



OPERATIONAL GUIDANCE NOTE

THE GAMBIA

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1. Introduction

- 1.1** This document provides UK Border Agency caseowners with guidance on the nature and handling of the most common types of claims received from nationals/residents of The Gambia, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Caseowners *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 caseowners 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. 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 Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners 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.

2. Country assessment

- 2.1** Caseowners 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://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/accessible-hrd-report-2010>

2.3 Actors of protection

- 2.3.1** Case owners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also 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 armed forces are responsible for external defence and report to the minister of defence, a position held by the president. The police, under the interior minister, are responsible for public security. The National Intelligence Agency (NIA) is responsible for protecting state security, collecting intelligence, and conducting covert investigations; it reports directly to the president. The NIA is not authorised to investigate police abuses, but during 2010, the NIA often assumed police functions such as detaining and questioning criminal suspects. Security forces frequently were corrupt and ineffective. On occasion security forces acted with impunity and defied court orders.¹
- 2.3.3** The Police Act which outlines the duties and functions of the police is a colonial law. The Gambia Government is working towards the amendment of the Act to bring it in line with international standards and best practices on human rights and policing. The Training Manual for The Gambia Police Force will also be updated to include a section on human rights.²
- 2.3.4** The Police also have a Human Rights and Complaints Unit and a Child Welfare and Vulnerable Person's Unit. The Human Rights and Complaints Unit is the internal investigation mechanism branch of the police dealing with general public complaints against the police, which include police corruption, human rights abuses and related matters.³ During the year, the unit received several complaints, and some police officers faced disciplinary action as a result.⁴ The Government intends to address the human

¹ US State Department Human Rights Report 2010: The Gambia, Section 1

<http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

² COIS Gambia Country Report October 2011 (para 8.05) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

³ COIS Gambia Country Report October 2011 (para 8.06) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁴ US State Department Human Rights Report 2010: The Gambia, Section 1

<http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

resources constraints faced by these Units.⁵

- 2.3.5** The constitution and law provide for an independent judiciary; however, the courts, particularly at the lower levels, were corrupt and subject to executive pressure. The constitution and law also provide for a fair and public trial, and the judiciary generally enforced this right, although frequent delays and missing or unavailable witnesses, judges, and lawyers often impeded the process. The judicial system suffered from inefficiency at all levels. Cases continued to be delayed because the court system was overburdened. To alleviate the backlog, the government continued to recruit judges and magistrates from other commonwealth countries that have similar legal systems.⁶
- 2.3.6** The judicial system recognises customary, Sharia (Islamic), 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. Customary law recognises the rights of all citizens regardless of age, gender, and religion. It does not call for discrimination, but women are expected to show respect for their husbands and children for their parents. Sharia was employed primarily in Muslim marriage and divorce matters; it favoured men in its provisions. General Law, following the British model, applied to felonies and misdemeanours and to the formal business sector.⁷
- 2.3.7** Official corruption remains a serious problem, although President Yahya Jammeh's recent focus on economic development policies has led to increased anticorruption efforts, including the establishment of an Anti-Corruption Commission. In March 2010, the government prosecuted and dismissed several high ranking security officials for corruption and drug-related charges. The Gambia was ranked 91 out of 178 countries surveyed in Transparency International's 2010 Corruption Perceptions Index.⁸
- 2.3.8** Twelve organisations, including Amnesty International, made a joint submission to the UN for the 2010 Universal Periodic Review of The Gambia in which they reported that journalists, opposition politicians and their supporters are "at risk of becoming victims of enforced disappearance" and "possible extra judicial execution".⁹ In June 2011, Amnesty International noted in a report on enforced disappearances, killings and torture in The Gambia that the human rights situation "is deteriorating". It stated that "cases of enforced disappearance are yet to be resolved after several years, those involved in unlawful killings have not been identified and brought to justice, and torture is still widely used by security forces".¹⁰
- 2.3.9** Freedom House similarly noted that impunity is a problem in relation to the security forces. This is particularly the case for the National Intelligence Agency (NIA) which, under a 1995 decree, is allowed to "search, arrest or seize any person or property without a warrant in the name of state security". It also stated that "Individuals are often arrested without warrant, including journalists, and some individuals are held incommunicado by the government for their political views or associations".¹¹
- 2.3.10** The U.S. Department of State reported that human rights violations committed by the

⁵ COIS Gambia Country Report October 2011 (para 8.05) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁶ US State Department Human Rights Report 2010: The Gambia, Section 1, <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

⁷ US State Department Human Rights Report 2010: The Gambia, Section 1, <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

⁸ Freedom House Country Report 2011: The Gambia, May 2011 <http://www.freedomhouse.org/report/freedom-world/2011/gambia>

⁹ UN Human Rights Council, Summary prepared by the office of the high commissioner for Human Rights in accordance with paragraph 15 (C) of the annex to Human Rights Council Resolution 5/1 – Gambia, 02/11/2009, paragraphs 9 and 11. http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/GM/A_HRC_WG6_7_GMB_3_E.pdf

¹⁰ Amnesty International, Climate of fear continues: Enforced disappearances, killings and torture in Gambia, 22/06/2011. <http://www.amnesty.org/en/library/asset/AFR27/001/2011/en/e5acba67-e8f2-4a86-b1e8-975b48e9baab/af270012011en.pdf>

¹¹ Freedom House, Country Report 2011: The Gambia <http://www.freedomhouse.org/report/freedom-world/2011/gambia>

Gambian state included "government complicity in the abduction of citizens; torture and abuse of detainees and prisoners, including political prisoners; poor prison conditions; arbitrary arrest and detention of citizens, including incommunicado detention; denial of due process and prolonged pretrial detention; restrictions on freedom of speech and press". It noted that security forces were involved in the torture, beating and mistreatment of persons in custody, on occasion acting in defiance of court orders.¹²

2.4 Internal relocation.

2.4.1 Caseowners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and 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, but 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 The constitution and law provide for freedom of movement within the country, foreign travel, emigration, and repatriation, but allow for "reasonable restrictions." Restrictions were imposed on foreign travel for many persons released from detention, often because their travel documents were temporarily confiscated at the time of their arrest or soon afterwards. As a rule, all government employees were required to obtain permission from the office of the president before travelling abroad.¹³

2.4.3 Where a category of applicants' fear is of based on ill-treatment or persecution by the state authorities, then internal relocation to escape that persecution is unlikely to be an option. In the case of non-state agents, very careful consideration must be given as to whether internal relocation would be an effective way to avoid ill-treatment or persecution and whether, taking into account their personal circumstances, it would be unduly harsh to expect the applicant to internally relocate to another part of The Gambia.

2.5 Country guidance caselaw

MD (Gambia), R (on the application of) v SSHD [2011] EWCA Civ 121 (17 February 2011)

The appellant, a national of Gambia, challenged by way of judicial review proceedings two decisions of the Secretary of State for the Home Department ("SSHD"). The first was her decision to include Gambia, in respect of men only, in the list of countries in section 94(4) of the Nationality, Immigration and Asylum Act 2002 (a process known as "designation"). The second is the related decision by the SSHD to certify the Appellant's case as clearly unfounded pursuant to section 94(2).

Following an examination of documentary evidence on the country situation, looking into evidence of Human Rights abuses, detention, politically motivated arrests, evidence of torture, prison conditions and over-crowding, the judiciary, homosexuals and an episode of the Gambian police arbitrarily kidnapping citizens, The Court of Appeal found;

¹² US State Department Human Rights Report 2010: The Gambia, section 1
<http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

¹³ US State Department Human Rights Report 2010: The Gambia, Section 2
<http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

“Having regard to all these matters I remind myself that the question is not whether this court would consider it appropriate to list Gambia, but whether the Secretary of State is entitled to do so. I agree with the observation of Beatson J that the situation is troubling, but I also agree with his conclusion that the Secretary of State was entitled to conclude, as I assume she must have done, that the human rights infringements were not so systemic or general as to compel the conclusion that as a matter of law Gambia could not properly be designated under section 94(4). It follows that the first ground of appeal fails.” (para 50)

The court upheld the second ground of appeal.

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 The Gambia. 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.
- 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 Policy Instruction on considering the protection (asylum) claim and assessing credibility).
- 3.3** 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 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** All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

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

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 the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. Caseowners 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 Home Office 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 matched 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 Female Genital Mutilation (FGM)

- 3.6.1** Applicants may make an asylum and/or 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.** In 2011, Freedom House reported that “female genital mutilation remains legal and widely practiced”.¹⁴ Similarly, the U.S. Department of State stated in its annual human rights report that “The law does not prohibit female genital mutilation (FGM), and the practice remained widespread. A survey by the United Nations Children's Fund conducted in 2005/06 found that approximately 78 percent of girls and women have undergone FGM, and seven of the nine major ethnic groups reportedly practiced it at ages varying from shortly after birth until age 16”.¹⁵ The organisation Africa 4 Women's Rights also reported that FGM “remains widespread throughout Gambia”, with an estimated “70 to 80% of the female population” having undergone some form of FGM. It further stated that “amongst the Mandingoes and the Sarakoles it is estimated that FGM affects 100% of women, amongst the Peuls 90% and amongst the Jolas 65-70%”.¹⁶ The U.S. Department of State report noted that “Some religious leaders publicly defended the practice”¹⁷ and that in October 2010 “two prominent gender activists and anti-FGM campaigners were arrested and charged with stealing 30,000 euros”.¹⁸
- 3.6.3** It is generally the older women and excisors 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. In some cases, older women have been known to pursue a reluctant young woman and force her 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. Occasionally the procedure is performed without the parents' consent. Rural women in groups that practice any form of FGM/FGC, strongly support the practice.¹⁹
- 3.6.4** A paper published in 2006 in the Institute of Development Studies Bulletin reported the difficulties families faced in denouncing or ending FGM practice due to extended family pressures and lack of legal remedies: “While some individual families are responding to the call to stop the practice, most are yet to pay heed, and pressures from the extended family often outweigh the efforts of nuclear families to stop FGM. Gambia has witnessed two FGM court cases recently, one of which was thrown out due to the lack of any law protecting those who do not want to circumcise their children”.²⁰
- 3.6.5** A partnership between The Gambia Committee against Traditional Practices (GAMCOTRAP), Save The Children and the UNIFEM (United Nations Development Fund for Women), was launched in 2010, with objectives to create a favourable environment for the implementation of programmes to eradicate female genital mutilation in The Gambia by 2012 and to strengthen the capacity and skills of various actors intervening in targeted communities. Speaking at the launch, Dr. Omar Sey, deputy permanent secretary at the Ministry of Health and Social Welfare expressed the hope that the project will engage communities in the region to reverse the trends of the practice. He noted that his ministry is happy to be associated with the drive and already has signed a Memorandum of Understanding to integrate FGM issues into health promotion activities.²¹

¹⁴ Freedom House, Country Report 2011: The Gambia <http://www.freedomhouse.org/report/freedom-world/2011/gambia>

¹⁵ US State Department Human Rights Reports 2010: The Gambia, Section 6 <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154348.htm>

¹⁶ Africa 4 Women's Rights, Dossier of Claims: Gambia, 05/03/2010, Violence. http://www.africa4womensrights.org/public/Dossier_of_Claims/GambiaENG.pdf

¹⁷ US State Department Human Rights Reports 2010: The Gambia, Section 6 <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154348.htm>

¹⁸ US State Department Human Rights Reports 2010: The Gambia, Section 5 <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154348.htm>

¹⁹ US State Department of State, 'The Gambia: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC)' 1 June 2001 <http://www.unhcr.org/refworld/country,,USDOS,,GMB,,46d5787732,0.html>

²⁰ Isatou Toura, Sexuality and Women's Sexual Rights in the Gambia, in Institute of Development Studies (IDS) Bulletin Volume 37 Number 5 October 2006, 3.2 Female Genital Mutilation (FGM). <http://www.b-fair.net/wp-content/uploads/2010/12/DOWNLOAD-THE-ARTICLE.pdf>

²¹ Today Newspaper online edition 'New project to combat FGM, other harmful traditional practices' 18 May 2010 The website of the Gambian "Today" Newspaper is down, but a copy of the article can be viewed here: <http://www.afranblog.com/blog/?p=713>

- 3.6.6** In June 2011 a total of 117 Fula and Mandinka communities in the Upper River Region (URR) openly declared they have abandoned Female Genital Mutilation (FGM); and early and forced marriage; among other harmful traditional practices.²²
- 3.6.7** However, Government policy on FGM has not been consistent. The Sexual Rights Initiative in its submissions to the UN Human Rights Council for the 2010 Universal Periodic Review of The Gambia stated that:

The broadcast of information against FGM on the state-controlled Radio Gambia and Gambia Television has been prohibited at various times in recent years. Although the President has recently said that he does not support FGM, in the past he is reported as having stated that although anti-FGM campaigners could continue to do their work among the villages “there’s no guarantee that after they deliver their speeches, they will return to their homes”. President Jammeh alleged that campaigners against female genital mutilation are receiving millions to undermine Islam and African culture. It “is part of our culture and we should not allow anyone to dictate to us how we should conduct ourselves,” Jammeh said. In a veiled threat to the campaigners, Jammeh said they should be ready to face any consequences that may befall them.²³

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

3.6.8 Conclusion. The law does not prohibit FGM and the practice remains widespread. Women from tribes that practice FGM, who have not undergone FGM themselves will be members of a particular social group (PSG) and individual claimants from these tribes who are 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. Very careful consideration must be given as to whether internal relocation would be an effective way to avoid the 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 The Gambia. Accompanying parents of such applicants will be eligible for a grant of discretionary leave unless they are able to establish their own protection needs.

3.7 Political opponents or those perceived to be in opposition to the government, including NGO members and human rights defenders

3.7.1 Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the authorities due to their actual or perceived opposition to the Gambian government and/or their involvement with non-governmental organisations (NGOs)

3.7.2 Treatment. The constitution and law provide for freedom of assembly and association. However, Amnesty International reported that the government continued to restrict political freedom, stifle freedom of expression and commit human rights violations with impunity. Members of the National Intelligence Agency (NIA), army, police, and shadowy militias close to the President – known as ninjas, drug boys and jugglers – arbitrarily arrested and detained government opponents, human rights defenders, journalists and former security

²² The Daily Observer, Gambia: 117 Urr Communities Abandon FGM, Other Practices, 14/06/2011.

<http://allafrica.com/stories/201106150765.html>

²³ Sexual Rights Initiative, Report on Gambia to the 7th Round of the Universal Periodic Review – February 2010, 23/11/2009, paragraph 5.

http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/GM/SRI_UPR_GMB_S07_2010_%20SexualRightsInitiative.pdf

personnel.²⁴

- 3.7.3** On 24 January 2012, Amnesty International reported that four activists were convicted over the distribution of Coalition for Change – The Gambia (CCG) t-shirts calling for an ‘End to Dictatorship Now’. Amongst those men was the former Minister for Information and Communication, who was sentenced to life imprisonment with hard labour for treason.²⁵ In June 2011, Amnesty International published a report which recorded the enforced disappearance of a number of journalists, opposition party members and security force personnel, as well as extrajudicial executions carried out against members of the security forces who oppose the government, students, journalists and foreign nationals.²⁶
- 3.7.4** The U.S. Department of State reported that during 2010 “there were credible reports that the government held civilians based on their political views or associations, and some were held incommunicado for prolonged periods” and that “Observers believed the government monitored citizens engaged in activities that it deemed objectionable”.²⁷
- 3.7.5** Freedom House noted that “Private discussion is limited by fears of surveillance, searches, and arrest by the National Intelligence Agency (NIA)” and that “individuals are often arrested without warrant”, some of whom are “held incommunicado by the government for their political views or associations”.²⁸ It also reported that, during a tour of the country in July 2010, President Jammeh “threatened to withhold government services to voters who fail to support him in the 2011 elections”.²⁹
- 3.7.6** Similarly, Article 19 reiterated its concern “over the repression of free speech and the prevailing climate of fear” and “the government’s use of draconian and undemocratic laws to silence critical voices, including sedition and treason charges, which are constantly invoked to punish and intimidate government critics”.³⁰ Ahead of the November 2011 presidential elections the Economic Community of West African States (ECOWAS) refused to send election observers due to “an opposition and electorate cowed by repression and intimidation”.³¹
- 3.7.7** The office of the ombudsman operated a national human rights unit (NHRU) to promote and protect human rights and to support vulnerable groups. The office was established by the government and receives government funding. During 2010 the unit received complaints regarding unlawful dismissals, termination of employment, unfair treatment, and illegal arrest and detention.³²
- 3.7.8** In May 2010, the World Organisation Against Torture (OMCT) reported that an international fact-finding mission of the Observatory for the Protection of Human Rights Defenders, a joint programme of the World Organisation Against Torture (OMCT) and the International Federation for Human Rights (FIDH), which was carried out in Dakar (Senegal) and Banjul (The Gambia), confirm the existence of a climate of fear for human rights defenders in The Gambia.³³ In 2011, the OMCT noted that “the restrictive legal and institutional framework

²⁴ Amnesty International Annual Report 2011; The Gambia <http://www.amnesty.org/en/region/gambia/report-2011>

²⁵ Amnesty International, Activists jailed for distributing T-Shirts, 24/01/2012. <http://www.amnesty.org/en/library/asset/AFR27/002/2012/en/fb90d99-d11c-4e59-9a08-ca90bb382f89/afr270022012en.pdf>

²⁶ Amnesty International, Climate of fear continues: Enforced disappearances, killings and torture in Gambia, 22/06/2011 <http://www.amnesty.org/en/library/asset/AFR27/001/2011/en/e5acba67-e8f2-4a86-b1e8-975b48e9baab/afr270012011en.pdf>

²⁷ US State Department Human Rights Reports 2010: The Gambia, Section 1 <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154348.htm>

²⁸ Freedom House, Country Report 2011: The Gambia, <http://www.freedomhouse.org/report/freedom-world/2011/gambia>

²⁹ Freedom House, Country Report 2011: The Gambia, <http://www.freedomhouse.org/report/freedom-world/2011/gambia>

³⁰ Article 19, Gambia: Free speech & journalist security still under threat, 22/07/2011.

<http://www.article19.org/resources.php/resource/2341/en/gambia:-free-speech-&-journalist-security-still-under-threat>

³¹ BBC News, Gambia’s Yahya Jammeh wins fourth presidential term, 25/11/2011 <http://www.bbc.co.uk/news/world-africa-15897134>

³² US State Department Human Rights Reports 2010: The Gambia, Section 1 <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154348.htm>

³³ COIS Gambia Country Report October 2011 (para 15.02)

hampers the promotion and defence of human rights. In this context, the State institutions have failed to guarantee effective protection to defenders". It further noted that despite "less acts of physical violence against human rights defenders [...] the recurrence of arrests and prolonged trials of defenders on baseless charges [...] reveals State tendency to "legalise" repression against human rights defenders".³⁴

3.7.9 The Gambia section of the Amnesty International annual report 2011 stated that the climate of fear generated by the President's threats against human rights defenders in 2009 persisted. Nigerian Edwin Nebolisa Nwakaeme, director of a Gambian human rights organisation, Africa in Democracy and Good Governance, was arrested on 22 February by the Immigration Department, released three days later, then rearrested on 1 March. He was taken to court in March and charged with giving "false information". In September he was sentenced to six months' imprisonment with hard labour. Two women, Dr Isatou Touray and Amie Bojang Sissoho, were arrested on Monday 11 October 2010 by Gambian security personnel, charged with theft, and sent to Mile 2 Central Prison, notorious for its ill-treatment of inmates and appalling prison conditions. Both women work GAMCOTRAP, and their organisation has faced harassment in the past.³⁵

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

3.7.10 Conclusion. The constitution and law provide for freedom of assembly and association. However, in practice a climate of fear exists in which some individuals who are perceived to oppose the government, including members of the political opposition, human rights defenders and NGO workers, have been intimidated, harassed, arbitrarily arrested and detained. In some cases individuals have been victims of enforced disappearance and extra-judicial execution.

3.7.11 Each case must be carefully considered on an individual basis to determine whether there is sufficient evidence to show that the applicant's profile and actions are likely to bring them to the adverse attention of the authorities and therefore put them at real risk of ill-treatment due to their perceived opposition to the government. Where an individual claimant is able to demonstrate that they are at serious risk of persecution, a grant of asylum will be appropriate.

3.8 Journalists

3.8.1 Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the authorities due to them being journalists who have expressed anti-government views.

3.8.2 Treatment. The constitution and law provide for freedom of speech and of the press; however, the government limited these rights by intimidation, detention, and restrictive legislation. In a July 2009 television interview, President Jammeh warned that journalists who tarnished the country's image would be "severely dealt with." Although the independent press practiced self-censorship, opposition views regularly appeared in the independent press, and there was frequent criticism of the government in the private media.³⁶

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

³⁴ International Federation for Human Rights (FIDH), Climate of fear amongst the community of human rights defenders, 22/07/2011. <http://www.fidh.org/Climate-of-fear-amongst-the>

³⁵ Amnesty International Annual Report 2011; The Gambia <http://www.amnesty.org/en/region/gambia/report-2011>

³⁶ US State Department Human Rights Report 2010: The Gambia, section 2
<http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

- 3.8.3** The government published one newspaper, The Gambia Info. The privately owned Daily Observer favoured the government in its coverage. There were seven other independent newspapers, including one published by an opposition political party that remained highly critical of the government. There was one independent biweekly magazine.³⁷
- 3.8.4** One government-owned and nine private radio stations broadcast throughout the country. During 2010, the government-owned Gambia Radio and Television Services (GRTS) gave limited coverage to opposition activities. GRTS television rebroadcast CNN, while local radio stations rebroadcast the BBC, Radio France Internationale, Voice of America, and other foreign news sources, all of which were also available via shortwave radio. GRTS television, foreign cable, and satellite television channels broadcasting independent news coverage were available in many parts of the country, and the government allowed unrestricted access to such networks.³⁸
- 3.8.5** The deterioration of the country's media environment continued during 2010. The government harassed journalists who wrote articles it considered inaccurate and investigated cases it considered sensitive. Several journalists reportedly went into hiding from fear of government retaliation. Security forces arbitrarily arrested and detained numerous journalists during the year.³⁹ The US State Department Human Rights Report contains numerous examples of arrests and detention of journalists.
- 3.8.6** In some cases journalists from certain independent newspapers were denied access to state-sponsored events and press conferences due to official disapproval of their editorial stances.⁴⁰
- 3.8.7** In The Gambia, despite the recent talks between journalists and government, the tension and climate of fear among journalists instilled after so many years of oppression remains and continues to hamper the work of independent journalists.⁴¹
- 3.8.8** In 2011, Freedom House,⁴² OMCT⁴³ and Amnesty International⁴⁴ all noted in their respective annual reports that journalists continue to face harassment, threats, arrests, arbitrary detention and violence. Such treatment could result simply from publishing "stories deemed unfavourable to the authorities".⁴⁵ The Committee to Protect Journalists reported in 2011 that arbitrary arrests, censorship, intimidation and prosecutions under restrictive legislation had "reduced the domestic news media to a handful of newspapers that operate under intense fear and self-censorship."⁴⁶
- 3.8.9** According to Article 19, following the Presidential election in November 2011, the Gambian President Jammeh has "continued to threaten journalists and human rights defenders. On 28 November 2011, Gambian Election Day, he declared that he would not reconsider his position on the treatment of the Gambian media because, "journalists are less than 1% of the population ... if anybody expects me to allow less than 1% of the population to destroy

³⁷ US State Department Human Rights Report 2010: The Gambia, section 2 <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

³⁸ US State Department Human Rights Report 2010: The Gambia, section 2 <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

³⁹ US State Department Human Rights Report 2010: The Gambia, section 2 <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

⁴⁰ US State Department Human Rights Report 2010: The Gambia, section 2 <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

⁴¹ International Federation of Journalists 'African Journalists and ARTICLE 19 Urge the African Commission on Human and Peoples 'Rights to Prioritize Protection and Safety of Journalists' 2 May 2011 <http://africa.ifj.org/en/articles/african-journalists-and-article-19-urge-the-african-commission-on-human-and-peoples-rights-to-prioritize-protection-and-safety-of-journalists>

⁴² Freedom House, Country Report 2011: The Gambia, <http://www.freedomhouse.org/report/freedom-world/2011/gambia>.

⁴³ World Organisation Against Torture (OMCT), Steadfast in Protest: Annual Report: Sub-Saharan Africa, 24/10/2011, The Gambia. http://www.fidh.org/IMG/pdf/obs_2011_uk-afriqsub.pdf

⁴⁴ Amnesty International, Annual Report 2011: Gambia, <http://amnesty.org/en/region/gambia/report-2011>

⁴⁵ Amnesty International, Annual Report 2011: Gambia, <http://amnesty.org/en/region/gambia/report-2011>

⁴⁶ Committee to Protect Journalists, Attacks on the Press in 2011 – Gambia, 22/02/2012 <http://www.unhcr.org/refworld/country,...GMB,,4f4cc98dc,0.html>

99% of the population, you are in the wrong place".⁴⁷

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

3.8.10 Conclusion. The constitution and law provide for freedom of speech and of the press; however, the government limited these rights by intimidation, detention, and restrictive legislation. The Government continues to harass and detain journalists who write or publish articles which are considered unfavourable to the authorities.

3.8.11 Caseowners must assess on a case by case basis whether there is a real risk that a journalist who has expressed anti-government views will encounter ill treatment amounting to persecution. Where an individual claimant is able to demonstrate that they are at serious risk of persecution, a grant of asylum will be appropriate.

3.9 Gay men and Lesbians

3.9.1 Some applicants may make asylum and/or human rights claims based on ill-treatment amounting to persecution as gay men, lesbians, bisexual, transgender or intersex persons in The Gambia.

3.9.2 Treatment The International Lesbian Gay, Bisexual, Trans and Intersex Association (ILGA) when referring to The Gambia noted that same-sex relationships are illegal.⁴⁸ The law establishes prison terms ranging from five to 14 years for any male that commits in public or private any act of gross indecency, procures another male, or has actual sexual contact with another male; however, to date, no one has been prosecuted. There is no similar law targeting women. Many citizens shunned lesbian, gay, bisexual, and transgender (LGBT) individuals.⁴⁹

3.9.3 In Gambia, lesbianism is taboo and many people do not believe that it exists. It is not recognised by society and is seen as an unacceptable social relationship. It is referred to as the practice of an alien culture by those who are psychologically and spiritually lost. Lesbian relationships do, however, exist among women in The Gambia, but are kept secret for fear of social rejection. Lesbianism in The Gambia has a historical association with families with powerful women.⁵⁰

3.9.4 In a March 2009 speech before the National Assembly, President Jammeh called homosexual conduct 'strange behaviour that even God will not tolerate.' The president previously described homosexual conduct as a criminal practice and told police to arrest persons practicing homosexual activity and to close motels and hotels that accommodated them. In 2008 the president ordered all LGBT persons to leave the country within 24 hours and threatened to cut off their heads. Despite this statement, there were no reported incidents of physical violence against LGBT individuals. This may be explained by the fact that there were no LGBT organisations in the country to advocate on the behalf of those who are affected and by the climate of fear that exists in Gambia for those perceived to be in opposition to government policies (see 3.7 and 3.8 above).⁵¹

⁴⁷ Article 19, The Gambia: Freedom of expression continued casualty, 16/12/2011

http://www.unhcr.org/refworld/country,...GMB_4f265b402_0.html

⁴⁸ The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), State-sponsored Homophobia: A world survey of laws criminalising same-sex sexual acts between consenting adults, Gambia, May 2011, http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2011.pdf

⁴⁹ US State Department Human Rights Report 2010 The Gambia, Section 6 <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

⁵⁰ COIS Gambia Country Report October 2011 (para 19.04)

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

⁵¹ US State Department Human Rights Report 2010 The Gambia, Section 6 <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

- 3.9.5** In February 2012, a news article published by The Independent (Kampala) reported that the Gambian President reiterated his stance that he would never accept homosexuality in The Gambia and said "We know what human rights are. Human beings of the same sex cannot marry or date [...] If you think it is human rights to destroy our culture, you are making a great mistake because if you are in the Gambia, you are in the wrong place then".⁵²
- 3.9.6** There is strong societal discrimination against LGBT individuals, but officially there are no laws that deny such individuals access to citizenship, employment, housing, education, or healthcare.⁵³

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

- 3.9.7 *Conclusion*** Case owners must refer to the Asylum Instruction on sexual orientation and gender identity in the asylum claim. Societal hostility and discrimination against LGBT persons exists in The Gambia and same sex relationships are illegal. While there are no reports at all of homosexuals being arrested on a widespread basis, it is accepted that gay men and lesbians are likely to face social hostility. Where this is the case internal relocation may be possible, but the personal circumstances of the individual applicant should be carefully considered when assessing whether it would be unduly harsh to expect them to do so.
- 3.9.8** Each case must however be examined on its own merits. Where caseowners conclude that a claimant is at real risk of persecution in The Gambia on account of their sexual orientation then they should be granted asylum because gay men, lesbians, bisexuals and intersex people in The Gambia may be considered to be members of a particular social group.
- 3.9.9** If an individual chooses to live discreetly because he/she wants to avoid 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.
- 3.9.10** 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 Domestic violence**
- 3.10.1** Some female applicants will apply for asylum or make a human rights claim based on the grounds that they are the victims of domestic violence and are unable to seek protection from the authorities.
- 3.10.2 *Treatment*** The criminal law prohibits rape, including marital rape, and assault, but there is no law expressly prohibiting domestic violence. Domestic and sexual violence are widespread yet they remain underreported. A culture of silence prevents victims from coming forward and such violence is often considered as a private family matter outside the

⁵² The Independent (Kampala), Uganda: Not Straight, 28/02/2012 <http://allafrica.com/stories/201202280519.html>

⁵³ US State Department Human Rights Report 2010 The Gambia, Section 6
<http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

jurisdiction of law enforcement. There is no law prohibiting sexual harassment.⁵⁴

- 3.10.3** Domestic violence, including spousal abuse, was a widespread problem; however, it was underreported due to the stigma surrounding such violence. There was no law prohibiting domestic violence; however, cases of domestic violence could be prosecuted under laws prohibiting rape, spousal rape, and assault. There have been no prosecutions. Cases of domestic violence are often settled through counselling and dialogue with family elders. Police generally considered reports of spousal rape to be domestic issues outside of their jurisdiction.⁵⁵
- 3.10.4** There are no shelters or hotlines for victims. One of the leading women's rights NGOs in the country, GAMCOTRAP, has included gender-based violence in its training modules for combating FGM.⁵⁶
- 3.10.5** Protection for the physical integrity of Gambian women is weak. Violence against women, including domestic violence and abuse is rarely reported, but its occurrence is believed to be quite common. Even though wife-beating is a criminal offence (and constitutes grounds for divorce under civil law), the police typically consider such incidents to be domestic issues that lie beyond their jurisdiction. The Gambia does have laws prohibiting rape and assault, which are generally enforced. Spousal rape, however, is not specifically recognised.⁵⁷
- 3.10.6** Gambia News reported that Gambia's Assistant Superintendent of Police Yahya Fadera declared there would be zero tolerance towards gender-based violence; in particular rape and sexual assault against women and girls, warning that perpetrators will have no place to hide. Fadera made the declaration in Banjul at the opening of a training workshop for law enforcement officers on violence against women and children.⁵⁸
- 3.10.7** Freedom House noted that many in The Gambia do not consider domestic violence as a crime.⁵⁹ In its submission to the UN Human Rights Council, the Sexual Rights Initiative stated that domestic violence is "largely tolerated by society and government", with the police regarding it as a "private matter" similar to sexual abuse in the home, which tends to be considered by the police as an issue "outside their jurisdiction".⁶⁰ Professor Abdoulaye Saine wrote that "human rights instruments and national laws [in The Gambia] offer little to no protection or recourse to wives and women that suffer such abuse [domestic violence] from husbands and other males, including relatives."⁶¹

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

3.10.8 Conclusion Case owners must refer to the Asylum Policy Instruction on gender.

⁵⁴ COIS Gambia Country Report October 2011 (para 21.15)

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

⁵⁵ US State Department Human Rights Report 2010: The Gambia, Section 6

<http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

⁵⁶ US State Department Human Rights Report 2010 The Gambia, Section 6

<http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

⁵⁷ COIS Gambia Country Report October 2011 (para 21.17)

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

⁵⁸ COIS Gambia Country Report October 2011 (para 21.21)

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

⁵⁹ Freedom House, Country Report 2011: The Gambia <http://www.freedomhouse.org/report/freedom-world/2011/gambia>

⁶⁰ UN Human Rights Council, Summary prepared by the office of the high commissioner for Human Rights in accordance with paragraph 15 (C) of the annex to Human Rights Council Resolution 5/1 – Gambia, 02/11/2009, paragraphs 19 and 20. http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/GM/A_HRC_WG6_7_GMB_3_E.pdf

⁶¹ The Gambia Echo, Guest Editorial: Violence against Women (wife-beating): A Bastion of Male-domination that must End, 04/03/2010. <http://www.thegambiaecho.com/Homepage/tabid/36/articleType/ArticleView/articleId/1831/Default.aspx>

3.10.9 Domestic violence is widespread in The Gambia and is widely under-reported. While there are laws in place which prohibits rape, including marital rape, and assault, there is no law expressly prohibiting domestic violence and there are no shelters or hotlines available to victims. Applicants are unlikely to access effective protection from the police. Internal relocation may be possible for some applicants to escape domestic violence, but the personal circumstances of an individual applicant should be taken into account when assessing whether it would not be unduly harsh to expect them to do so.

3.11 Prison conditions

3.11.1 Applicants 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.

3.11.2 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.

3.11.3 Consideration: Prison conditions were poor, and cells were overcrowded, damp, and poorly ventilated. Inmates complained of poor sanitation and food. Unlike in previous years, there were no reports that guards were reluctant to intervene in fights between prisoners in 2010. Local prisons were overcrowded, and inmates occasionally slept on the floor. Prior to conviction, detainees were allowed to receive food from outside, but not after conviction. Medical facilities in prisons were poor; inmates who fell ill often were taken to the Royal Victoria Teaching Hospital in Banjul or nearby health centers for examination and treatment. Water supply was adequate but lighting in some cells was poor. During the summer months temperatures are extremely high and there were no ceiling fans to reduce the heat.⁶² Amnesty International reports that “conditions in Gambian prisons, especially in Mile 2 Central Prison and other secret detention centres, military barracks, secret quarters in police stations, police stations in remote areas, and warehouses are appalling”.⁶³

3.11.4 According to Amnesty International, “Torture is used routinely in Gambia to force confessions and to punish detainees. Significant evidence has emerged in trials in recent years suggesting that people were tortured to extract confessions, raising concerns about the admissibility of the evidence”.⁶⁴ Similarly, the U.S. State Department stated that “there were reports that security forces tortured, beat, and mistreated persons in custody.”⁶⁵

3.11.5 In addition, the World Organisation Against Torture notes that “Torture and other ill-treatment in custody were reported but were never investigated by the police”.⁶⁶ Amnesty international submitted to the Human Rights Council in 2009 that it was aware of at least 20 people who have died in Mile Two Central Prison since 2005 and that no investigations had

⁶² US State Department Human Rights Report 2010 The Gambia, Section 1
<http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

⁶³ Amnesty International, “Freedom Day” in The Gambia is a travesty, 22/07/2010
<http://www.amnesty.org/en/library/asset/AFR27/005/2010/en/33cdeb4c-8d95-4ad4-9663-4704bf321f2d/af270052010en.pdf>

⁶⁴ Amnesty International, Climate of fear continues: Enforced disappearances, killings and torture in Gambia, 22/06/2011
<http://www.amnesty.org/en/library/asset/AFR27/001/2011/en/e5acba67-e8f2-4a86-b1e8-975b48e9baab/af270012011en.pdf>

⁶⁵ US State Department Human Rights Report 2010 The Gambia, Section 1
<http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

⁶⁶ World Organisation Against Torture, Steadfast in Protest; Annual Report 2010; The Gambia, October 2011
http://www.ecoi.net/file_upload/90_1319544266_obs-2011-uk-complet.pdf

been carried out by the authorities to determine the cause of death.⁶⁷ In February 2011, it was alleged that a man had been tortured to death in detention.⁶⁸

- 3.11.6** Pretrial detainees occasionally were held with convicted prisoners. At year's end, there were more than 800 inmates in the country's prisons. Women and men were held in separate wings, as were juveniles and adults. There were occasional reports of lawyers' and family members being denied access to detainees at Mile 2 Central Prison, but generally all prisoners had access to visitors. Prisoners were free to observe any religion. Prisoners and detainees who had complaints could transmit them through their lawyers or relatives, who could take up the complaints with judicial authorities.⁶⁹
- 3.11.7** Lack of resources coupled with the problem of overcrowding means most of the facilities provided are overstretched. Another problem is long pre-trial detentions. Many criminal cases get adjourned due to lack of enough judicial personnel to preside over them. Prison officials also need training, especially on international best practices. Other constraints faced by the prison services include lack of enough medical doctors and nurses to provide proper and timely medication and lack of adequate recreational and sporting facilities.⁷⁰
- 3.11.8** Authorities sometimes investigated credible allegations of inhumane conditions, as was the case in the reports of prisoners in Mile 2 being fed tainted beef in 2006. A Prisons Visiting Committee, which comprises several government agencies, is empowered to monitor detention center conditions, but it was thought to be inactive during 2010. The Office of the Ombudsman can investigate all reports brought before it, including bail conditions, pretrial detention, and confinement of juvenile offenders. However, it is not involved in negotiating alternatives for suspects facing the law. The Office of the Ombudsman did not publish findings of any investigations it conducted 2010.⁷¹
- 3.11.9** The government permitted limited independent monitoring of prison conditions by some local and international human rights groups and diplomatic missions; however, neither the media nor the International Committee of the Red Cross (ICRC) was granted access to detainees or prisoners during the year.⁷²
- 3.11.10** The Gambia abolished the death sentence in 1981 but had it reinstated in 1995. Two dozen people have been sentenced to death since then but no executions have reportedly been carried out.⁷³ The application of the death penalty was limited only to murder and treasonable offences. Even with that, it could only be imposed where the offence resulted in death, or the administration of any toxic substance, resulting in the death of another person.⁷⁴ However, in October 2010 the legislators approved a law that imposes the death penalty on people convicted of being in possession of cocaine or heroine amounting to or more than 250 grams.⁷⁵

3.11.11 Conclusion Prison conditions were poor and cells were overcrowded, damp, and poorly

⁶⁷ UN Human Rights Council, Summary prepared by the office of the high commissioner for Human Rights in accordance with paragraph 15 (C) of the annex to Human Rights Council Resolution 5/1 – Gambia, 02/11/2009, paragraphs 16. http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/GM/A_HRC_WG6_7_GMB_3_E.pdf

⁶⁸ FOROYAA Newspaper, Gambia: Young Man Alleged to Be Tortured to Death While Under Detention, 04/02/2011 <http://allafrica.com/stories/201102070280.html>

⁶⁹ US State Department Human Rights Report 2010 The Gambia, Section 1, <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

⁷⁰ COIS Gambia Country Report October 2011 (para 11.03) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁷¹ US State Department Human Rights Report 2010 The Gambia, Section 1, <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

⁷² US State Department Human Rights Report 2010 The Gambia, Section 1, <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

⁷³ COIS Gambia Country Report October 2011 (para 12.06) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁷⁴ COIS Gambia Country Report October 2011 (para 12.02) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁷⁵ COIS Gambia Country Report October 2011 (para 12.03) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

ventilated. Taking into account the incidence of torture, conditions are likely to reach the article 3 threshold in some cases. The individual circumstances 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 likely length of detention, the type of detention of facility and the individual's age, gender and state of health. Where 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 Asylum Instructions 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 Asylum Instructions 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 Asylum Instructions on Discretionary Leave and the Asylum Instructions 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 (a) they have family to return to; or (b) there are adequate reception and care arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, support and care arrangements in place for minors with no family in The Gambia. 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 Applicants 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 government is the major provider of health services. The public health care system has three tiers, based on the primary health care strategy. Presently, services are provided by four hospitals at the tertiary level, 38 health centers at the secondary level and 492 health posts at the primary level. The system is complemented by 34 private and nongovernmental organization (NGO) clinics. For most communities, the first point of contact with health care services is the informal sector through traditional healers.⁷⁶

4.4.3 Societal discrimination against persons infected with HIV/AIDS hindered disclosure and resulted in rejection by partners and relatives. The government took a multisectoral approach to fighting HIV/AIDS through its national strategic plan, which provided for care, treatment, and support to persons living with or affected by HIV/AIDS. The plan also protected the rights of those at risk of infection. In 2007 the national AIDS secretariat collaborated with the Chamber of Commerce and Industry to develop a business coalition response to HIV/AIDS, using workplace policies to destigmatize it and allow workers to feel comfortable seeking information. Public discourse about HIV/AIDS continued during the year [2010] as President Jammeh continued his controversial herbal treatment program for the disease. Throughout the year the Ministry of Health urged persons to undergo voluntary

⁷⁶ COIS Gambia Country Report October 2011 (para 24.04)
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

HIV/AIDS counselling and testing.⁷⁷

- 4.4.4** The number of people affected by mental disorders in the Gambia is significant. It is estimated that of a population of around 1.478 million, about 120,000 people have a mental disorder requiring treatment. However, almost 90% of people with severe mental disorder in the Gambia are left without access to the treatment they need. There is limited infrastructure for mental health treatment and care in the Gambia. The Polyclinic Mental Health Unit at the Royal Victoria Teaching Hospital has a single room allocated for outpatient mental health services. The Campama Psychiatric Unit (Banjul), the only inpatient facility in the country, is isolated and difficult to access, custodial in nature and has poor living conditions.⁷⁸
- 4.4.5** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant 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.

5. Returns

- 5.1** There is no policy which precludes the enforced return to The Gambia 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** Gambian nationals may return voluntarily to any region of The Gambia 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.
- 5.4** 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 The Gambia. 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. Gambian nationals wishing to avail themselves of this opportunity for assisted return to The Gambia should be put in contact with Refugee Action Details can be found on Refugee Action's web site at:

www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx

Country Specific Litigation Team
Immigration Group
UK Border Agency
May 2012

⁷⁷ US State Department Human Rights Report 2010 The Gambia, Section 6
<http://www.state.gov/g/drl/rls/hrrpt/2010/af/154348.htm>

⁷⁸ COIS Gambia Country Report October 2011 (para 24.14)
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>