



# OPERATIONAL GUIDANCE NOTE

## GHANA

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## 1. Introduction

**1.1** This document provides UK Border Agency case owners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Ghana, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.

**1.2** Case owners must not base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and case owners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

**1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. Where a claim for asylum or Humanitarian Protection is being considered, case owners must consider any elements of Article 8 of the ECHR in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules. Where a person is being considered for deportation, case owners must consider any

elements of Article 8 of the ECHR in line with the provisions of Part 13 of the Immigration Rules.

- 1.4** With effect from 2 December 2005 Ghana is a country listed in section 94 of the Nationality, Immigration and Asylum Act 2002 in respect of men only and the prima face evidence is that the current underlying situation in the country remains the same or similar to that considered when the country was first designated. Asylum and human rights claims must be considered on their individual merits. However, if, following consideration, a claim from a man who is entitled to reside in Ghana is refused case owners must certify the claim as clearly unfounded unless satisfied that it is not. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail. Ghana is not listed in section 94 in respect of women. If, following consideration, a claim from a woman is refused, caseworkers may, however, certify the claim as clearly unfounded on a case-by-case basis if they are satisfied that it is. The information set out below contains relevant country information, the most common types of claim and guidance from the courts, including guidance on whether cases are likely to be clearly unfounded.

## **2. Country assessment**

- 2.1** Case owners should refer the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

- 2.2** An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://fcohdreport.readandcomment.com/wp-content/uploads/2011/02/Cm-8339.pdf>

## **2.3 Actors of protection**

- 2.3.1** Case owners must refer to section 7 of the Asylum Instruction - [Considering the asylum claim and assessing credibility](#). To qualify for asylum, an individual must have a fear of persecution for a Convention reason and be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to seek protection in their country of origin or habitual residence. Case owners must take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

- 2.3.2** The police, under the Ministry of Interior, were responsible for maintaining law and

order.<sup>1</sup> The structure of the Police Service has expanded over the years with the creation of new units to address the increasing demands of governance and public safety. The day-to-day administration of the Police Service is under the unified command and authority of the Inspector-General of Police (IGP) who is based at the Police Headquarters in Accra, the nation's capital. The IGP is assisted by a Deputy Inspector General of Police. Also assisting the IGP at the Police Headquarters is the Headquarters Management Advisory Board: (HEMAB). The Ghana Police Service is divided into twelve (12) administrative regions namely: Accra, Tema, Ashanti, Brong Ahafo, Eastern, Volta, Western, Central, Northern, Upper East, Upper West and Railways, Ports and Harbour Regions. Below the regions, there are: 51 Police Divisions, Commanded by Divisional Commanders, 179 Police Districts Commanded by District Commanders, and 651 Police Stations and posts supervised by Station Officers. The Service has manpower strength of a little over twenty-three thousand 23,000 personnel with a male to female ratio of about 4:1 and police civilian ratio of about 1:1200.<sup>2</sup>

- 2.3.3** During 2011 the military continued to participate in law enforcement activities. A separate entity, the Bureau of National Investigations (BNI), handled cases considered critical to state security and answered directly to the Ministry of National Security. Police maintained specialized units in Accra for homicide, forensics, domestic violence, trafficking in persons, visa fraud, narcotics, and cybercrimes. Such services were unavailable nationwide due to lack of office space, vehicles, and other equipment outside the capital. In May 2010 the police unveiled a five-year strategic plan to increase police personnel, housing, vehicles, equipment, and establish new training academies.<sup>3</sup>
- 2.3.4** Police brutality, corruption, negligence, and impunity were problems. Delays in prosecuting suspects, rumours of police collaboration with criminals, and a widespread perception of police ineptitude contributed to vigilante violence during 2011. There were credible reports that police extorted money by acting as private debt collectors, setting up illegal checkpoints, and arresting citizens in exchange for bribes from disgruntled business associates of those detained. Low salaries, which were sometimes not paid on time, contributed to police corruption. In July 2010 the government implemented the Single Spine Salary Structure, which increased the salaries of all police officers, partly in an effort to reduce corruption.<sup>4</sup>
- 2.3.5** The Police Intelligence and Professional Standards Unit (PIPS) investigated human rights abuses and police misconduct. From January 2011 through December 2011, PIPS received 366 new cases; of those, 219 were closed, and 147 remained under investigation at year's end. Among the 366 cases, 13 involved complaints of harassment, eight of extortion, 72 of misconduct, 24 of unlawful arrest and detention, 92 of unprofessional handling of a case, 51 of unfair treatment, 51 of undue delay of investigation, and 37 of alleged police brutality with human rights violations.<sup>5</sup>
- 2.3.6** The Commission on Human Rights and Justice (CHRAJ) investigates human rights

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<sup>1</sup> US State Department Human Rights Report 2011; Ghana  
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186202>

<sup>2</sup> The Ghana Police Service (GPS) official website, undated [http://www.ghanapolice.info/broad\\_formation.htm](http://www.ghanapolice.info/broad_formation.htm)

<sup>3</sup> US State Department Human Rights Report 2011; Ghana  
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186202>

<sup>4</sup> US State Department Human Rights Report 2011; Ghana  
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186202>

<sup>5</sup> US State Department Human Rights Report 2011; Ghana  
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186202>

abuses, public corruption, and abuse of power and is empowered to recommend punishments for violators. The attorney general, the minister of justice, the Economic and Organised Crime Office (EOCO), and the Public Prosecutor's Office are responsible for combating corruption. The parliamentary Public Accounts Committee is also responsible for auditing government spending. An auditor general reviews public sector accounts.<sup>6</sup>

**2.3.7** Corruption was present in all branches of government. The law provides criminal penalties for official corruption; however, the government did not implement the law effectively, and some officials frequently engaged in corrupt practices. Police set up barriers to extort money from motorists, and judicial officials accepted bribes to expedite or postpone cases or to "lose" records. The World Bank's most recent Worldwide Governance Indicators reflected that corruption was a problem.<sup>7</sup>

**2.3.8** The constitution and law provide for an independent judiciary; however, the judiciary was inefficient and subject to influence and corruption.<sup>8</sup> There were continued long delays in police and court procedures. Access to legal aid was inadequate and many prisoners spent years awaiting trial.<sup>9</sup> Freedom House report that Ghanaian courts have acted with increased autonomy under the 1992 constitution, but corruption remains a problem. Scarce resources compromise the judicial process, and poorly paid judges are tempted by bribes. The Accra Fast Track High Court is specifically tasked with hearing corruption cases involving former government officials, but many observers raised doubts about its impartiality and respect for due process under the Kufuor administration. In August 2010, the chairman of the NDC urged the chief justice to "purge" the judiciary of corruption or face government intervention, leading critics to condemn the NDC for attempting to infringe upon the judiciary's independence.<sup>10</sup>

**2.3.9** The constitution and law provide for the right to a fair trial, and the judiciary generally enforced this right. However, the judiciary was sometimes inefficient and subject to influence and corruption. Defendants are presumed innocent and trials are public. Juries are used in murder trials. Defendants have a right to be present, to be represented by an attorney (at public expense if necessary), and to cross-examine witnesses. Defendants have the right also to present witnesses and evidence. Defendants and their attorneys have access to government-held evidence relevant to their cases and have a right to appeal. The law extends the above rights to all citizens. In practice authorities generally respected these safeguards.

**2.3.10** The Chieftaincy Act gives village and other traditional chiefs the power to mediate local matters and enforce customary tribal laws dealing with such matters as divorce, child custody, and property disputes; however, the authority of traditional rulers had steadily eroded because of a commensurate increase in the power of civil institutions, including courts and district assemblies.

**2.3.11** The High Court has original jurisdiction in human rights matters, and a human rights division of the High Court has been established. The Human Rights Court has been fairly successful in protecting the rights of ordinary citizens and opposition politicians

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<sup>6</sup> US State Department Human Rights Report 2011; Ghana <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186202>

<sup>7</sup> US State Department Human Rights Report 2011; Ghana <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186202>

<sup>8</sup> US State Department Human Rights Report 2011; Ghana <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186202>

<sup>9</sup> Amnesty International Annual Report 2012; Ghana <http://www.amnesty.org/en/region/ghana/report-2012#section-16-3>

<sup>10</sup> Freedom House, Freedom in the World 2012; Ghana <http://www.unhcr.org/refworld/country...GHA..503c722ec.0.html>

against overreaching government agencies. Meanwhile, CHRAJ is the primary organ for redress of human rights violations in Ghana, and it has acquired a reputation for investigative independence. However, a recent Supreme Court decision has reduced its ability to initiate investigations.<sup>11</sup>

**2.3.12** A judicial complaints unit, headed by a retired Supreme Court justice, addressed public complaints, such as unfair treatment by a court or judge, unlawful arrest or detention, missing dockets, delayed trials and delivery of judgments, and alleged bribery of judges. In 2009, the most recent statistics available, the unit received 345 complaints, of which 294 were resolved, and 51 were under investigation at year's end.

## **2.4 Internal relocation.**

**2.4.1** Case owners must refer to the Asylum Instruction on [Internal Relocation](#) and in the case of a female applicant, the AI on [Gender Issues in the Asylum Claim](#), for guidance on the circumstances in which internal relocation would be a 'reasonable' option, so as to apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account. Case owners must refer to the Gender Issues in the asylum claim where this is applicable. The fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

**2.4.2** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unreasonable to expect them to do so, then asylum or humanitarian protection should be refused.

**2.4.3** The constitution provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice.<sup>12</sup>

## **2.5 Country guidance caselaw**

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<sup>11</sup> Freedom House, Countries at Crossroads 2012; Ghana <http://www.freedomhouse.org/report/countries-crossroads/2012/ghana>

<sup>12</sup> US State Department Human Rights Report 2011; Ghana <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186202>

**Supreme Court. RT (Zimbabwe) & others v Secretary of State for the Home Department [2012] UKSC 38 (25 July 2012)**

The Supreme Court ruled that the rationale of the decision in HJ (Iran) applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

**Supreme Court. HJ & HT v SSHD [2010] UKSC31 7 July 2010**

The Supreme Court hereby established the test which should be applied when assessing a claim based on fear of persecution because of an applicant's sexual orientation which is as follows:

- (i) Is the applicant gay or someone who would be treated as gay by potential persecutors in the country of origin?
- (ii) If yes, would gay people who live openly be liable to persecution in that country of origin?
- (iii) How would the applicant behave on return? If the applicant would live openly and be exposed to a real risk of persecution, he has a well-founded fear of persecution even if he could avoid the risk by living discreetly.
- (iv) If the applicant would live discreetly, why would he live discreetly? If the applicant would live discreetly because he wanted to do so, or because of social pressures (e.g. not wanting to distress his parents or embarrass his friends) then he is not a refugee. But if a material reason for living discreetly would be the fear of persecution that would follow if he lived openly, then he is a refugee.

### **3. Main categories of claims**

**3.1** This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Ghana. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below. All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in Karanakaran should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction '[Considering the asylum claim and assessing credibility](#)').
- 3.3** For any asylum cases which involve children either as dependents or as the main applicants, case owners must have due regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. The UK Border Agency instruction '[Every Child Matters; Change for Children](#)' sets out the key principles to take into account in all Agency activities.
- 3.4** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant does not qualify for asylum, or Humanitarian Protection, consideration must be given to any claim as to whether he/she qualifies for leave to remain on the basis of their family or private life. Case owners must also consider if the applicant qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4.1 Consideration of Articles 15(a) and (b) of the Directive/Articles 2 and 3 ECHR**  
An assessment of protection needs under Article 15(c) of the Directive should only be required if an applicant does not qualify for refugee protection, and is ineligible for subsidiary protection under Articles 15(a) and (b) of the Directive (which broadly reflect Articles 2 and 3 of the ECHR). Case owners are reminded that an applicant who fears a return to a situation of generalised violence may be entitled to a grant of asylum where a connection is made to a Refugee Convention reason or to a grant of Humanitarian Protection because the Article 3 threshold has been met.
- 3.4.2 Other severe humanitarian conditions and general levels of violence meeting the Article 3 threshold.**  
There may come a point at which the general conditions in the country – for example, absence of water, food or basic shelter – are unacceptable to the point that return in itself could, in extreme cases, constitute inhuman and degrading treatment. Decision makers need to consider how conditions in the country and locality of return, as evidenced in the available country of origin information, would impact upon the individual if they were returned. Factors to be taken into account would include age, gender, health, effects on children, other family circumstances, and available support structures. It should be noted that if the State is withholding these resources it could constitute persecution for a Convention reason and a breach of Article 3 of the ECHR.
- 3.4.3** As a result of the [Sufi & Elmi v UK](#) judgment in the European Court of Human Rights (ECtHR), where a humanitarian crisis is predominantly due to the direct and indirect actions of the parties to a conflict, regard should be had to an applicant's ability to provide for his or her most basic needs, such as food, hygiene and shelter and his or her vulnerability to ill-treatment. Applicants meeting either of these tests would qualify for Humanitarian Protection.

### **3.5 Credibility**

**3.5.1** This guidance is not designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see 'Section 4 – Making the Decision in the Asylum Instruction [‘Considering the asylum claim and assessing credibility’](#). Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the UK Border Agency file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

### **3.6 Inter-ethnic clashes, tribal disputes and Chieftain disputes**

**3.6.1** Some applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of rival ethnic groups or tribes on account of their ethnicity. Some applicants may apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of family or senior community/tribal members due to them being unwilling to succeed to chieftain or high priest of their particular ethnic group or tribe.

**3.6.2 Treatment.** Ethnically, Ghana is divided into small groups speaking more than 50 languages and dialects. Among the more important linguistic groups are the Akans, which include the Fantis along the coast and the Ashantis in the forest region north of the coast; the Guans, on the plains of the Volta River; the Ga- and Ewe-speaking peoples of the south and southeast; and the Moshi-Dagomba-speaking tribes of the northern and upper regions.<sup>13</sup>

**3.6.3** There is relatively little discrimination based solely on ethnicity in Ghana. However, local disputes over land use and chieftaincy sometimes lead to ethnically tinged violence, and the political exploitation of ethnicity has exacerbated some conflicts. This is particularly true in areas where tenant farmers occupy and develop land whose owners are from another ethnic group.<sup>14</sup>

**3.6.4** Ethnic rivalries of the pre-colonial era, variance in the impact of colonialism upon different regions of the country, and the uneven distribution of social and economic amenities in post independence Ghana have all contributed to present-day ethnic tensions. For example, in February 1994, more than 1,000 persons were killed and 150,000 others displaced in the north eastern part of Ghana in fighting between Konkomba on one side and Nanumba, Dagomba, and Gonja on the other. The clashes resulted from longstanding grievances over land ownership and the prerogatives of chiefs. A military task force restored order, but a state of emergency in the region remained in force until mid-August 1994.<sup>15</sup>

**3.6.5** Communal and ethnic violence occasionally flares in Ghana. In March 2010, tensions rose in the Brong Ahafo region between the Tuobodom and Techiman groups, resulting in three deaths. Some argued that the regional police failed to prevent the escalation of violence, though a government investigation into the

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<sup>13</sup> US State Department Country background note; Ghana, December 2011

<http://www.state.gov/outofdate/bgn/ghana/192343.htm>

<sup>14</sup> Freedom House, Countries at the Crossroads 2012; Ghana <http://www.freedomhouse.org/report/countries-crossroads/2012/ghana>

<sup>15</sup> Ghana Web, Ethnic Groups, undated <http://www.ghanaweb.com/GhanaHomePage/tribes/>



incident was ongoing at the end of 2011. Other isolated cases of communal and ethnic violence occur periodically, including several ritual killings and lynchings of suspected thieves.<sup>16</sup>

- 3.6.6** Chieftaincy disputes, which frequently resulted from a lack of clear succession, competing claims over lands and other natural resources, and internal rivalries and feuds, continued to result in deaths, injuries, and destruction of property. For example, in January 2011 one person was killed and two others seriously injured over a land dispute between Abiriw and Dawu residents, in Kuapem, North District. In March 2011 two police officers were shot in a chieftaincy riot at Akwamufie, Akosombo District. One of the officers died from his injuries.<sup>17</sup>
- 3.6.7** In September 2011 residents of Agogo in the Ashanti Region organised a protest march to bring attention to alleged criminal activity by Fulani herdsmen such as the destruction of crops, rape, and highway robberies. By November, 12 people allegedly had been murdered within 18 months by Fulani herdsmen in various parts of the Eastern Region. In addition police recorded many rape and defilement incidents victimizing women and children perpetrated by Fulani herdsmen. On 7 December, 13 Fulanis, including one woman and two children, were killed during a shooting incident in Zamashegu, Northern District. The parliament formed a committee to investigate allegations of criminal activities by herdsmen believed to be of Fulani descent.<sup>18</sup>

**See also:** [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)

- 3.6.8 Conclusion.** Certain communities, tribes and ethnic groups maintain a hierarchical culture in which the leading roles, such as the chieftain and/or high priest, are subject to a succession process. There is no reported evidence to the effect that mistreatment occurs, but the availability of adequate state protection and a viable internal relocation alternative means that those within a particular community who are unwilling to succeed to one of these roles are unlikely to encounter mistreatment in breach of the 1951 Convention or the ECHR. Sporadic inter-ethnic clashes are reported, but they are usually short-lived or quickly subdued by the state authorities. Applicants citing conflict between or within any rival groups are generally able to seek and receive adequate state protection and are also generally able to internally relocate to another part of the country to escape such conflict. A grant of asylum or Humanitarian Protection is therefore not likely to be appropriate and such cases should be certified as clearly unfounded unless in a particular case there are specific reasons not to do so.

### **3.7 Trokosi system and idol worship**

- 3.7.1** Some applicants may make an asylum and/or human rights claim based on them having been victims of, or otherwise involved in, the trokosi system (a practice involving a period of enforced domestic servitude lasting up to three years). More generally, female applicants may also allege that tribal leaders or fetish priests of their ethnic group will subject them to idol worship.

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<sup>16</sup> Freedom House, Freedom in the World 2012; Ghana <http://www.unhcr.org/refworld/country,,,GHA,,503c722ec,0.html>

<sup>17</sup> US State Department Human Rights Report 2011; Ghana <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186202>

<sup>18</sup> US State Department Human Rights Report 2011; Ghana <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186202>

- 3.7.2 Treatment.** The Trokosi custom is practised in south-eastern Ghana. A family must offer a daughter to the priest as a way of appeasing the gods for a relative's transgression, past or present. The tradition has been part of the Ewe culture for centuries, requiring a girl to spend the rest of her life as a 'wife of the gods'. Children as young as 18 months are sent to the shrine. When a Trokosi girl dies, her family is expected to replace her with another young girl, passing the problem down from generation to generation.<sup>19</sup>
- 3.7.3** In 1998, the Government passed a law against ritual servitude (among other things), criminalizing the practice of trokosi, although there have been no prosecutions under the law. Government officials were under the impression that the practice had since almost vanished. Information obtained from other sources indicates that the practice continues to thrive. Reportedly, there are at least 23 shrines in the Volta Region and 3 in the Greater Accra Region which still accept trokosi.<sup>20</sup>
- 3.7.4** International Needs Ghana (ING) and other non-governmental organisations have led efforts to liberate trokosi and put an end to the practice. According to ING's own estimates 3,500 girls have so far been liberated and 50 shrines have stopped accepting trokosi. ING seeks to liberate trokosi with the cooperation and consent of affected communities. Communities willing to cooperate are provided with much needed development infrastructure such as schools and boreholes. Fetish priests and shrine owners are encouraged to accept livestock or monetary donations, instead of girls, from families seeking to appease the gods.<sup>21</sup>

**See also:** [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)

- 3.7.5 Conclusion.** Those subjected to the trokosi system are in general able to seek and receive adequate state protection. Furthermore the availability of a safe internal relocation option to escape such practices means that such claims will not in general engage the UK's obligations under the 1951 Convention. The grant of asylum will not normally be appropriate and any such claims are likely to be clearly unfounded.

### **3.8 Alleged victims of witchcraft and those accused of witchcraft**

- 3.8.1** Some applicants may also make an asylum and/or human rights claim based on ill-treatment amounting to persecution due to them having been attacked by witches or the subject of a witches' curse or hex. Some applicants may also claim that they have been accused of being a witch.

- 3.8.2 Treatment.** In northern Ghana hundreds of women accused of witchcraft by relatives or members of their community are living in 'witch camps' after fleeing or

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<sup>19</sup> (BBC) News Online , Woman's Hour International Archive – Trokosi women in Ghana, 27 August 2009  
[http://www.bbc.co.uk/radio4/womanshour/04/2009\\_34\\_thu.shtml](http://www.bbc.co.uk/radio4/womanshour/04/2009_34_thu.shtml)

<sup>20</sup> United Nations Human Rights Council, Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Yakin Erturk : addendum : mission to Ghana, 21 February 2008  
[http://www.wunrn.com/news/2008/05\\_08/05\\_19\\_08/051908\\_ghana\\_files/051908\\_ghana.doc](http://www.wunrn.com/news/2008/05_08/05_19_08/051908_ghana_files/051908_ghana.doc)

<sup>21</sup> United Nations Human Rights Council, Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Yakin Erturk : addendum : mission to Ghana, 21 February 2008  
[http://www.wunrn.com/news/2008/05\\_08/05\\_19\\_08/051908\\_ghana\\_files/051908\\_ghana.doc](http://www.wunrn.com/news/2008/05_08/05_19_08/051908_ghana_files/051908_ghana.doc)

being banished from their homes. The camps, which are home to around 800 women and 500 children, offer poor living conditions and little hope of a normal life.<sup>22</sup>

- 3.8.3** The camps are said to have come into existence more than 100 years ago, when village chiefs decided to establish isolated safe areas for the women. They are run by tindanas, leaders capable of cleansing an accused woman so that not only is the community protected from any witchcraft but the woman herself is safe from vigilantes. Today they are still run by local chiefs, and accommodate up to 1,000 women in spartan huts with no electricity or running water, and roofs that leak.<sup>23</sup>
- 3.8.4** The witch camps appear to be unique to northern Ghana. But Ghana shares with other African countries an endemic belief in witchcraft with illness, drought, fires and other natural disasters blamed on black magic. The alleged witches are nearly always elderly.<sup>24</sup>
- 3.8.5** An ActionAid report published in September 2012 explains that women flee discrimination, threats or even mob justice after being accused of witchcraft and blamed for 'crimes' such as causing sickness, droughts or fires, cursing a neighbour or even just appearing in someone's dream. Those who reach the witch camps are the lucky ones. Women have been murdered after accusations of witchcraft. Recently a mother of three was beaten and set on fire after being blamed for making a child sick through witchcraft. In 2010, the case of a 72-year-old woman who was set on fire and killed made headlines around the world. Some elderly women have lived in the camps for as long as 40 years – abandoned by their families and trapped in the camps until they die. Their only companions are young girls, often granddaughters or family members, who were sent with the women as 'attendants'. Most of these girls have never gone to school, or have dropped out, and even when they reach the age when they could leave the camps, they usually cannot because they are tainted by the word 'witch'.<sup>25</sup>
- 3.8.6** A BBC news report dated 1 September 2012 explains that when misfortune hits a village, there is a tendency in some countries to suspect a "witch" of casting a spell. In Ghana, outspoken or eccentric women may also be accused of witchcraft - and forced to live out their days together in witch camps.<sup>26</sup>
- 3.8.7** An ActionAid report on witch camps, published at the end of August 2012, says that more than 70% of residents in Kuku camp were accused and banished after their husbands died - suggesting that witchcraft allegations are a way of enabling the family to take control of the widow's property. "The camps are a dramatic manifestation of the status of women in Ghana," says Professor Dzodzi Tsikata of the University of Ghana. "Older women become a target because they are no longer useful to society." Women who do not conform to society's expectations also fall victim to the accusations of witchcraft, according to Lamnatu Adam of the

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<sup>22</sup> ActionAid, 'Condemned without trial; women and witchcraft in Ghana' September 2012

[http://www.actionaid.org.uk/doc\\_lib/ghana\\_report\\_single\\_pages.pdf%20%20](http://www.actionaid.org.uk/doc_lib/ghana_report_single_pages.pdf%20%20)

<sup>23</sup> BBC News, 'Ghana witch camps: Widows' lives in exile', 1 September 2012 <http://www.bbc.co.uk/news/magazine-19437130>

<sup>24</sup> BBC News, 'Ghana witch camps: Widows' lives in exile', 1 September 2012 <http://www.bbc.co.uk/news/magazine-19437130>

<sup>25</sup> ActionAid, 'Condemned without trial; women and witchcraft in Ghana' September 2012

[http://www.actionaid.org.uk/doc\\_lib/ghana\\_report\\_single\\_pages.pdf%20%20](http://www.actionaid.org.uk/doc_lib/ghana_report_single_pages.pdf%20%20)

<sup>26</sup> BBC News, 'Ghana witch camps: Widows' lives in exile', 1 September 2012 <http://www.bbc.co.uk/news/magazine-19437130>

women's rights group Songtaba.<sup>27</sup>

- 3.8.8** Ghana's government is looking at ways to support people accused of witchcraft - mainly women and children banished by their communities to "witches' camps" in the north - and to reintegrate them in their home villages. Currently around 1,000 women and 700 children are living in six camps in northern Ghana, where they have found refuge from threats and violence from people in their home communities after being labelled witches and blamed for causing misfortune to others. In most cases the residents were taken to the camps by family members. A small number of men are also banished to the camps as "wizards", according to Hajia Hawawu Boya Gariba, Ghana's deputy minister for women and children's affairs. The camps are located in remote areas and the residents usually live in basic conditions in mud huts without electricity, with limited access to food, water or medicine. Local reports detail women going hungry, residents having to walk kilometres to collect water, and children being unable to attend school. The camps are run by managers - usually the people who founded them - who rely on funding from NGOs and private donations to operate the facilities. Sometimes camp managers also take payment such as food from residents.<sup>28</sup>
- 3.8.9** In 2011 the Ghanaian government, through the Ministry of Women and Children's Affairs, announced that the witch camps should be closed in 2012. However the residents said they preferred to stay in the camps if work had not been carried out in their original villages to prevent further violence and discrimination.<sup>29</sup>

**See also:** [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)

- 3.8.10 Conclusion.** There remains a strong belief in witchcraft in some parts of the country but a subjective fear of witchcraft without evidence of plausible threats of harm will not engage the UK's obligations under the Refugee Convention or ECHR. Sufficiency of protection and internal relocation will be available in the event of a genuine threat to the individual. The grant of asylum will not be appropriate and any such claims are likely to be clearly unfounded.
- 3.8.11** Applicants who claim to be accused of being a witch may be able to avoid the threat of persecution by relocating. Very careful consideration must be given as to whether internal relocation would be an effective way to avoid such ill-treatment and whether, taking into account their personal circumstances, it would be unduly harsh to expect the applicant to internally relocate to another part of Ghana.

## **3.9 Gay men and lesbians**

- 3.9.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution as gay men or lesbians in Ghana.

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<sup>27</sup> BBC News, 'Ghana witch camps: Widows' lives in exile', 1 September 2012 <http://www.bbc.co.uk/news/magazine-19437130>

<sup>28</sup> IRIN (United Nations Integrated Regional Information Networks) Ghana: reintegrating the nation's 'witches', 13 October 2011 <http://www.irinnews.org/Report/93961/GHANA-Reintegrating-the-nation-s-witches>

<sup>29</sup> ActionAid, 'Condemned without trial; women and witchcraft in Ghana' September 2012 [http://www.actionaid.org.uk/doc/lib/ghana\\_report\\_single\\_pages.pdf%20%20](http://www.actionaid.org.uk/doc/lib/ghana_report_single_pages.pdf%20%20)

- 3.9.2 Treatment.** Under Ghanaian law, male homosexual activity is officially illegal. Gay men can also be punished under provisions concerning assault and rape, only if "in public or with minor". The Constitution of Ghana guarantees the protection of all human rights for Ghanaian citizens "whatever his race, place of origin, political opinion, colour, religion, creed or gender", but does not mention sexuality.<sup>30</sup>
- 3.9.3** A section on the Law in Ghana on the International Lesbian Gay Bisexual Trans and Intersex Association (ILGA) website stated that same sex activity between women was legal.<sup>31</sup> Similarly, while a GhanaWeb article of 7 June 2011 says that 'Gays can be prosecuted', it noted that "the law is, however, silent on any form of punishment for lesbianism."<sup>32</sup>
- 3.9.4** There are no registered LGBT organisations in Ghana, and in 2006, the government banned an LGBT rights conference that was supposed to be held. Gays and lesbians have frequently been the victim of blackmail, with blackmailers threatening to 'disclose' their status; they have faced extortion, direct threats, assault, rape and murder.<sup>33</sup>
- 3.9.5** LGBT persons faced widespread discrimination, as well as police harassment and extortion attempts. Gay men in prison were often subjected to sexual and other physical abuse. In June 2010 more than 1,000 protesters in Takoradi, Western Region, participated in a peaceful rally against reports of gay and lesbian activities in their city. This was reportedly the first such protest in the country.<sup>34</sup>
- 3.9.6** It was reported that four men who worked within the community of gay men were arrested in May 2010 in connection with an alleged sexual assault and were later charged with sodomy. The case was first brought to the Takoradi Circuit Court on August 24; however, it had not been heard by the end of 2011.<sup>35</sup>
- 3.9.7** In a June 2010 interview with The Daily Graphic, the Western Region minister called on the government to take steps to combat homosexuality. He included the possibility of police raids on locales frequented by gay men and lesbians, efforts by community leaders to "wean young people" away from homosexuality, and a public condemnation by the government. However, no arrests of persons were made in connection with his comments by year's end, and he did not repeat his call.<sup>36</sup>
- 3.9.8** Recent condemnation of homosexuality by religious and political leaders in Ghana has led to a climate of fear preventing men who have sex with men (MSM) from accessing vital health services, say local NGOs. The minister of Ghana's Western Region, Paul Evans Aidoo, publicly described homosexuality as 'detestable and abominable' after media reports in late May that 8,000 homosexuals had registered with health NGOs in the country's west (the information appears to come from records kept by the NGOs of people who accessed services for MSM). Aidoo has

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<sup>30</sup> GlobalGayz, Ghana, undated accessed on 17 October 2012 <http://www.globalgayz.com/africa/ghana/>

<sup>31</sup> International Lesbian Gay Bisexual Trans and Intersex Association (ILGA) Law in Ghana, undated <http://ilga.org/ilga/en/countries/GHANA/Law>

<sup>32</sup> Ghana Web, Gays can be prosecuted, 7 June 2011

<http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=210533>

<sup>33</sup> Freedom House, LGBT Population Under Threat in Ghana, 8 August 2011 <http://www.freedomhouse.org/article/lgbt-population-ghana-under-threat>

<sup>34</sup> US State Department Human Rights Report 2011; Ghana

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186202>

<sup>35</sup> US State Department Human Rights Report 2011; Ghana

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186202>

<sup>36</sup> US State Department Human Rights Report 2011; Ghana

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186202>

since called for increased security in the region and the arrest of all homosexuals. Other religious leaders and politicians have followed suit, condemning homosexual activity.<sup>37</sup>

**3.9.9** Human rights abuses against individuals suspected of same-sex relations continued. On 20 July 2011, Paul Evans Aidoo, the Western Region Minister, ordered security forces to arrest all gay men and lesbians in the west of the country, and called on landlords and tenants to report anyone they suspected of being gay or lesbian.<sup>38</sup>

**3.9.10** The former and current commissioners of the CHRAJ spoke out against discrimination and advocated the need to protect the human rights of every citizen as provided for in the constitution. In November 2011 media accounts reported British Prime Minister Cameron was considering suspending direct aid to countries with poor records on LGBT rights. In response President Mills commented that Ghana was committed to upholding human rights as provided by the constitution, but he would not initiate a change to the law.<sup>39</sup>

**See also:** [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)  
[Caselaw](#) (section 2.5 above)

**3.9.11 Conclusion** Homosexual acts are illegal in Ghana and can carry a prison sentence. Despite Ghana's constitution which states that all citizens must be treated equally under the law and not face discrimination based on gender, race or religion, and have the right to privacy, LGBT persons continue to be subject to societal harassment, discrimination, intimidation, and threats to their wellbeing. This can in individual cases amount to persecution and in general the Ghanaian authorities do not provide gay men, lesbians and bisexuals or those perceived as such with effective protection.

**3.9.12** Where gay men and lesbians do encounter social hostility they may be able to avoid this by moving elsewhere in Ghana. There are however likely to be difficulties in finding safety through internal relocation given that homophobic attitudes are prevalent across the country. The Supreme Court in the case of HJ (Iran) made the point that internal relocation is not the answer if it depends on the person concealing their sexual orientation in the proposed new location for fear of persecution.

**3.9.13** Each case must however be examined on its own merits. Where caseowners conclude that a claimant is at real risk of persecution in Ghana on account of their sexual orientation then they should be granted asylum because gay men, lesbians and bisexuals in Ghana may be considered to be members of a particular social group.

**3.9.14** If an individual chooses to live discreetly because he/she wants to avoid

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<sup>37</sup> IRIN (United Nations Integrated Regional Information Networks) Analysis: Understanding the Drivers of Homophobia in Ghana, 1 August 2011 <http://www.irinnews.org/Report/93387/Analysis-Understanding-the-drivers-of-homophobia-in-Ghana>

<sup>38</sup> Amnesty International, Annual Report 2012; Ghana <http://www.amnesty.org/en/region/ghana/report-2012#section-16-8>

<sup>39</sup> US State Department Human Rights Report 2011; Ghana <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dld=186202>

embarrassment or distress to her or his family and friends he/she will not be deemed to have a well founded fear of persecution and will not qualify for asylum. This is because he/she has adopted a lifestyle to cope with social pressures and not because he/she fears persecution due to her or his sexual orientation.

**3.9.15** If an individual chooses to live discreetly because he/she fears persecution if he/she were to live as openly gay, lesbian or bisexual then he/she will have a well founded fear and should be granted asylum. It is important that gay, lesbian and bisexual people enjoy the right to live openly without fear of persecution. They should not be asked or be expected to live discreetly because of their well founded fear of persecution due to their sexual orientation.

### **3.10 Prison conditions**

**3.10.1** Applicants may claim that they cannot return to Ghana due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Ghana are so poor as to amount to torture or inhuman treatment or punishment.

**3.10.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

**3.10.3 Consideration.** Prison conditions generally were harsh and sometimes life threatening. Police have been known to beat suspects in custody. Much of the prison population was held in buildings that were originally colonial forts or abandoned public or military buildings, with poor ventilation and sanitation, substandard construction, and limited space and light. Many prisoners slept on bare floors or took turns using beds. According to the 2010 Prisons Service Annual Report (its most recent available report), 13,507 prisoners (average daily lockup) were held in prisons designed to hold approximately one-third that number.<sup>40</sup>

**3.10.4** In 2010, 78 prisoners died in custody. The CHRAJ noted the most common ailments (including tuberculosis, malnutrition, dysentery, HIV/AIDS, and skin disease) affecting prisoners stemmed from overcrowding, poor nutrition, and a lack of ventilation. Medical facilities were inadequate, and the prisons supplied only the most basic medicines. Prisoners relied on families or outside organisations for additional food, medicine, and other necessities. According to the CHRAJ, the daily food stipend for prisoners was 60 Ghana pesewa (£0.25), which the CHRAJ deemed too low. Shortages of food, bedding, clean water, and clothing for prisoners persisted.<sup>41</sup>

**3.10.5** In February 2010 two inmates in a police cell in Ashaiman, Greater Accra Region, allegedly suffocated to death. The cell in which the two were incarcerated was built to accommodate 10 persons but held 43 prisoners on remand and 19 convicted prisoners at the time of the deaths.<sup>42</sup>

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<sup>40</sup> US State Department Human Rights Report 2011; Ghana  
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186202>

<sup>41</sup> US State Department Human Rights Report 2011; Ghana  
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186202>

<sup>42</sup> US State Department Human Rights Report 2011; Ghana

- 3.10.6** On average there were 187 female and 115 juvenile inmates in the 42 prisons and prison camps. Juvenile detainees were not housed separately from adults, and pretrial detainees were held with convicted prisoners. In 2011 Amnesty International reported that access to legal aid was inadequate, which resulted in some prisoners spending more than 10 years awaiting trial. It also stated that 123 people, including three women, were on death row at year's end; however, no executions had been carried out since 1993. The Constitutional Review Commission recommended abolishing the death penalty in its final report on the amendment of the 1992 Constitution.<sup>43</sup>
- 3.10.7** Prisoners and detainees had reasonable access to visitors and were permitted religious observance. Authorities permitted prisoners and detainees to submit complaints to judicial authorities without censorship and to request investigation of credible allegations of inhumane conditions and treatment; however, submission of complaints by prisoners was not common practice. Authorities investigated credible allegations of inhumane conditions and treatment and documented the results. Whenever allegations of inhumane treatment are made, the accused officer is asked to respond. If prison authorities are unsatisfied with the response of the officer, an internal inquiry is launched and recommendations for disciplinary action are submitted to the director general of the prisons service.<sup>44</sup>
- 3.10.8** The government permitted independent monitoring of prison conditions by the CHRAJ, which served as the official ombudsman, and the welfare unit of the prisons service. During the year the CHRAJ monitored 28 of the 42 prisons and prison camps. The CHRAJ and other NGOs worked on behalf of prisoners and detainees to help alleviate inhumane overcrowding, address the status and circumstances of confinement of juvenile offenders, and improve pretrial detention, bail, and recordkeeping procedures to ensure prisoners do not serve beyond the maximum sentence for the charged offenses.<sup>45</sup>
- 3.10.9** The government permits independent monitoring of prison conditions by local and international human rights groups, including the International Committee of the Red Cross; however, no such visits were conducted during the year.<sup>46</sup>
- 3.10.10** During the year 1,150 inmates were discharged under the "Justice for All" program, which was started in 2008 to ease prison overcrowding and to accelerate judicial processes; another 727 inmates were released on bail.<sup>47</sup>
- 3.10.11 Conclusion** Prison conditions in Ghana are harsh and sometimes life threatening and taking into account overcrowding, unsanitary conditions and a lack of health and medical care, are likely to reach the article 3 threshold in some cases. Where an individual applicant is able to demonstrate a real risk of significant period of detention or imprisonment on return to Ghana, and exclusion under Article 1F is not

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<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186202>

<sup>43</sup> US State Department Human Rights Report 2011; Ghana

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186202>

<sup>44</sup> US State Department Human Rights Report 2011; Ghana

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186202>

<sup>45</sup> US State Department Human Rights Report 2011; Ghana

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186202>

<sup>46</sup> US State Department Human Rights Report 2011; Ghana

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186202>

<sup>47</sup> US State Department Human Rights Report 2011; Ghana

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186202>



justified, a grant of Humanitarian Protection will be appropriate.

#### **4. Discretionary Leave**

**4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instruction on [Discretionary Leave](#))

**4.2** With particular reference to Ghana the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should **not** imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instruction on [Discretionary Leave](#).

#### **4.3 Minors claiming in their own right**

**4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. Case owners should refer to the Agency's guidance on Family Tracing following the Court of Appeal's conclusions in the case of [KA \(Afghanistan\) & Others \[2012\] EWCA civ1014](#). In this case the Court found that Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to endeavour to trace the families of Unaccompanied Asylum Seeking Children (UASCs).

**4.3.2** At present there is insufficient information to be satisfied that there are adequate reception, support and care arrangements in place for minors with no family in Ghana. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant [Asylum Instructions](#)

#### **4.4 Medical treatment**

**4.4.1** Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR. Case owners should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to the COI Service (COIS).

**4.4.2** The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the country of origin. According to the House of Lords' judgment in the case of [N \(FC\) v SSHD \[2005\] UKHL31](#), it is "whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.

- 4.4.3** That standard continues to be followed in the Upper Tribunal (UT) where, in the case of [GS and EO \(Article 3 – health cases\) India \[2012\] UKUT 00397\(IAC\)](#) the UT held that a dramatic shortening of life expectancy by the withdrawal of medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, the absence of resources through civil war or similar human agency.
- 4.4.4** The improvement or stabilisation in an applicant’s medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion will therefore not in itself render expulsion inhuman treatment contrary to Article 3 ECHR. All cases must be considered individually, in the light of the conditions in the country of origin, but an applicant will normally need to show exceptional circumstances that prevent return, namely that there are compelling humanitarian considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.
- 4.4.5** Where a case owner considers that the circumstances of the individual applicant and the situation in the country would make removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave. Case owners must refer to the Asylum Instruction on [Discretionary Leave](#) for the appropriate period of leave to grant.
- 5. Returns**
- 5.1** There is no policy which precludes the enforced return to Ghana of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules.
- 5.3** Any medical conditions put forward by the person as a reason not to remove them and which have not previously been considered, must be fully investigated against the background of the latest available country of origin information and the specific facts of the case. A decision should then be made as to whether removal remains the correct course of action, in accordance with [chapter 53.8 of the Enforcement Instructions and Guidance](#).
- 5.4** Ghanaian nationals may return voluntarily to any region of Ghana at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.
- 5.5** The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Ghana. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Ghanaian

nationals wishing to avail themselves of this opportunity for assisted return to Ghana should be put in contact with Refugee Action Details can be found on Refugee Action's web site at: [www.choices-avr.org.uk](http://www.choices-avr.org.uk).

**Country Specific Litigation Team  
Operational Policy & Rules Unit  
Strategy & Assurance Group  
UK Border Agency  
January 2013**