

Gambia - Researched and compiled by the Refugee Documentation Centre of Ireland on 26 March 2009

How enforceable/prevalent is Sharia law in Gambia?

A *Europa World Online* entry on the judicial system of Gambia, in a paragraph headed "Supreme Court of The Gambia", refers to Shari'a Law as follows:

"The Courts administer Islamic Shari'a law. A *cadi*, or a *cadi* and two assessors, preside over and constitute an Islamic Court. Assessors of the Islamic Courts are Justices of the Peace of Islamic faith." (*Europa World Online (2008) Africa South of the Sahara – The Gambia: Judicial System*)

A case study prepared by the *International Records Management Trust*, in a section titled "The Legal And Judicial System" (paragraph 28), states:

"The judicial system in The Gambia recognises customary, Sharia and common or general law. Customary law covers, for example, traditional marriage, divorce and family matters, inheritance, land tenure and tribal and clan leadership. Sharia law, which has to some extent displaced customary law, is observed primarily in Muslim marriage, family and inheritance matters. Common law, following the English model, provides the residual law. Trials are public and defendants have the right to legal representation at their own cost." (*International Records Management Trust (December 2001) Legal and Judicial Records and Information Systems in The Gambia, p.5*)

Paragraph 29 of this document states:

"The subordinate courts consist of the *Cadi* (or *Khadi*) courts (proceedings of which are in Arabic), district tribunals and magistrate's courts. The *Cadi* courts have jurisdiction to apply the Shari'a in matters of marriage, divorce, child custody and inheritance where the parties or other interested parties are Muslims. A panel consisting of the *Cadi* and two other scholars of the Sharia preside at hearings at first instance. Appeals against decisions of *Cadi* courts are made to the High Court. The *Cadi* Court in the capital, Banjul, was constituted in 1905 and is one of only a handful of Muslim Courts established under British rule throughout the world. It is one of two such courts in The Gambia; the other is located in Kanifing some ten miles outside the capital." (*ibid, p.5*)

An article published by the Banjul-based newspaper *The Independent* quotes a Gambian High Court *Cadi* as follows:

"It is appropriate on this occasion to share some thoughts with you. I have been on the bench for quite a while now and have gone through a lot of cases", he said, depicting into the qualities of a good *Cadi*, pointing out that *Cadis* are required to apply Sharia in the contested matters before them. As *Cadis*, 'you certainly have an onerous task, and most of the people who comes to your courts are not learned. The good thing is that you have two panelists equally learned in

Sharia to assist the court', he noted." (Independent, The (Banjul) (4 October 2003) *Gambia: New Cadi for High Court* Sankano, Muhammed J.)

In a section headed "Trial Procedures" the *US Department of State Country* report on Gambia states:

"The judicial system recognizes customary, Shari'a (Islamic law), and general law. Customary law covers marriage and divorce for non-Muslims, inheritance, land tenure, tribal and clan leadership, and other traditional and social relations. Shari'a was observed primarily in Muslim marriage and divorce matters; it favored men in its provisions. General law, following the British model, applied to felonies and misdemeanors in urban areas and to the formal business sector." (US Department of State (Bureau of Democracy, Human Rights, and Labor) (25 February 2009) *2008 Human Rights Reports: The Gambia*)

In a section titled "Women" this report states:

"Shari'a law is applied in divorce and inheritance matters for Muslims, who make up more than 90 percent of the population. Women normally received a lower proportion of assets distributed through inheritance than males. The concerned church and the Office of the Attorney General settled Christian and civil marriage and divorce matters." (ibid)

In a section titled "Internal law and the rights of women" an *International Federation for Human Rights* report on the situation for Gambian women states:

"In many cases, the provisions of the Sharia co-exist alongside the laws of custom, which is an additional handicap for women as the discriminations in both systems apply. The lives of over 90% of Gambian women are subject to the law of the Sharia and/or customary law. The Ministry of Justice explained to the FIDH mission that 'the Sharia is an integral part of our law'. There are three Cadi [Qadi] courts, which correspond to Sharia courts and have jurisdiction over all matters arising out of family law. All discriminations connected with Islamic law are applied to Gambian women: polygamy, inequality as regards succession, divorce at the instigation of the husband except in certain specific cases, inferiority of women in several spheres such as that of legal witness, the testimony of two women being equal to that of one man." (International Federation for Human Rights (FIDH) (22 July 2005) *Note on the situation of Women in Gambia*, p.8)

This response was prepared after researching publicly accessible information currently available to the Refugee Documentation Centre within time constraints. This response is not and does not purport to be conclusive as to the merit of any particular claim to refugee status or asylum. Please read in full all documents referred to.

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