

CASE STUDY

Albertina, 21 years old female from Kenya applied for asylum in the Slovak Republic in June 2013. During interview she has explained that in 2006 she has dropped out of the high school based on requirement of her father who wanted her to get married. He required her to undergo female genital mutilation (FGM) in order to get suitable for marriage. She has avoided any remarks about marriage because of her homosexual orientation. She disliked or even detested men since her father raped her twice in summer 2006. She has avoided FGM also for the reason that her older sister got infected with HIV virus during FGM. Her mother, on the contrary, supported her in her decision to avoid FGM. When her father was in the bad mood, he blamed her and has beaten her often. When he was aggressive, her mother used to send her to the house of her friend. This friend was actually applicant's girlfriend, but her parents did not know about this. In December 2011 her parents found out about her homosexual orientation, when a family member found her in intimate situation with her girlfriend. Her parents were shocked and got violent, so applicant ran away from home. After four days her mother found her and told her not to return home since her father would kill her. She helped her to travel out of the country.

At the airport she met with her mother's friend and an unknown man who gave her a travel document with Slovak visa. She was supposed to travel to Slovakia for purpose of attending a two-day conference about environment protection. She knew she will not return home because she feared her father who was outraged for her homosexual orientation.

After arrival to Vienna airport, they took taxi to Bratislava. They were accommodated in a house and next day they were supposed to go to the conference. But instead they were held there for next three months and sexually exploited. When she successfully escaped from her prisoners, she has contacted police.

What questions would you consult with COI? What pieces of evidence will you be looking for in order to determine her case?

Lesbian female who refuses to undergo FGM and get married threatened by her father and the rest of her community from clan X. in Kenya.

Is there any other vulnerability present?

National laws – Is violence, rape, domestic violence by beating prohibited by law? Does it include domestic violence? Is FGM prohibited and punishable under the law?

Willingness for Domestic protection – Are state authorities willing to protect victims of domestic violence, of FGM, lesbians? Are there any policies in place to fight the prevalence of domestic violence in society, fight FGM? Are lesbian relationships legal? What are the punishments? Is violence of a father against his daughter considered in the same manner as any other violence? Does the fact that it involves FGM change anything? Does the fact that she is lesbian change anything?

Ability of Domestic Protection – Do state authorities have resources and capacity to protect? Are there persecutions and convictions based on national provisions on domestic violence, FGM, lesbians?

Access to state protection – Is there social stigma publicly admitting that she is a lesbian, victim of domestic (sexual) violence and possibly trafficking? Are there any reasons preventing from reporting incidents to the police? Do police refuse to receive complaints about domestic violence, or FGM, since they see it as internal family matter?

Internal Flight Alternative – Are there areas where as a woman from clan X. could feel safe? Does

her lesbian sexual orientation, her marital status, her age, her lack of FGM change anything about her perspective to settle down elsewhere in Kenya? Can a single female reach area safely? Can she make living on her own (housing, social affairs and labour)?

Result of the case adjudication:

Case refused as manifestly unfounded due to the fact that Kenya is considered a safe country of origin by Slovak authorities (list of safe countries of origin is regulated by the order of the government and is rarely used). It has not been shown in her case, Kenya could represent a country which is not safe for her due to her own individual circumstances

COI in the decision:

In order to assess application for international protection Migration Office utilised mostly information of the Department for Documentation and Foreign Affairs of the Migration Office No.....dated....prepared in the Slovak Republic, which is based on various different publically available and balanced sources.

Based on findings of the Migration office, homosexuality as such is neither punishable nor prohibited according to Kenyan legislation. Although sexual relationships or attempted sexual relationships among men are considered a criminal act, lesbians are ignored and sexual relationships between women are legal. The report of the International Associations of Gay and Lesbian People called "Worldwide research of legal norms prohibiting voluntary sexual activity among adults of the same sex" from May 2012 informs that homosexual act between women in Kenya is legal. One of the most important activists advocating for rights of gay and lesbians in east Africa, working for a number of non-governmental organisations, including Gay and Lesbian Coalition, Mr. Denis Nzioka, reports that similarly like in other African countries, in Kenya, lesbian behaviour is not considered criminal. Lesbians are simply ignored. According to the report of the United States Ministry of Foreign Affairs on observation of human rights in Kenya in 2012 organisations uniting lesbian, gay, bisexual and transgender persons (LGBTI) were able to register themselves and conduct activities. As reported, in course of 2012 there were no public campaigns against LGBTI. New Kenyan Constitution, valid since August 2010, presumes positive developments in rights of LGBTI in three different ways: 1. it contains broad Charter of rights and freedoms with positive obligation of the state to support and fulfil human rights therein, 2. explicitly includes the international law into the domestic Kenyan legislation and 3. regulates that all laws, including norms of common law, which are in contravention with the Constitution, will be considered invalid to the extent of this contravention. Any activity or lack of activity which is not in accordance with the Constitution is invalid. Although, Constitution does not explicitly mention sexual orientation or gender identity, it prohibits discrimination based on any ground.

Based on information collected by the Migration Office rape is a criminal act in Kenya. Kenyan law criminalises rape, sexual exploitation and sexual tourism. Rape is punishable with maximum length of lifetime imprisonment. Minimal punishment is ten years of imprisonment. Although Kenyan criminal law does not recognise specific crime based on domestic violence, therefore in reported situations it is referred to as an attack. Regarding FGM (female circumcision), Kenyan law prohibited execution of FGM in September 2011. Law also prohibits use of abusive remarks about women who have not undergone FGM. Despite, prohibition of FGM, in practice, mainly in rural areas, it is still exercised. According to the law, a person who exercises FGM, shall be imprisoned for minimum of three years. If during execution of FGM a person causes a death of the other person, s/he will be imprisoned for lifetime. In practice it really happens that a person exercising FGM is arrested. There are also very strict measures adopted against parents who get their children facing FGM. Despite FGM being still rather widespread, as traditional values and structures dissolves and women acquire broader access to modern western education and market economy, this practice becomes less and less common. Despite the fact that the applicant referred to herself as a member of the clan X. for which FGM is considered inevitable for womanity, morality, self-confidence and eligibility to conclude marriage. Applicant can find many places in Kenya where FGM is neither exercised, nor forced to undergo.

According to findings of the Migration Office, clan X. is the most favourite and the biggest ethnic clan in Kenya. His members like to work, they are educated and politically active. Even current president of Kenya is from this clan. Despite their largest concentration is in province A., members of this clan live anywhere in Kenya. Many of them live modern life in cities. Due to their various origin, their heights and bodily construction, tone of skin and face features vary considerably. For this reason Migration Office considers her fear that they could recognise her anywhere in Kenya as

a member of X. clan irrelevant. There is also no objective evidence about the fact that a female member of X. clan would not be tolerated in regions where only little members of X. clan live (conclusion of the Asylum and immigration Board of the UK Home Office in case Y. - female circumcision, threat and resettlement. Ministry of Interior, CG (2007) UKAII-00041).

*Which pieces of evidence (COI) are you missing to be able to determine her asylum application? Which questions stayed unanswered? Is there any information which cannot be considered COI? If so, how would you evaluate it?
How are main COI standards maintained (visibly) in this case (Relevance, Reliability and Balance, Accuracy and Currency, Transparency)? How would you ensure equality of arms in this case?*