



## **EMN Ad-Hoc Query on Type of International Protection Status for victims of FGM**

Requested by Tania CHARALAMBIDOU on 19th May 2017

### **Protection**

Responses from Austria, Belgium, Croatia, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Slovenia, Sweden, United Kingdom, Norway (22 in total)

#### Disclaimer:

*The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*


### **Background information:**

Cyprus is in the process of drafting guidelines relating to the handling of applications for international protection submitted by Somali nationals claiming to be victims of FGM. Such applications are on the rise and therefore practices followed by other Member States will be of added value to the establishment of national practice in Cyprus.

### **Questions**

1. What is your policy when dealing with an FGM case regarding the type of protection status granted? Do you grant refugee status for reasons of membership to a particular social group (that is ‘women who already experienced this procedure in Somalia’)? If not, do you consider other grounds than the one of participation in a particular social group?
2. What is your policy concerning minor girls or women who didn’t experience this procedure?
3. Does your policy differ towards older women?
4. Do you grant subsidiary protection status to Somali women claiming to be victims of FGM? If yes, on what grounds?

### **Responses**

	<b>Country</b>	<b>Wider Dissemination</b>	<b>Response</b>
	Austria	Yes	<ol style="list-style-type: none"><li>1. The Austrian Federal Office for Immigration and Asylum does not have any general guidelines on a special approach towards victims of female genital mutilation (FGM). As with other seekers of international protection, it is examined individually and having regard to the individual circumstances, whether the person concerned fulfils the requirements for international protection. Source: Federal Ministry of the Interior.</li><li>2. See above.</li><li>3. See above.</li><li>4. See above.</li></ol>






Belgium




Yes




**1.** Female genital mutilation (FGM) is included as an act of persecution in the Act of December 1980 regarding the access to the territory, residence, settlement and removal of foreigners. The Belgian asylum authority, the Office of the Commissioner General for Refugees and Stateless Persons (CGRS) distinguishes between: • a women or a girl claiming to be at risk of undergoing FGM • (one of) the parents claiming their daughter under 18 is at risk of undergoing FGM. When an applicant claims that she, or her daughter, is at risk of FGM, the CGRS can grant refugee status, in the latter case to the daughter and the parents. Each case is examined individually. To this end, the CGRS first examines the personal and family situation of the applicant (education level, ethnic origin, family history in relation to FGM, etc.). The CGRS also takes into account the current situation in the country of origin (the prevalence of FGM, the attitude of the authorities, the possibility of resisting social pressure...). Note: Refugee status does not necessarily offer absolute protection against FGM. There is also a risk of undergoing female genital mutilation in Europe, often by family members. For this reason, the CGRS has set up a monitoring procedure to ensure that a girl will not undergo FGM after being granted refugee status. The parent(s) will be summoned by the CGRS before the decision to grant refugee status is taken. During this interview, the CGRS will inform the parents • about parental responsibilities with respect to their daughter • that female genital mutilation is banned in Belgium and punished by law. The parent(s) then have to sign a ‘commitment on honour’, by means of which they commit themselves to send once a year to the CGRS a medical certificate stating that their daughter has not undergone any form of female genital mutilation. If the Commissioner General is made aware that the circumstances justifying refugee status do no longer exist (i.e. if the daughter has undergone female genital mutilation), he has the authority to review the refugee status of the parents and their daughter and to withdraw or cancel their refugee status. If he is aware that a minor has undergone female genital mutilation since her arrival in Belgium, the Commissioner General will inform the Public Prosecutor.




**2.** Regarding Somali girls: in countries such as Somalia with a very high prevalence rate of FGM, the CGRS considers that there is an objective risk for every girl to be subjected to FGM unless the girl or her family have some characteristics: for instance the girl/the family are members of an ethnic group where FGM are not carried out (for instance the Bajunis in Somalia), or the mother is not cut, etc. Such profiles are quite exceptional in a country with a prevalence rate of more than 97 %. Therefore, actually, the most of Somali asylum applicant girls who have not undergone FGM are granted refugee status.

**3.** Yes. Given that FGM are generally carried out during childhood, a Somali woman who has not undergone FGM is expected to explain to the CGRS why she was not cut and the reason for her to be now at risk of being

			<p>cut. The refugee status is granted only if the following conditions are met: 1. the asylum applicant is credible regarding why she is still intact and regarding the context in which she would be now subjected to FGM (Country of origin information might mention if women from her ethnic group, of her age, may really be subjected to FGM for the first time at this age); 2. given her personal profile (regarding her autonomy, level of education, etc.) she could not or would not be able to evade this context and this risk. The CGRS generally considers that due the situation in Somalia, for a woman whose asylum application is based on this ground, the IFA (Internal Flight Alternative) is not an option.</p> <p><b>4. No.</b> Refugee status is granted to girls and women who have a well-founded fear of being subjected to FGM.</p>
	Croatia	Yes	<p><b>1.</b> 1. In Croatia, from 2007 to 2017 no woman or a minor girl has been identified as victim of FGM among asylum seekers. There was one case in 2006 and it was granted refugee status to the Somali girl for reasons of membership to a particular social group.</p> <p><b>2.</b> 2. N/a.</p> <p><b>3.</b> 3. N/a.</p> <p><b>4.</b> 4. N/a.</p>
	Czech Republic	No	
	Estonia	Yes	<p><b>1.</b> There have not been cases concerning FGM in Estonia and therefore Estonia has not developed a policy and does not have general guidelines to deal with these types of cases.</p> <p><b>2.</b> N/A</p> <p><b>3.</b> N/A</p> <p><b>4.</b> N/A</p>




	Finland	No	
	France	Yes	<ol style="list-style-type: none"> <li>1. N/A</li> <li>2. Children and adolescents threatened with excision in Somalia are recognized as a social group. These facts therefore fall within the scope of Article 1A2 of the Geneva Convention.</li> <li>3. Outside Sudan, the Office does not recognize a social group of parents who oppose their daughter's circumcision. Accordingly, the individual fears of the parents as a result of their opposition to the excision of their child will fall within the scope of Article 15 (b) of the Qualification Directive. Moreover, the only fear for a parent that his daughter is circumcised does not in itself constitute a serious individual attack justifying the granting of protection to that parent. It is therefore necessary for the parent to raise individual fears and for the OP to appreciate the reality of its opposition, which must be frank and assumed.</li> <li>4. N/A</li> </ol>
	Germany	Yes	<ol style="list-style-type: none"> <li>1. Women or girls who are at risk of FGM will be granted refugee status for reason of membership of a particular social group. For women or girls who are already circumcised it has to be assessed if it is probable that they might undergo this procedure again. This assessment will be based on COI and information obtained in the asylum procedure (interview, written statements, medical reports). If yes, refugee status will be granted, too. If no, it has to be assessed if there are other reasons for granting protection. For example, the health status of a girl or woman might lead to humanitarian protection status when she suffers medical problems as consequence of FGM.</li> <li>2. There is no general policy, every case is assessed on its individual merits. Depending on available COI and information submitted in the asylum procedure (interview and/or written statements) it will be assessed if a minor girl or woman is at risk of being circumcised.</li> <li>3. See question 3.</li> </ol>



			4. See question 1.
	Hungary	Yes	<p>1. The Immigration and Asylum Office of Hungary has no established guidelines concerning victims of FGM. All applications are examined on an individual basis.</p> <p>2. See answer to question 1.</p> <p>3. See answer to question 1.</p> <p>4. See answer to question 1.</p>
	Ireland	No	
	Italy	Yes	<p>1. There are not specific rules addressed to Somali women. In general, for women who are verified victims of FGM, it is granted the refugee status for reasons of membership to a particular social group (women), according to national jurisprudence referring to Legislative Decree 251/2007. In particular, there are two cases of judges according international protection after Commissioni Territoriali (Italian authorities in charge of international protection decision) denied it. These cases were: - Corte di Appello di Catania, sentence of 27.11.2012; - Tribunale di Cagliari, ordinance n° 8192 of 3.4.2013 (that refers also to the decision of Corte d'Appello di Roma of 2.7.2012). There is also a more recent case: Tribunale di Bologna, ordinance of 1.10.2016. In all this cases, the judicial authority decides to give international protection (refugee status) to women victims of FGM, according to rules foreseen in Legislative Decree 251/2007, before verifying their status of victims: indeed, the mere declaration of being a victim of FGM is not sufficient to obtain the refugee status and authorities have to ascertain it. Moreover, in Italy, special reception conditions have to be reserved to women victims of FGM, while they are waiting the decision concerning the application for international protection (and also after they become refugees), according to the Legislative Decree 142/2015.</p> <p>2. The rules for girls or women who did not experience FGM procedures are the same of who applies for international protection.</p>



			<p><b>3.</b> No, if a woman is verified victim of FGM, her age is not relevant.</p> <p><b>4.</b> No, the status is recognized only after verifying that the woman is a victim of FGM. The mere declaration from the woman is not sufficient to obtain the status.</p>
	Latvia	Yes	<p><b>1.</b> Taking into account countries of origin of the applicants applying for asylum in Latvia, Latvia has not experienced FGM cases so far, therefore has no policy/established practice/experience concerning particular cases.</p> <p><b>2.</b> N/A</p> <p><b>3.</b> N/A</p> <p><b>4.</b> N/A</p>
	Lithuania	Yes	<p><b>1.</b> There was no practice regarding victims of FGM (from 2012 to 2017 (May 30th) there were no cases). Since each application is examined individually, no further conclusions from case practice can be made.</p> <p><b>2.</b> n/a. See 1st answer.</p> <p><b>3.</b> n/a. See 1st answer.</p> <p><b>4.</b> n/a. See 1st answer.</p>
	Luxembourg	Yes	<p><b>1.</b> Luxembourg has ratified various international conventions condemning FGM (i.e. Universal Declaration of Human Rights (DHR), 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 European Convention of Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union. Article 400 of the Criminal Code punishes this type of act and article 401bis considers as an aggravated factor if the FGM is practiced on a child under the age of 14. Nevertheless, the principle of extraterritoriality is not applicable. The Law of 18 December 2015 on</p>

			<p>international protection and temporary protection establishes that a person can obtain international protection under article 37 (4) in accordance with article 42(1) a) and (2) a). Normally as the acts are perpetrated by a non-public actor Luxembourg can grant subsidiary protection to women who have been subject to FGM. In Luxembourg the evaluation of the situation is made on a case by case basis and not for reasons of membership to a particular social group that only will be considered part of the elements to evaluate.</p> <p><b>2.</b> See answer to question 1.</p> <p><b>3.</b> No.</p> <p><b>4.</b> As it was described in answer to question 1, Luxembourg evaluates each application individually taking into consideration all the elements. Article 16 of the Law of 18 December 2015 establishes that the Minister in charge of Asylum and Immigration can decide to order a medical examination (even though it requires the consent of the applicant) in case there are signs that the applicant has suffered persecution or serious harm in the past. This element is considered under Luxembourgish law as a serious indication on the claim of the applicant. So, in principle, Luxembourg can grant after a complete evaluation of the specific situation subsidiary protection to a victim who had suffered FGM in Somalia.</p>
+	Malta	Yes	<p><b>1.</b> The Office of the Refugee Commissioner only received a limited number of applications for international protection lodged by female applicants on the basis of FGM. To date, the Office does not have a specific policy concerning the practice of FGM in Somalia. Each application received by the Office is assessed on its own merits, and depending on the particular circumstances of the case, FGM related cases could lead to the granting of refugee status on the basis of membership to a particular social group.</p> <p><b>2.</b> Depending on the circumstances of the case, applications for international protection lodged by minor girls or women who didn't experience this procedure, could lead to the granting of refugee status on the basis of membership to a particular social group.</p> <p><b>3.</b> No.</p> <p><b>4.</b> No</p>



	Netherlands	Yes	<p><b>1.</b> • Women who have already experienced the procedure, are not granted refugee status or subsidiary protection. They are no longer at risk and therefore do not require international protection against FGM. • Women and girls who risk experiencing FGM are generally granted subsidiary protection (if they in addition to being at real risk of suffering serious harm do not have access to protection as defined in article 7 of the Qualification Directive and if there is also no internal protection alternative (IPA) as defined in article 8 of the Qualification Directive) . This policy is not specific for Somalia but applies to all countries, particularly those countries where FGM is prevalent. • For Somalia it is assumed the applicant does not have access to protection or IPA as defined in Articles 7 and 8 of the qualification directive. • In cases where the applicant has a well-founded fear of persecution as a result of political opposition of FGM, they may be granted refugee status.</p> <p><b>2.</b> See answer ‘1’.</p> <p><b>3.</b> Policy does not differ and subsidiary protection may be granted if the applicant runs a real risk of experiencing FGM. However, since FGM is usually carried out at a young age, older women who have not experienced FGM yet must have a valid explanation why there is a risk right now.</p> <p><b>4.</b> See answer ‘1’.</p>
	Poland	Yes	<p><b>1.</b> Because of the very low number of such cases (only 1 during the last few years) it’s impossible to answer on those questions, but in general Poland in FGM cases probably will grant woman, who suffered such persecution a refugee status for reasons of membership to a particular social group.</p> <p><b>2.</b> as above</p> <p><b>3.</b> as above</p> <p><b>4.</b> as above</p>
	Slovak Republic	Yes	<p><b>1.</b> Slovak Republic has not registered such cases.</p>

			<p>2. N/A</p> <p>3. N/A</p> <p>4. N/A</p>
	Slovenia	Yes	<p>1. In practice we did not have FGM cases.</p> <p>2. We have not any policy concerning minor girls or women, because we have not relating practice. Nevertheless, in such cases the decision will be taken on a “case by case” basis.</p> <p>3. We have not any policy concerning older women, because we have not relating practice. Nevertheless, in such cases the decision will be taken on a “case by case” basis.</p> <p>4. In a case that the competent authority shall grant subsidiary protection, it will be on the ground that person is member of a particular social group.</p>
	Sweden	Yes	<p>1. A forward looking assessment of the personal risk of the applicant is made. As in all asylum cases an individual assessment is made to determine if it has been made probable that the applicant has a well-founded fear of persecution in case of return. Also for women who have already been victims of FGM a forward looking risk assessment shall be conducted, for example about potential risk of so called “reinfibulation”. The assessment of need for protection and status is made individually. Risk of “reinfibulation” can be considered gender specific and gender related persecution. Updated and relevant country information must be considered.</p> <p>2. A forward looking assessment of the personal risk of the applicant is made. As in all asylum cases an individual assessment is made to determine if it has been made probable that the applicant has a well-founded fear of persecution in case of return. Risk of FGM can be considered gender specific and gender related persecution. Updated and relevant country information must be considered.</p> <p>3. No, it is the forward looking assessment of the personal risk of the applicant that is determining the outcome of the application. As in all asylum cases an individual assessment is made to determine if it has been made probable that the applicant has a well-founded fear of persecution in case of return. Risk of FGM can be</p>

			<p>considered gender specific and gender related persecution. Updated and relevant country information must be considered.</p> <p><b>4.</b> A forward looking assessment of the personal risk of the applicant is made. As in all asylum cases the individual assessment is made to determine if it has been made probable that the applicant has a well-founded fear of persecution in case of return. Updated and relevant country information must be considered.</p>
	United Kingdom	Yes	<p><b>1.</b> Women whose asylum claim is based on a fear of Female Genital Mutilation (FGM) may qualify for refugee status on grounds that they form a particular social group (PSG) under the Refugee Convention. Whether or not a PSG exists will depend on the conditions in the claimant's country of origin. The Home Office policy in considering this issue is set out in Section 7.6 of the 'Assessing credibility and refugee status' instruction, and Section 4.5 of the 'Gender issues in the asylum claim' instruction, both of which are available on Gov.UK at: • <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397778/ASSESSING_CREDIBILITY_AND_REFUGEE_STATUS_V9_0.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397778/ASSESSING_CREDIBILITY_AND_REFUGEE_STATUS_V9_0.pdf</a> • <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257386/gender-issue-in-the-asylum.pdf">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257386/gender-issue-in-the-asylum.pdf</a> . All asylum claims are carefully considered on their individual own merits with reference to relevant country information. Decision makers have access to country specific guidance for Somalia to assess whether an individual would be at risk of persecution, including FGM, on return. The guidance can be found on GOV.UK at: <a href="https://www.gov.uk/government/publications/somalia-country-policy-and-information-notes">https://www.gov.uk/government/publications/somalia-country-policy-and-information-notes</a> .</p> <p><b>2.</b> Minor girls and women who are considered to be a risk of FGM on return to their country of origin may be granted refugee status.</p> <p><b>3.</b> No. Those who are at real risk of persecution, including being subjected to FGM, on return to their country of origin are not expected to return there regardless of their age.</p> <p><b>4.</b> Refer to the answers to the questions above.</p>
	Norway	Yes	<p><b>1.</b> No: Norway does not in general provide protection for women who only claim that they have already been exposed to FGM. We do not consider this to be included among 'other reasons' of the refugee Convention. In</p>

		<p>some cases, however, women from Somalia claim that they are in danger of being exposed to reinfibulation (fgm again). Our available country information (COI) indicates that there is no reason to claim that reinfibulation is common after for example birth or divorce. However, there may be different traditions in some families and clans. If we believe that a Somali woman is in danger of being reinfibulated if she would return to Somalia, she will be granted asylum because of membership to a particular social group (woman at risk of reinfibulation in Somalia).</p>
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**2.** Girls/women seeking asylum in Norway because they fear to be exposed to FGM if they return to Somalia are normally granted asylum in Norway for reasons of membership to a particular social group. However, they must substantiate that they are in danger of FGM if they return. According to our country information, about 98% of all Somali girls are circumcised and most of them are circumcised before the age of 10. We therefore normally consider the risk of FGM as large. But we make a concrete assessment in each case where we consider the parents' possibility and capacity to resist the pressure of FGM, by assessing the parents' and family's resource situation and attitudes towards FGM.

**3.** Basically not: The age of the girl who is not circumcised when she comes to Norway will, however, be related to the risk of her being exposed to FGM if returned to Somalia. The country information (COI) that most girls are circumcised before the age of 10, does imply that if the girl is older, her parents or family are able to prevent her from being exposed for FGM. In such cases we need more proof that she is at risk of being circumcised if she returns to Somalia, e.g. if she has lived in Somalia throughout her life and for example is over the age of 18. Nevertheless, we make a concrete assessment in each case, and older women may also be granted protection on the basis of a risk of FMG if they are likely to be in danger upon return to Somalia.

**4.** No: see the answers above.