

AI Index: ACT 77/13/97
FEMALE GENITAL
MUTILATION AND ASYLUM

In several jurisdictions, women have been recognized as refugees under the 1951 UN Convention relating to the Status of Refugees (UN Refugee Convention) on the grounds that they would be at risk of FGM if returned to their country. It is important to note, however, that there are still only a tiny number of such cases.

In 1993 Canada granted refugee status to a Somali woman, Khadra Hassan Farah, who had fled her country with her 10-year-old daughter, Hodan, because she feared that Hodan would be forced to undergo genital mutilation. In making the ruling, immigration officials said that Hodan's "right to personal security would be grossly infringed" if she was returned to Somalia.

In 1996 Fauziya Kasinga, who had sought sanctuary in order to escape FGM in Togo, was finally granted asylum by the US authorities. She had been held in harsh conditions in detention camps for more than a year. An immigration judge initially rejected her asylum claim, saying "this alien is not credible". His decision was overturned and Fauziya's claim for refugee status was granted. In 1997 two families were granted asylum in Sweden on the grounds that the female members of these families would be in danger of genital mutilation if returned to their country of origin, Togo. Though the authorities did not recognize the families as refugees under the UN Refugee Convention, they did grant them residence permits on humanitarian grounds.

The Australian Government's Guidelines on Gender Issues for Decision Makers, issued in 1996, recognize that FGM "may constitute persecution in particular circumstances". In addition, the French Refugee Appeal Commission has accepted that FGM may be classified as persecution and give rise to a claim for refugee status.

In a letter to the British Refugee Legal Centre dated 8 July 1994, the United Nations High Commissioner for Refugees (UNHCR) outlined its position on FGM. The letter states that: "FGM, which causes severe pain as well as permanent physical harm, amounts to a violation of human rights, including the rights of the child, and can be regarded as persecution. The toleration of these acts by the authorities, or the unwillingness of the authorities to provide protection against them, amounts to official acquiescence. Therefore a woman can be considered a refugee if she or her daughter/daughters fear being compelled to undergo FGM against their will; or, she fears persecution for refusing to undergo or allow her daughters to undergo the practice."¹

The UN Refugee Convention defines a refugee as someone who "...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country..." (Article 1(A)(2)). Under this definition, women from a particular country or ethnic group who are at risk of female genital mutilation (FGM) can be properly construed as a "particular social group". The fact that the "particular social group" may consist of large numbers of women is irrelevant; other Convention grounds, such as nationality and political opinion, are also characteristics shared by large numbers of people.

¹ Crawley, Heaven, Women as Asylum Seekers — A Legal Handbook, p. 71, Immigration Law Practitioners' Association and Refugee Action, London, 1997.