



# OPERATIONAL GUIDANCE NOTE

## THE GAMBIA

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## 1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in [COUNTRY] and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers must refer to the relevant Asylum Policy Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service [COUNTRY] Country of Origin Information at:
- [http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the API on Article 8 ECHR. If, following consideration, a claim is to be refused, caseworkers should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

### Source documents

- 1.4** A full list of source documents cited in footnotes is at the end of this note.

## 2. Country assessment

- 2.1** The Gambia is a republic under multi-party democratic rule and the Constitution provides for the separation of the powers of the executive, legislative and judicial organs of state.<sup>1</sup>

<sup>1</sup> COIS The Gambia Country Report para 5.08 & USSD 2005 (Introduction)

The Constitution provides citizens with the right to change their Government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage.<sup>2</sup>

- 2.2** The president incumbent is Colonel Dr Alhagi Yahya A. J. J. Jammeh, who was proclaimed Head of State on 26 July 1994; elected President on 26 September 1996, and re-elected on 18 October 2001.<sup>3</sup> On the 22 September 2006 President Jammeh was re-elected for a third term with 67.3% of the vote. The main opposition candidate Ousainou Darboe secured 27% of the vote, while Halifa Sallah received 6%. Voter turnout was about 59%, lower than in Gambia's last presidential election.<sup>4</sup>
- 2.3** The Alliance for Patriotic Reorientation and Construction (APRC) holds the presidency, and an overall majority of seats in the National Assembly.<sup>5</sup> Other major political parties included the United Democratic Party (UDP); the National Reconciliation Party (NRP); the National Democratic Action Movement (NDAM); the People's Democratic Organisation for Independence and Socialism (PDOIS); the People's Progressive Party (PPP); and the National Convention Party (NCP).<sup>6</sup> In January 2005 these five opposition political parties formed a coalition called the National Alliance for Democracy and Development (NADD).<sup>7</sup>
- 2.4** The Constitution provides for an independent judiciary; however, in practice, the courts, especially at the lower levels, were corrupt and subject to executive branch pressure at times. Nevertheless, the courts demonstrated independence on several occasions, including in significant cases.<sup>8</sup>
- 2.5** The Government generally respected the human rights of its citizens during 2005, however, there were problems in some areas. Security forces harassed or otherwise mistreated journalists, detainees, prisoners, opposition members and in some cases, ordinary civilians. Arbitrary arrest and detention were problems; and there were reports of a case of incommunicado detention. Prolonged pre-trial detention was also a problem.<sup>9</sup>
- 2.6** The FCO reported that the situation in The Gambia has deteriorated significantly in the last 12 months. Since an attempt to overthrow the government in March 2006, several media representatives have been arrested without charge and held in detention. *The Independent* newspaper has not been allowed to publish for several months and the radio stations Sud FM and Citizens Radio have not been allowed to resume broadcasting. Journalist Lamin Fatty has been held in detention since writing an article for *The Independent* in April 2006 about suspects arrested in connection with the attempted coup.<sup>10</sup>
- 2.7** While civilian authorities generally maintained effective control of the security forces, there were a few instances in which elements of the security forces acted independently of government authority.<sup>11</sup> There were reports that security forces, notably soldiers acting outside official controls, beat persons and mistreated civilians.<sup>12</sup>
- 2.8** The Government at times infringed on citizens privacy rights. The Government limited freedom of speech and of the press by intimidation and restrictive legislation. Some journalists practised self-censorship. The Government generally did not restrict freedom of

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<sup>2</sup> COIS The Gambia Country Report para 5.09

<sup>3</sup> COIS The Gambia Country Report para 5.10

<sup>4</sup> BBC article Gambian President is re-elected 23 September 2006

<sup>5</sup> COIS The Gambia Country Report para 5.13

<sup>6</sup> COIS The Gambia Country Report para 5.14

<sup>7</sup> COIS The Gambia Country Report Annex A & B

<sup>8</sup> COIS The Gambia Country Report para 5.16

<sup>9</sup> USSD 2005 (Introduction)

<sup>10</sup> FCO Human Rights report October 2006 p. 281

<sup>11</sup> USSD 2005 (Introduction)

<sup>12</sup> USSD 2005 (Section 1)

assembly. Violence and discrimination against women were problems. The practice of female genital mutilation (FGM) remained widespread and entrenched.<sup>13</sup>

- 2.9** There were no reports in 2005 of the arbitrary or unlawful deprivation of life committed by the Government or its agents or reports of politically motivated disappearances.<sup>14</sup> However, the public perception of the murder of Journalist Deyda Hydara in December 2004 was that the state, in one way or another, was involved. Deyda Hydara's murder has never been fully investigated by the Gambian authorities.<sup>15</sup>

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

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in The Gambia. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. 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 API's, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant 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 API on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)
- 3.5** All APIs can be accessed via the IND website at:

<http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/>

### **3.6 Female Genital Mutilation (FGM)**

- 3.6.1** Some claimants will seek asylum or make a human rights claim on the basis that they would be forcibly required by family/tribal members to undergo female genital mutilation (FGM) and/or that FGM will be forced upon their children if they were to return to The Gambia.
- 3.6.2 *Treatment.*** The practice of female genital mutilation (FGM) is widespread and entrenched in The Gambia, although there were efforts by several NGOs to discourage the practice through public education. Between 60 and 90 percent of women have undergone FGM and

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<sup>13</sup> COIS The Gambia Country Report para 6.01

<sup>14</sup> USSD 2005 (Section 1)

<sup>15</sup> COIS The Gambia Country Report para 6.10

approximately seven of the nine major ethnic groups practice FGM at ages varying from shortly after birth until age 16.<sup>16</sup>

- 3.6.3** The frequency of FGM varies from one ethnic group to another. It is almost 100% amongst the Mandingoes [Manjagos] and the Sarakoles [Serahulis] and more than 90% amongst the Peuls [Fulas]. Together these ethnic groups make up 69% of the Gambian population. However, FGM is less frequent amongst the Jolas and very rare amongst the Wolofs who together make over a quarter of the population. On the religious front, FGM is almost unheard of amongst the 9 % of the population who are Christian.<sup>17</sup>
- 3.6.4** Of those who have undergone any of the four types of FGM procedures, twenty percent are below the age of five and fifty percent are between the ages of five and eighteen, with the average being approximately age twelve. The urbanised areas of the western division of The Gambia have a high concentration of ethnic Wolofs who do not practice any of these procedures.<sup>18</sup>
- 3.6.5** It is generally the older women and excisors (those who perform the procedure) who are the major force behind maintaining the practice. The enticement of a big party, festive cooking and new clothes are commonly used as incentives for a girl to undergo the procedure. It is difficult for a young woman to resist in the face of powerful extended family members should she decide not to undergo FGM and in some cases older women have been known to pursue a reluctant young woman and force her to undergo the procedure. Occasionally the procedure is performed without the parents' consent. Rural women in groups that practice any form of FGM strongly support the practice.<sup>19</sup>
- 3.6.6** The Government publicly supported efforts to eradicate FGM and discouraged it through health and education programmes; however, the authorities have not passed legislation against FGM, which was not considered a criminal act. Practitioners of FGM and other types of circumcision in the country believed that Islam mandates it; however, at least one influential imam declared that Islam forbids such harmful customs.<sup>20</sup> President Jammeh stated that the government would not impose a ban on FGM but has spoken out against it publicly, and his administration worked to convince traditional village leaders to abandon the practice. The National Assembly Select Committee on Women and Children also campaigned actively against FGM and other harmful traditional practices affecting the lives of women and children.<sup>21</sup>
- 3.6.7** The Gambia Committee against Traditional Practices (GAMCOTRAP) is the National Committee of the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children (IAC) in the country. It has the lead role in sensitising the public about the harmful effects of traditional practices such as FGM. It uses various strategies at the grassroots level using indigenous modes of communication and local languages.<sup>22</sup>
- 3.6.8** GAMCOTRAP has organized training workshops and programmes, including video viewing, to provide information on the harmful effects of this practice. It has directed its campaign to eradicate this practice at women, community leaders, youth and children. It has carried out programmes on the harmful effects of the practice for traditional birth attendants (TBAs) in a number of villages. Workshops held during a women's week in The Gambia reached at least 5000 women. Lectures are held around the country to reach the entire populace. As a result, the once taboo subject is now openly discussed. GAMCOTRAP has also tried to reach school children through use of audio-visual materials and theatre. It has used the

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<sup>16</sup> COIS The Gambia Country Report para 6.92

<sup>17</sup> COIS The Gambia Country Report para 6.94 & CIA world factbook

<sup>18</sup> USSD FGM Report 2001

<sup>19</sup> USSD FGM Report 2001

<sup>20</sup> COIS The Gambia Country Report para 6.96

<sup>21</sup> USSD 2005 (Section 5)

<sup>22</sup> USSD FGM Report 2001

media. It is also developing new strategies to provide excisors with alternate ways of earning a living.<sup>23</sup>

- 3.6.9** However, many Gambians, including State House Imam Abdoulie Fatty, support FGM. In his sermons, Imam Fatty often stated that FGM 'is good and should be encouraged by every Muslim.' He describes anti-FGM campaigners as 'enemies of the Islamic faith and infidels, paid to cause confusion among Gambian population.' Following national tension generated by the topic, President Yahya Jammeh had to issue an executive order a few years ago forbidding State radio and television from broadcasting views on FGM. It was not until recently that the State media resumed reporting on the sensitive subject.<sup>24</sup>
- 3.6.10** In May 2004, the head of the Supreme Islamic Council stated that the practice is an 'honour for women to undergo,' but other, well-respected local Muslim leaders continued to speak out against it, as did human rights activists and others. Although government programmes to promote girls' education and development quietly work to reduce the prevalence of FGM by changing societal attitudes, the Government's official stance is that FGM is a cultural issue which the Government cannot forbid.<sup>25</sup>
- 3.6.11** On 22 June 2004 the National Assembly passed a Children's Bill, aimed at curbing violence against children, that outlaws 'social and cultural practices that affect the welfare, dignity, normal growth and development of the child and in particular, those customs and practices that are prejudicial to the health and life of the child and; discriminatory to the child on the grounds of sex or other status.'<sup>26</sup>
- 3.6.12** *Sufficiency of protection.* Although the authorities do not condone FGM and publicly support efforts to eradicate it through health and education programmes, the practice remains legal and is widespread throughout The Gambia. It is generally considered a cultural issue in which the authorities do not interfere and therefore individuals may not be able to access sufficiency of protection.
- 3.6.13** *Internal relocation.* The Constitution provides for freedom of movement (but allows for 'reasonable restrictions,' which the Government at times enforced)<sup>27</sup> and the urbanised areas of the western division of The Gambia have a high concentration of ethnic Wolofs who do not practice FGM.<sup>28</sup> Therefore a woman from an ethnic background where FGM is the tradition and who is seeking to avoid the threat of FGM may be able to relocate there. In general, internal relocation to escape a localised threat from members of a family or tribe is an option. However, each case must be considered individually and some individuals may encounter a lack of acceptance by others in the new environment as well as lack of accommodation, land etc which may make internal relocation unduly harsh.
- 3.6.14** *Conclusion.* Although the National Assembly passed the Children's Bill in June 2004, aimed at curbing violence against children, which specifically outlaws the type of violence against children that is characteristic of FGM, the practice of FGM is not illegal. FGM is widespread in The Gambia and the Government's official stance is that FGM is a cultural issue that the Government cannot forbid or interfere with and therefore any protection that the authorities are able or willing to offer will be limited. However, the Gambian authorities publicly supported efforts to eradicate FGM and discouraged it through health and education programmes. In addition there are also a number of NGOs who work to promote women's rights and campaign against FGM.
- 3.6.15** The urbanised areas of the western division of The Gambia have a high concentration of ethnic Wolofs who do not practice FGM and a woman from an ethnic background where

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<sup>23</sup> USSD FGM Report 2001

<sup>24</sup> COIS The Gambia Country Report para 6.97

<sup>25</sup> COIS The Gambia Country Report para 6.98

<sup>26</sup> COIS The Gambia Country Report para 6.98

<sup>27</sup> COIS The Gambia Country Report para 6.75

<sup>28</sup> USSD FGM Report 2001

FGM is the tradition and who are seeking to avoid the threat of FGM may be able to relocate there. Each case must be considered individually, and much will depend on the social standing of the woman and her ability to live independently of her family, the influence which could be exerted by her family or tribe, and the availability of other family members who might be able to offer protection. If it is considered that that an applicant could successfully internally relocate to an another area of The Gambia in order to avoid the threat of FGM a grant of asylum or Humanitarian Protection will not be appropriate. Women from tribes that practice FGM but who are 'intact' i.e. have not undergone FGM, will be members of a particular social group and individual claimants from these tribes who able to demonstrate that they are at serious risk of facing such treatment and could not escape the risk by internal relocation should be granted asylum.

### **3.7 Involvement with opposition political organisations/NGOs**

- 3.7.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of authorities due to involvement with opposition political organisations/NGOs.
- 3.7.2 *Treatment.*** The Gambia is a republic under multi-party democratic rule and the Constitution provides for the separation of the powers of the executive, legislative and judicial organs of state.<sup>29</sup> The Constitution provides citizens with the right to change their Government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage.<sup>30</sup>
- 3.7.3** The Alliance for Patriotic Reorientation and Construction (APRC) holds the presidency, and an overall majority of seats in the National Assembly.<sup>31</sup> Other major political parties included the United Democratic Party (UDP); the National Reconciliation Party (NRP); the National Democratic Action Movement (NDAM); the People's Democratic Organisation for Independence and Socialism (PDOIS); the People's Progressive Party (PPP); and the National Convention Party (NCP).<sup>32</sup> In January 2005 these five opposition political parties formed a coalition called the National Alliance for Democracy and Development (NADD).<sup>33</sup>
- 3.7.5** In an interim statement on the recent 22 September 2006 Presidential elections, the Commonwealth Observer Group stated that although it had concerns regarding the ruling party using State resources to secure victory, and that a memorandum of understanding brokered between the parties before the election was not adhered to, they concluded that the Independent Electoral Commission deserves to be congratulated for a job well done and that on the Election Day, the process was well organised and things went smoothly. Overall the voters were able to express their will and the result of the election reflected their wishes.<sup>34</sup>
- 3.7.6** The law provides for freedom of assembly, and the government generally respected this right in practice; however, in November and December 2005 the police obstructed NADD's ability to hold rallies in support of their detained leaders. Although permits were granted for the rallies, the police refused, allegedly for security reasons, the use of public address systems at the rallies.<sup>35</sup> Human rights groups and other non-governmental organisations generally operate freely, although human rights workers, opposition members, and journalists occasionally face harassment.<sup>36</sup>

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<sup>29</sup> COIS The Gambia Country Report para 5.08

<sup>30</sup> COIS The Gambia Country Report para 5.09

<sup>31</sup> COIS The Gambia Country Report para 5.13

<sup>32</sup> COIS The Gambia Country Report para 5.14

<sup>33</sup> COIS The Gambia Country Report Annex A & B

<sup>34</sup> Commonwealth Secretariat - September 2006

<sup>35</sup> USSD 2005 (Section 2)

<sup>36</sup> COIS The Gambia Country Report para 6.50

- 3.7.7** The Constitution provides for freedom of association, and the Government generally respected this right in practice. Decree 81 requires non-governmental organisations (NGOs) to register with the National Advisory Council, which has the authority to deny, suspend, or cancel the right of any NGO to operate, including that of international NGOs.<sup>37</sup>
- 3.7.8** However, the Government did not take action against any NGOs during 2004<sup>38</sup> and a number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases and Government officials were sometimes co-operative and responsive to their views.<sup>39</sup> However, immediately prior to the African Union summit in July 2006 the authorities stopped an NGO forum on freedom of expression from meeting in the capital Banjul.
- 3.7.9** Restrictions on political activities were revoked in July 2001.<sup>40</sup> However, during 2005 the government arrested and detained opposition leaders who publicly criticised or who expressed views in disagreement with the government. For example in November 2004 three National Alliance for Democracy and Development (NADD) leaders were detained on charges of sedition and unauthorised possession of a government document.<sup>41</sup> However, on 7 February 2006 the President dropped all charges and the three were released.<sup>42</sup>
- 3.7.10** In March 2006 the regime was shaken by a coup attempt, following which 27 people were arrested and the former chief of staff of the army disappeared, having been accused of being behind the coup. After the 'coup', many of those arrested were detained without access to lawyers or international organisations, and well beyond the 72 hours allowed by law.<sup>43</sup>
- 3.7.11** Amnesty international reported in October 2006 that there are now known to be 22 people detained in relation to the alleged coup. Eight detainees, four military officers and four civilians, have been charged with treason. Another six military officers and one civilian have been charged with concealment of treason and another group of seven security officers is charged with conspiracy to commit treason.<sup>44</sup>
- 3.7.12** The FCO reported in their annual human rights report (October 2006) that [since the attempt to overthrow the government in March 2006, several media representatives have been arrested without charge and held in detention.](#)<sup>45</sup> (See section 3.8)
- 3.7.13** **Sufficiency of protection.** As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.
- 3.7.14** **Internal relocation.** As this category of claimants fear is of ill treatment/persecution by the state authorities' relocation to a different area of the country to escape this threat is not feasible.
- 3.7.15** **Conclusion.** The Gambia is a functioning multi-party democracy in which numerous political parties are able to contest elections. Human rights groups and other non-governmental organisations (NGOs) generally operate freely, although human rights workers, opposition members, and journalists occasionally face harassment. There is freedom of association and assembly and the authorities generally respected these rights. There were arrests and prolonged detentions following the April 2006 attempted coup but some of those detained have now been released and the remaining 22 have all been charged in connection with the events in April and there is no evidence that political

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<sup>37</sup> COIS The Gambia Country Report para 6.53 & USSD 2005 (Section 2)

<sup>38</sup> COIS The Gambia Country Report para 6.53

<sup>39</sup> COIS The Gambia Country Report para 6.120

<sup>40</sup> COIS The Gambia Country Report para 6.54

<sup>41</sup> USSD 2005 (Section 1)

<sup>42</sup> FCO Country Profile 12 October 2006

<sup>43</sup> FCO Country Profile 12 October 2006

<sup>44</sup> AI Urgent Action 4 October 2006

<sup>45</sup> FCO Human Rights report October 2006 p. 281

opponents generally suffer persecution or treatment in breach of Article 3. Considering the above it is unlikely that claimants in this category would qualify for asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.

### 3.8 Journalists

- 3.8.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Gambian authorities due to them being journalists who have expressed anti-government views.
- 3.8.2 *Treatment.*** The law provides for freedom of speech and the press; however during 2005, the government limited these rights by intimidation and restrictive legislation. Journalists practised a degree of self-censorship.<sup>46</sup> In June 2003 the National Media Commission was created and was given far-reaching powers, including the authority to imprison journalists for terms of up to six months.<sup>47</sup>
- 3.8.3** The Government generally did not restrict the publication, importation, or distribution of written material. English, French, and other foreign newspapers and magazines were available. The Government published one newspaper, *The Gambia Daily*. *The Daily Observer*, although privately owned, tended to favour the Government in its coverage. There were four other independent newspapers, including one published by an opposition political party. There was one independent weekly magazine.<sup>48</sup>
- 3.8.4** There were occasions in 2005 when the security forces detained persons who publicly criticised or who expressed views in disagreement with the Government. However, there were fewer reports in 2005 of the government harassing journalists and editors of newspapers that published articles it considered inaccurate or sensitive.<sup>49</sup>
- 3.8.5** During 2004 Gambian journalists and media organisations were also subjected to threats and violent attacks at the hands of unidentified assailants and a pro-government gang called the Green Boys. In April 2004, arsonists set fire to *The Independent's* new printing press, while in August 2004 the home of BBC correspondent Ebrima Sillah was set ablaze.<sup>50</sup>
- 3.8.6** In mid-December 2004 Deyda Hydera, the editor of the independent newspaper *The Point*, who had been severely critical of the new legislation, was murdered in Banjul. The incident precipitated a demonstration in the capital, reportedly attended by several hundred journalists, and later that month a one-week media strike was observed.<sup>51</sup> There were no further developments in the above cases by the end of 2005.<sup>52</sup>
- 3.8.7** The FCO reported in their annual human rights report (October 2006) that since the [attempt to overthrow the government in March 2006, several media representatives have been arrested without charge and held in detention](#) and there have been restrictions imposed upon the media. [The Independent newspaper has not been allowed to publish for several months and the radio stations Sud FM and Citizens Radio have not been allowed to resume broadcasting. Journalist Lamin Fatty has been held in detention since writing an article for The Independent in April 2006 about suspects arrested in connection with the attempted coup.](#)<sup>53</sup>

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<sup>46</sup> USSD 2005 (Section 2)

<sup>47</sup> COIS The Gambia Country Report para 6.14

<sup>48</sup> COIS The Gambia Country Report para 6.24

<sup>49</sup> USSD 2005 (Section 2)

<sup>50</sup> COIS The Gambia Country Report para 6.34

<sup>51</sup> COIS The Gambia Country Report para 6.36

<sup>52</sup> USSD 2005 (Section 2)

<sup>53</sup> FCO Human Rights report October 2006 p. 281



- 3.8.8 Sufficiency of protection.** As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.
- 3.8.9 Internal relocation.** As this category of claimants fear is of ill treatment/persecution by the state authorities' relocation to a different area of the country to escape this threat is not feasible.
- 3.8.10 Conclusion.** The Constitution guarantees freedom of speech and the press and there are a number of opposition newspapers and journals in circulation. However, there were occasions when journalists who expressed views criticising the government were detained by the authorities and some media organisations and journalists were subject to harassment and violent attacks from government supporters. Following the attempted coup in March 2006 restrictions on the media have increased. However, in the majority of cases this harassment does not amount to persecution or ill-treatment contrary to article 3 of the ECHR and therefore it is unlikely that claimants in this category would qualify for asylum or Humanitarian Protection and claims in this category are likely to be clearly unfounded.
- 3.9 Prison conditions**
- 3.9.1** Claimants may claim that they cannot return to The Gambia due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in The Gambia are so poor as to amount to torture or inhuman treatment or punishment.
- 3.9.2** The policy advice 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 claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.
- 3.9.3 Consideration** Prison conditions at Mile 2, Janjanbureh, and Jeshwang prisons generally met international standards during 2005 and the Government permitted visits by independent human rights observers.<sup>54</sup>
- 3.9.4** Local jails continued to experience overcrowding and inmates, including detainees awaiting trial, occasionally had to sleep on the floor although they were provided with mats or blankets. Prison guards were often reluctant to intervene in fights between prisoners, and some of the prisoners were injured.<sup>55</sup>
- 3.9.5** Women were held separately from men. Juveniles were held separately from adults, and pre-trial detainees were held separately from convicted prisoners. There was no separate section or facility for political prisoners.<sup>56</sup>
- 3.9.6** The government permitted independent monitoring of prison conditions by local and international human rights groups during 2005.<sup>57</sup>
- 3.11.7 Conclusion.** Prison conditions in the main national prisons have been judged to meet international standards. However, at a local level, conditions deteriorate with overcrowding and lack of adequate supervision being particular problems. However, in general conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to The Gambia a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the

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<sup>54</sup> USSD 2005 (Section 1)

<sup>55</sup> COIS The Gambia Country Report para 5.38

<sup>56</sup> COIS The Gambia Country Report para 5.38

<sup>57</sup> USSD 2005 (Section 1)

likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold 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 API on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the API on Article 8 ECHR.

**4.2** With particular reference to The Gambia 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 API on Discretionary Leave and the API on Article 8 ECHR.

#### **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 they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.

**4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18<sup>th</sup> birthday, whichever is the shorter period.

#### **4.4 Medical treatment**

**4.4.1** Claimants may claim they cannot return to The Gambia due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

**4.4.2** The public health service delivery system in The Gambia is three tiered, based on the primary health care strategy. Presently government services are provided by 3 hospitals, 36 health facilities at the secondary level which provide outreach services to an additional 223 villages. There are 428 Primary Health Care (PHC) villages, organised in 69 circuits, providing limited village-based care, and outpatient clinics with physicians in 38 of those PHC villages. Thirty four private and Non-Governmental Organization clinics complement the public health system. The public sector has 1,477 beds, 211 doctors and dentists, 8 pharmacists, 261 registered nurses, 250 enrolled nurses, 144 community health nurses and 122 public health officials.<sup>58</sup>

**4.4.3** The main hospitals are the Royal Victoria Hospital situated in Banjul, a recently opened facility in Farafenni and the Bansang Hospital situated in the remote town of Bansang. There are additional primary health care clinics dotted around The Gambia; however these only provide basic health care facilities and are designed to deal with simple day to day health issues only.<sup>59</sup>

#### **HIV/AIDS**

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<sup>58</sup> COIS The Gambia Country Report para 5.45

<sup>59</sup> COIS The Gambia Country Report para 5.46

- 4.4.4** HIV infection has been on the increase in The Gambia since the first AIDS case was diagnosed in the country in 1986.<sup>60</sup> Although The Gambia has a relatively low HIV infection rate, officially estimated at 1.6 percent of the population aged between 15 and 49, many humanitarian workers fear that the real HIV prevalence rate is much higher because of an increase in the sexual abuse of local children.<sup>61</sup>
- 4.4.5** There are regional differences in HIV prevalence, with rural areas having higher prevalence. The predominant mode of HIV transmission in The Gambia is heterosexual contact and women are most affected.<sup>62</sup>
- 4.4.6** There is evidence of societal discrimination against persons infected with the HIV/AIDS virus. Stigma and discrimination hindered disclosure and led to rejection from partners and relatives. In some cases, persons infected with HIV/AIDS were prevented from meeting visitors. The Government committed itself to protecting the rights of persons living with HIV/AIDS by developing a 5-year National Strategic Plan that includes the provision of care, treatment, and support to persons living with, or affected by, HIV/AIDS.<sup>63</sup>
- 4.4.7** In response to the growing problem, The Gambia is making a continuous effort through its national coordinating authority, the National AIDS Secretariat (NAS), supported by the National AIDS Council (NAC) and chaired by the President.<sup>64</sup>
- 4.4.8** In October 2004 it was reported that a free anti-AIDS drug programme was being launched in The Gambia which will benefit 150 people living with HIV and AIDS. Between 15 and 20 people are expected to be treated in the first phase of the rollout.<sup>65</sup> In September 2004 around 17,000 people were living with HIV/AIDS of these around 2,550 were in need of Anti-retroviral treatment. As of September 2004 only 15 of these people were receiving this treatment.<sup>66</sup>

#### **Mental Health**

- 4.4.9** Treatment for mental health problems is available and mental health is being integrated into the primary health system. There is a community mental health service that conducts country wide mental health promotional activities. A good number of doctors and nurses were trained on the diagnosis, treatment and management of mental health disorders through WHO support in 2004 and some traditional healers have also been trained. The country has specific programmes for mental health for children.<sup>67</sup>
- 4.4.10** Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making 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. The Article 3 threshold will not be reached in the great majority of medical cases and a grant of Discretionary Leave will usually not be appropriate.

### **5. Returns**

- 5.1** 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, in particular

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<sup>60</sup> COIS The Gambia Country Report para 5.47

<sup>61</sup> COIS The Gambia Country Report para 5.48

<sup>62</sup> COIS The Gambia Country Report para 5.49

<sup>63</sup> COIS The Gambia Country Report para 5.50

<sup>64</sup> COIS The Gambia Country Report para 5.51

<sup>65</sup> IRIN Plus News October 2004

<sup>66</sup> IRIN Plus News September 2004

<sup>67</sup> COIS The Gambia Country Report para 5.53

paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

- 5.2** Gambian nationals may return voluntarily to any region of The Gambia at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in The Gambia. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Gambian nationals wishing to avail themselves of this opportunity for assisted return to The Gambia should be put in contact with the IOM offices in London on 020 7233 0001 or [www.iomlondon.org](http://www.iomlondon.org).

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