor).

**Demands:**

Further studies on prevalence in Switzerland are necessary. Prevention approaches should be guided by scientific research in order to provide a basis for decision-making.

**CONCLUSIONS**

In conclusion, the Network Against FGC Switzerland and End FGM EU would like to call upon the Swiss authorities to keep working towards putting an end to FGM, by taking the following measures:

- Implement the required measures outlined in the 2020 Federal Report on Measures against FGM. Ensure a systematic, comprehensive and integrated response to FGM at national and cantonal level, including through the establishment of a multi-agency coordination mechanism.
- Ensure that cantons increase their measures against FGM, define responsibilities and allocate resources and do so in a coordinated manner and in collaboration with the Network, namely:

- Cantons need to make sure, that specialist support services for FGM survivors (health & counselling services) are available in all regions
- Cantons need to implement the measures of cooperation with affected communities, ensure adequate and long-term funding is available for prevention community work and include FGM in other community work relevant sectors.
- Increasingly sensitise and train professionals from relevant occupational areas (health, asylum, child protection & social services, education and law enforcement) regarding FGM, and make them aware of the services provided by the Network Against FGC Switzerland needs to be integrated in the curricula for the education and training of relevant professionals, particularly health professionals.
- Ensure that the Assistance to Victims of criminal offenses (e.g. specialised holistic services, financial support and an interpreter) is available also when FGM was done to the woman/girl at a time when she was not residing in Switzerland and irrespective of her residence status.
- Reassess Article 124 of the Penal Code in light of the following elements:
  - Carefully reconsider the principle of universality applied to the crime of FGM in light of Article 7 of the European Court of Human Rights, including through a comparative study with other European countries legislations;
  - reflect upon the challenge of correct clarification of the circumstances of the offence and the presentation of evidence that goes with the principle of universality;
  - reassess the principle of proportionality of the sentence in convictions.
- Grant refugee status also to women and girls who have already undergone FGM or run the risk of being reinfibulated upon return to the country of origin independent of the reason for de-infibulation, facilitate the procedures to access residence permit or humanitarian visa for girls at risk.
- Improve the national data situation and the monitoring of FGM (e.g. FGM prevalence, asylum applications and decision-making on the ground of FGM, data of number of women with FGM in the gynaecological and obstetrical context, number of child protection cases)

We thank the GREVIO for the opportunity given to civil society to provide our expertise and concrete recommendations to improve Swiss authorities' actions to end FGM.