



OPERATIONAL GUIDANCE NOTE

THE GAMBIA

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1. Introduction

- 1.1** This document provides UK Border Agency (UKBA) caseworkers 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. Caseworkers must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Caseworkers 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 caseworkers must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

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

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

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. Where a claim for asylum or Humanitarian Protection is being considered, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules. Where a person is being considered for deportation, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Part 13 of the Immigration Rules. Caseworkers must also consider if the applicant qualifies for Discretionary Leave in accordance with the published policy.
- 1.4** With effect from 27 July 2007 the Gambia is a country listed in section 94 of the Nationality, Immigration and Asylum Act 2002 in respect of men only. The designation was challenged in the courts in 2011 in the case [MD \(Gambia\)](#) when the Court found that although the situation in the Gambia was troubling the Secretary of State was entitled to conclude that the human rights infringements were not so systemic or general as to compel the conclusion that as a matter of law the Gambia could not properly be designated under section 94(4). Asylum and human rights claims must be considered on their individual merits. However, if, following consideration, a claim from a man who is entitled to reside in the Gambia is refused caseworkers must certify the claim as clearly unfounded unless satisfied that it is not. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail. The Gambia is not listed in section 94 in respect of women. If, following consideration, a claim from a woman is refused, caseworkers may, however, certify the claim as clearly unfounded on a case-by-case basis if they are satisfied that it is.

2. Country assessment

- 2.1** Caseworkers should refer the relevant COI Service country of origin information material. 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://fcohrdreport.readandcomment.com/read-and-download-the-report/>

2.2 Actors of protection

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

to the minister of defence, a position held by the president. The police, under the Ministry of Interior, are responsible for public security. The National Intelligence Agency (NIA), which reports directly to the president, is responsible for protecting state security, collecting intelligence, and conducting covert investigations. The NIA is not authorised to investigate police abuses but often assumed police functions such as detaining and questioning criminal suspects. During 2012 the National Drugs Enforcement Agency (NDEA), initially mandated to investigate narcotic crimes, received sweeping powers to protect state security, largely marginalising the NIA.¹ It is too soon to say whether this change will make any difference to the generally repressive political environment.

- 2.2.3** Security force members were frequently corrupt and ineffective. Impunity was a problem, and police sometimes defied court orders.²
- 2.2.4** A repressive political environment, aided by security agencies like the National Intelligence Agency (NIA), manufacture a culture of silence that reinforces compliance and coercion through arson attacks against media houses, assassinations, attempted assassinations, and abductions that result in the disappearance of journalists and citizens. President Jammeh also uses the courts to imprison his perceived enemies, sometimes for life. He manipulates the population, including civil servants and regime supporters, with hoax coup attempts that are foiled at the eleventh hour, only to be followed by yet another wave of arrests, firings, and detentions at Mile II, the country's notorious prison.³
- 2.2.5** Impunity for the country's security forces, particularly the NIA, is a problem. A 1995 decree allows the NIA to search, arrest, or seize any person or property without a warrant in the name of state security. Torture of prisoners, including political prisoners, has been reported as routine. Prisons are overcrowded and unsanitary, and inmates suffer from inadequate nutrition and lack of medical attention.⁴
- 2.2.6** The state generally cannot protect citizens from crime and threats to personal security. Newspapers have focused on the increased prosecutions of crimes; it is not clear whether the increased reporting on criminal cases indicates a rise in criminal activity or the regime's commitment to fighting crime and protecting citizens. There were several reported arrests of terrorist suspects, perhaps to attract Western financial assistance. There were also reports of alleged money-laundering activity by some foreign businesses in support of terrorist groups in the Middle East. The regime also allegedly gave safe passage and sanctuary to South American drug cartel members who used the national airport to ferry drugs to the U.S. and Europe.⁵
- 2.2.7** Official corruption remains a serious problem, although President Yahya Jammeh's recent focus on economic development policies led to increased anticorruption efforts, including the establishment of an Anti-Corruption

¹ US State Department, Country Report on Human Rights Practices 2012: The Gambia, Section 1D, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

² US State Department, Country Report on Human Rights Practices 2012: The Gambia, Section 1D, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

³ Freedom House, Countries at Crossroads 2012; The Gambia 20 September 2012, Accountability and public voice, <http://www.freedomhouse.org/report/countries-crossroads/2012/gambia>

⁴ Freedom House, Freedom in the World 2012; The Gambia, 4 July 2012 <http://www.freedomhouse.org/report/freedom-world/2012/gambia>

⁵ Freedom House, Freedom in the World 2013 – Gambia, The, 9 May 2013 <http://www.freedomhouse.org/report/freedom-world/2013/gambia>

Commission. In March 2010, the government prosecuted and dismissed several high ranking security officials for corruption and drug-related charges. Gambia was ranked 105 out of 176 countries surveyed in Transparency International's 2012 Corruption Perceptions Index.⁶

- 2.2.8** Poor training of military and security personnel result in the routine violation of fundamental human rights. Military personnel are above the law unless they run afoul of the president, who dismisses or jails and rehires them after they swear loyalty to him. A 2010 drug bust, conducted by British intelligence agents working with their Gambian counterparts, uncovered a cache of drugs and arms worth \$1 billion dollars. Several foreigners, key military, and security personnel were tried and jailed. It was clear that they were scapegoats to protect the military top brass and possibly the president himself, who is suspected of having a role in the drug trade. Though not a producer, the country's porous borders and complicit leadership has turned the country into a major transit point for illicit drugs into the U.S. and Europe.⁷
- 2.2.9** The newly restructured police prosecution and legal affairs unit has two officers assigned to human rights issues, but they received no complaints of abuses committed by police officers during 2012. Observers believed that citizens avoided reporting abuses due to fear of reprisal, lack of substantive redress, and a general mistrust of police. The Office of the Ombudsman appeared to handle most complaints against police officers.⁸
- 2.2.10** Few Gambians seek government redress as they believe that nothing is likely to come of communicating their grievances. Fear of government retaliation and poor familiarity with laws and government regulations dissuade many from engaging the state or its agencies; rural Gambians, in general, try to escape the reach of the state.⁹
- 2.2.11** Although the constitution provides for an independent judiciary, Jammeh has the authority to select and dismiss Judges. The judicial system recognises customary law and Sharia (Islamic law), primarily with regard to personal status and family matters.¹⁰
- 2.2.12** Judges who rule against the regime are sometimes dismissed, accused of corruption, and sacked. This severely weakens and exposes the judiciary to executive manipulation for political ends. President Jammeh's "hire and fire" policy also effectively reduces the civil service to a branch of his ruling party. Civil servants campaigned and donated to his re-election bid in 2011, and worked on his farms without pay. Promotions, rather than being based on merit, rested on ethnicity or loyalty to him. Consequently, the bulk of secretaries of state, top civil servants, as well as high-ranking military and senior security personnel, belong to President Jammeh's Jola ethnic group.¹¹

⁶ Freedom House, Freedom in the World 2013 – Gambia, The, 9 May 2013

<http://www.freedomhouse.org/report/freedom-world/2013/gambia>

⁷ Freedom House, Countries at Crossroads 2012; The Gambia 20 September 2012, Rule of Law,

<http://www.freedomhouse.org/report/countries-crossroads/2012/gambia>

⁸ US State Department, Country Report on Human Rights Practices 2012: The Gambia, Section 1D, 19 April 2013

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁹ Freedom House, Countries at Crossroads 2012; The Gambia 20 September 2012, Anti-Corruption and Transparency,

<http://www.freedomhouse.org/report/countries-crossroads/2012/gambia>

¹⁰ Freedom House, Freedom in the World 2013 – Gambia, The, 9 May 2013

<http://www.freedomhouse.org/report/freedom-world/2013/gambia>

¹¹ Freedom House, Countries at Crossroads 2012; The Gambia 20 September 2012, Rule of Law,

<http://www.freedomhouse.org/report/countries-crossroads/2012/gambia>

- 2.2.13** Civil society groups, including the Gambia Bar Association, spoke out against the conviction of Former High Court Judge, Moses Richards, and the excessive use of foreign judges, whose impartiality, competence and judicial independence were questioned. Gambian magistrates are also under executive pressure to rule in the regime's favor and hand out stiff prison sentences and exorbitant fines.¹²
- 2.2.14** The domination by the executive means presidential directives often trumps established legal procedures. Presumption of innocence, while guaranteed by law, is often sacrificed to curry favour with the president. The accused can have counsel, but only if they can afford it on their own. Prosecution of public officials is often politically motivated, either to settle scores or to eliminate a perceived threat.¹³
- 2.2.15** In February 2012, the first request from the Gambia to the UK for an individual to be extradited was refused. The Judge concluded that “Article 6 fair trial procedures, including judicial impartiality and an available (competent) lawyer, free to act in the best interests of his/her client, cannot be assured indeed that there is a very significant risk such safeguards will not be honoured. Similarly that (whether pre trial or if convicted post trial) detention will be in conditions that fall foul of Article 3 ECHR.”
- 2.2.16** Lack of democratic accountability and transparency, as well as judicial, legislative and civilian controls over the military remain key features of the post-1994 coup security environment. Having come to power through a coup, President Jammeh relies on security forces to remain in power. The NIA serves as the repressive arm of government, notorious for atrocious torture techniques used to extract confessions. Security forces suffer policy and institutional incoherence as a result of the high turnover of senior personnel. Former security officers are constantly intimidated and accused of plotting against the government, which leads to dismissals or imprisonment to stem the likelihood of a military coup.¹⁴
- 2.2.17** If the applicant's fear is of ill-treatment/persecution by the state authorities, or by agents acting on behalf of the state, then it is improbable that they can apply to those authorities for protection. If the ill-treatment/persecution is at the hands of non-state agents, then the provision of effective state protection is likely to be limited. Each case must be considered on its individual facts and the assessment of whether effective protection is available should be considered in relation to the particular circumstances and profile of the claimant and the latest country of origin information.

2.3 Internal relocation.

- 2.3.1** Caseworkers must refer to the Asylum Instruction on [Internal Relocation](#) and in the case of a female applicant, the AI on [Gender Issues in the Asylum Claim](#), for guidance on the circumstances in which internal relocation would be a 'reasonable' option, so as to apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant

¹² Freedom House, Countries at Crossroads 2012; The Gambia 20 September 2012, Rule of Law, <http://www.freedomhouse.org/report/countries-crossroads/2012/gambia>

¹³ Freedom House, Countries at Crossroads 2012; The Gambia 20 September 2012, Rule of Law, <http://www.freedomhouse.org/report/countries-crossroads/2012/gambia>

¹⁴ Freedom House, Countries at Crossroads 2012; The Gambia 20 September 2012, Rule of Law, <http://www.freedomhouse.org/report/countries-crossroads/2012/gambia>

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. Caseworkers must refer to the Gender Issues in the asylum claim where this is applicable. The fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

- 2.3.2** Where a category of applicants' fear is of ill-treatment/persecution by the state authorities, then internal relocation to escape that persecution will not generally be an option. Very careful consideration must be given to whether internal relocation would be a viable way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, from non-state actors, and it would not be unreasonable to expect them to do so, then asylum or humanitarian protection should be refused.
- 2.3.3** The constitution and law provide for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights.¹⁵
- 2.3.4** 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.¹⁶
- 2.3.5** Careful consideration must be given to the relevance and reasonableness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular claimant. Caseworkers need to consider the ability of the persecutor to pursue the claimant in the proposed site of relocation, and whether effective protection is available in that area. Caseworkers will also need to consider the age, gender, health, ethnicity, religion, financial circumstances and support network of the claimant, as well as the security, human rights and socio-economic conditions in the proposed area of relocation, including the claimant's ability to sustain themselves.

2.4 Country guidance caselaw

[K and others \(FGM\) Gambia CG \[2013\] UKUT 62 \(IAC\) \(09 April 2013\)](#)

The Court found:

1. FGM has been practised upon about three quarters of the female population of The Gambia historically. The most recent scientific evidence, based on data from

¹⁵ US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 2d, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

¹⁶ US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 2d, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

2005, showed no significant change in its incidence. There are ongoing campaigns, principally by GAMCOTRAP (Gambia Committee on Traditional Practices Affecting the Health of Women and Children), aiming to reduce and eventually to eliminate FGM. There has been some increase in published opinion in the Gambia against FGM, and there have been local declarations of renunciation, but there has been no scientific evaluation of GAMCOTRAP's effectiveness in establishing a decline.

2. Incidence of FGM varies by ethnic group. Within the four main ethnic groups there are subgroups, within which the incidence may vary – see the table below. In no ethnic group is the practice universal; in some ethnic groups the practice is absent. Ethnic groups are thoroughly interspersed. The country is small and highly interconnected. (Where reference is made to ethnic group we include sub-groups save where specified)

3. The evidence as at November 2012 falls short of demonstrating that intact females in The Gambia are, as such, at real risk of FGM. The assessment of risk of FGM is a fact sensitive exercise, which is likely to involve ethnic group, (whether parental or marital), the attitudes of parents, husband and wider family and socio-economic milieu.

4. There are significant variables which affect the risk:

- (i) the practice of the kin group of birth: the ethnic background, taking into account high levels of intermarriage and of polygamy;
- (ii) the education of the individual said to be at risk;
- (iii) her age;
- (iv) whether she lived in an urban or rural area before coming to the UK;
- (v) the kin group into which she has married (if married); and
- (vi) the practice of the kin group into which she has married (if married).

Also relevant is the prevalence of FGM amongst the extended family, as this may increase or reduce the relevant risk which may arise from the prevalence of the practice amongst members of the ethnic group in general.

5. In assessing the risk facing an individual, the starting point is to consider the statistical information currently known about the prevalence of the practice within the ethnic group that is the relevant ethnic group in the individual's case, as follows:

- a. If the individual is unmarried and given that ethnicity is usually taken from the father in The Gambia, the relevant ethnic group is likely to be the ethnic group of the father.
- b. If the individual is married to a man from an ethnic group that is different from her father's ethnic group, then the relevant ethnic is the ethnic group of the husband.

The statistics from which the prevalence of the practice of FGM within the ethnic groups in the Gambia is drawn, vary considerably given the lack of detailed research and analysis undertaken in The Gambia. From the material before the Upper Tribunal, those statistics indicate as follows:

Ethnic group	Prevalence of FGM/C
Mandinka	May be as high as 80-100%
Fula (Overall)	30%
Hobobehs (sub group of Fula)	0%
Jama (sub group of Fula)	0%
Toranks, Peuls, Futas, Tukuleurs, Jawarinkas, Lorbehs, Ngalunkas and Daliankos (sub groups of Fula)	Practise but % unknown
Serehule	May be as high as 100%
Njefenjefe (within the Serehule ethnic grouping)	0%
Niumikas (within the Serehule ethnic grouping)	Practise but % unknown
Jola & Karonikas	90 to 100%
Jola Foni	Practise but % not known
Jola Casa	0%
Others	Variable
Wolof – those who migrated from Senegal Oriental	0%
Wolof – those who migrated from Sine Saloum	Practise but % not known

6. The next step is to consider the various other factors mentioned in paragraph 4 above as some may increase the risk, whilst others may reduce the risk. Whilst each case will turn on its own facts, the following are of general application:

- a. In the case of an unmarried woman, parental opposition reduces the risk. In the case of a married woman, opposition from the husband reduces the risk. If the husband has no other “wives”, the risk may be reduced further. However, it should be borne in mind that parental/spousal opposition may be insufficient to prevent the girl or woman from being subjected to FGM where the extended family is one that practises it, although this will always be a question of fact.
- b. If the prevalence of the practice amongst the extended family is greater than the prevalence of the practice in the ethnic group in question, this will increase the risk. Conversely, if the prevalence of the practice amongst the extended family is less than the prevalence of the practice in the ethnic group in question, this will reduce the risk.
- c. If the woman is educated (whether she is single or married), the risk will reduce.
- d. If the individual lived in an urban area prior to coming to the United Kingdom, this will reduce the risk. Conversely, if the individual lived in a rural area prior to coming to the United Kingdom, this will increase the risk.
- e. The age of a woman does not affect the risk measurably; it is an issue upon marriage. Amongst the Fula, FGM has been carried out on babies as young as one week old. The average age at which FGM is carried out appears to be reducing and this may be due to concerns about the international pressure to stop the practice. Although there are statistics about the average age at which FGM is carried out on girls and women for particular ethnic groups, the evidence does not show that, in general, being above or below the relevant average age has a material effect on risk. It would therefore be unhelpful in most cases to focus on the age of the girl or woman and the

average age at which FGM is carried out for the ethnic group of her father (if unmarried) or that of her husband (if married).

7. Thus, it is possible to arrive at a conclusion that the risk faced by an individual is less than, or more than, the rate of incidence of FGM in the ethnic group of the individual's father (if unmarried) or her husband (if married). The rate of incidence of FGM in an ethnic group must therefore be distinguished from the degree of likelihood of infliction on an individual against her will or against the will of her parents. Some individuals from ethnic groups with a high incidence may not be at risk, while some individuals from ethnic groups with a low incidence may be at risk.

8. State protection: FGM is not specifically criminalised in The Gambia although it may be covered by the existing criminal law on assault or in The Gambia's Children's Act 2005. However, there are no known cases of prosecutions under the general criminal law or under the 2005 Act. There is no reliable evidence to suggest that a female who may be at real risk of FGM can avail herself of effective State protection or that her father or husband could invoke such protection on her behalf.

9. Internal flight: As a general matter, an individual at real risk of FGM in her home area is unlikely to be able to avail herself of internal relocation, although this is always a question of fact. Cogent reasons need to be given for a finding that the individual would be able to relocate safely, especially given the evidence that ethnic groups are thoroughly interspersed, the country is small and ethnic groups in different parts of the country are highly interconnected.

[Supreme Court. RT \(Zimbabwe\) & others v Secretary of State for the Home Department \[2012\] UKSC 38 \(25 July 2012\)](#) The Supreme Court ruled that the rationale of the decision in HJ (Iran) applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

[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;

“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. All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

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

3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in the Court of Appeal’s judgment in [Karanakaran](#) should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction ‘[Considering the asylum claim and assessing credibility](#)’).

3.3 For any asylum cases which involve children either as dependents or as the main applicants, caseworkers must have due regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. The UKBA instruction ‘[Every Child Matters: Change for Children](#)’ sets out the key principles to take into account in all Agency activities.

3.4 If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instruction on [Discretionary Leave](#)).

Consideration of Articles 15(a) and (b) of the Directive/Articles 2 and 3 ECHR

3.5 An assessment of protection needs under Article 15(c) of the Directive should only

be required if an applicant does not qualify for refugee protection, and is ineligible for subsidiary protection under Articles 15(a) and (b) of the Directive (which broadly reflect Articles 2 and 3 of the ECHR). Caseworkers are reminded that an applicant who fears a return to a situation of generalised violence may be entitled to a grant of asylum where a connection is made to a Refugee Convention reason or to a grant of Humanitarian Protection because the Article 3 threshold has been met.

Other severe humanitarian conditions and general levels of violence

- 3.6** There may come a point at which the general conditions in the country – for example, absence of water, food or basic shelter – are unacceptable to the point that return in itself could, in extreme cases, constitute inhuman and degrading treatment. Decision makers need to consider how conditions in the country and locality of return, as evidenced in the available country of origin information, would impact upon the individual if they were returned. Factors to be taken into account would include age, gender, health, effects on children, other family circumstances, and available support structures. It should be noted that if the State is withholding these resources it could constitute persecution for a Convention reason and a breach of Article 3 of the ECHR.
- 3.7** As a result of the [Sufi & Elmi v UK](#) judgment in the European Court of Human Rights (ECtHR), where a humanitarian crisis is predominantly due to the direct and indirect actions of the parties to a conflict, regard should be had to an applicant's ability to provide for his or her most basic needs, such as food, hygiene and shelter and his or her vulnerability to ill-treatment. Applicants meeting either of these tests would qualify for Humanitarian Protection.

Credibility

- 3.8** 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 'Section 4 – Making the Decision in the Asylum Instruction [‘Considering the asylum claim and assessing credibility’](#). Caseworkers 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 UKBA file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.
- 3.9 Female Genital Mutilation (FGM)**
- 3.9.1** 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.
- 3.9.2 Treatment.** The law does not prohibit female genital mutilation/cutting (FGM/C), and the practice remained widespread. A 2005-06 survey by UNICEF found that almost 80 percent of girls and women between the ages of 15 and 19 had undergone FGM/C and that seven of the nine major ethnic groups practiced

FGM/C on girls from shortly after birth until age 16. Type 1 was the most prevalent. FGM/C was less frequent among educated and urban groups. Some religious leaders publicly defended the practice. There were reports of health complications, including deaths, associated with FGM/C; however, no accurate statistics were available. Several NGOs conducted public education programs to discourage the practice and spoke out against FGM/C in the media.¹⁷

3.9.3 Information on the prevalence rates of FGM within the various ethnic groups in the Gambia is limited due to a lack of detailed research and analysis. Caseworkers must refer to the country guidance case of [K and others \(FGM\) Gambia CG \[2013\]](#) in which the Upper Tribunal drew up a table (see caselaw section above) showing the prevalence rates based on the material which was before the Upper Tribunal as well as analysing the risks and availability of protection and scope for internal relocation to escape such risks.

See also: [Actors of protection](#) (section 2.2 above)

[Internal relocation](#) (section 2.3 above)

[Caselaw](#) (section 2.4 above)

3.9.4 Conclusion. The law does not prohibit FGM and the practice-remains widespread. Women who have not undergone FGM but who come from tribes that practice it, and who are able to demonstrate that they are at serious risk of facing such treatment should be granted asylum as members of a particular social group (PSG) if they are unable to escape the risk by internal relocation.

3.9.5 According to the findings in [K and others \(FGM\) Gambia CG \[2013\]](#) as a general matter, an individual at real risk of FGM in her home area is unlikely to be able to avail herself of internal relocation, although each case should be considered on its individual merits. Very careful consideration must therefore be given and sound reasons made for finding that an individual would be able to relocate safely, given the evidence that ethnic groups are thoroughly interspersed, the country is small and ethnic groups in different parts of the country are highly interconnected.

3.9.6 Where applicants are granted asylum the accompanying parents may be eligible for a grant of leave. The act of enforced FGM on a child, where the parents are opposed to the act and there is no sufficiency of protection could result in mental suffering of the parents such as to amount to persecution. Caseworkers should consider whether, on the basis of the facts, accompanying parents would qualify for asylum on the basis of a well founded fear of persecution as a member of a PSG (accompanying parents of a daughter at risk of FGM) in the Gambia. Each case however, must be considered on its individual merits.

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

3.10.1 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)

3.10.2 Treatment. The Gambia is not an electoral democracy. The 2011 presidential

¹⁷ US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 6, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

election was marred by voter intimidation and government control of the media. The president is elected by popular vote for five-year terms. Of the 53 members of the National Assembly, 48 are elected by popular vote, with the remainder appointed by the president; members serve five-year terms.¹⁸

- 3.10.3** The constitution and law provide for freedom of assembly; however, police systematically refused requests for permission to hold demonstrations, even peaceful ones, and occasionally refused to issue permits to opposition parties wishing to hold political rallies. Unlike in previous years, in 2012 there were no reports that opposition leaders were imprisoned for organising political rallies without permits. The constitution and law provide for freedom of association, and the government generally respected this right in practice. Individuals who publicly or privately criticised the government or the president risked government reprisal. There were also examples of arbitrary arrest and detention. For example, on 31 October 2012, police arrested and detained for days without charge former government minister Mambury Njie before releasing him on bail. Njie, as minister of foreign affairs, reportedly advised against the executions of death row prisoners in August 2012. He was dismissed shortly afterwards. On 14 December, when he reported to the police as required under his bail conditions, he was taken to court and charged with economic crimes and abuse of office. He was remanded to prison custody and denied bail by a magistrate. No further details were given of the charges against him, and he remained in detention at the end of 2012.¹⁹
- 3.10.4** Freedoms of assembly and association are legally protected but constrained by state intimidation in practice. Workers, except for civil servants and members of the security forces, have the right to form unions, strike, and bargain for wages through a climate of fear generated by the state dissuades workers from taking action.²⁰ In 2012, a number of high-profile individuals were arrested arbitrarily or held without charge for longer than the 72 hours permitted; at least nine such documented cases occurred in December alone.²¹
- 3.10.5** Under international human rights law as well as Gambian law, individuals may only be deprived of their liberty on grounds and according to procedures established by law. The Gambian 1997 Constitution Chapter IV Section 19, Article 9 of the International Covenant on Civil and Political Rights (ICCPR) and Article 4 of the African Charter all guarantee the right of everyone to liberty and security, including the right not to be subjected to arbitrary arrest or detention. The Gambia is a state party to the ICCPR and the African Charter.²²
- 3.10.6** After a new wave of arrests, Amnesty International, ARTICLE 19 and the Commonwealth Human Rights Initiative strongly urge the Gambian government to immediately stop its crackdown on human rights defenders, journalists, government critics, lawyers and anyone who dares to speak out against the government or its policies.²³

¹⁸ Freedom House, Freedom on the world 2012; The Gambia 4 July 2012 <http://www.freedomhouse.org/report/freedom-world/2012/gambia>

¹⁹ US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 2b, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

²⁰ Freedom House, Freedom on the world 2012; The Gambia 4 July 2012 <http://www.freedomhouse.org/report/freedom-world/2012/gambia>

²¹ Freedom House, Freedom in the World 2013 – Gambia, The, 9 May 2013 <http://www.freedomhouse.org/report/freedom-world/2013/gambia>

²² Article 19, The Gambia: Government must stop intimidation and harassment of human rights defenders, journalists, lawyers and government critics, 21 December 2012 <http://www.refworld.org/docid/50eeb0a72.html>

²³ Article 19, The Gambia: Government must stop intimidation and harassment of human rights defenders, journalists, lawyers and government critics, 21 December 2012 <http://www.refworld.org/docid/50eeb0a72.html>

- 3.10.7** The fact that individuals could be arrested and detained often without any clear reason, explanation or evidence of a crime by the security forces is extremely worrying and a blatant violation of the basic rights enshrined in international law and in the Gambian Constitution. In some cases, the detainees themselves have not been informed of reasons for their arrest and access to legal representation has not been allowed. In most cases, if released they were subjected arbitrarily to procedures such as frequent check-in with the security forces.²⁴
- 3.10.8** Since the beginning of December 2012, at least nine cases of arbitrary arrest and illegal detention have been documented. The government continues to instill fear and use intimidation through arbitrary arrests and detention with the purpose of stifling expression and dissenting voices. The abuse of office by those in power is also a worrying practice. Several high profile individuals have recently been targeted and arrested either without charge or based on questionable charges; detained for longer than the constitutionally allowed period without being brought before a court; or released on onerous bail conditions and ordered to report daily to the security forces without any evidence or indication that a crime has been committed.²⁵
- 3.10.9** Amnesty International reports that during 2011, the National Intelligence Agency (NIA), the police and the army unlawfully arrested and detained people. Detainees were rarely informed of their rights or the reason for their arrest or detention and were often held for more than 72 hours without charge, in violation of the Constitution. Torture continued to be used routinely to extract confessions and as punishment. Human rights defenders, including lawyers and journalists, were also unlawfully arrested and detained. In March 2011, two family members of exiled opposition leader Mai Fatty were arrested and detained for displaying political campaign materials. On 7 June 2011, former Minister of Information and Communication Dr Amadou Scattred Janneh was arrested and detained at Mile 2 Central Prison, along with two others. They were charged with treason, which carries the death penalty, for printing and distributing T-shirts with the slogan "End to Dictatorship Now".²⁶ Dr. Janneh was sentenced to life in prison in January 2012, after spending a year in solitary detention. He was released in September 2012, but was not pardoned and instead "expelled in-stead from The Gambia" as a dual citizen of the United States of America.²⁷
- 3.10.10** During 2012 there were credible reports that the government held civilians based on their political views or associations, and some were held incommunicado for prolonged periods. There were nearly 30 reported political prisoners in detention at year's end. Most were former military personnel accused of involvement in plots to overthrow the government. They were held in the security wing of Mile 2 Central Prison, but were occasionally allowed visits from family members. The government did not allow international human rights organisations to have regular access to these detainees.²⁸ Amnesty International reports that

²⁴ Article 19, The Gambia: Government must stop intimidation and harassment of human rights defenders, journalists, lawyers and government critics, 21 December 2012 <http://www.refworld.org/docid/50eeb0a72.html>

²⁵ Article 19, The Gambia: Government must stop intimidation and harassment of human rights defenders, journalists, lawyers and government critics, 21 December 2012 <http://www.refworld.org/docid/50eeb0a72.html>

²⁶ Amnesty International, Amnesty International Annual Report 2012 - Gambia, 24 May 2012, <http://www.refworld.org/docid/4fbc393b37.html>

²⁷ The Gambia News, CCG (Coalition for Change-Gambia) and Civil Society Associations Welcomes Release Of Dr. Amadou Scattred Janneh, 4 October 2012 <http://thegambianews.eu/ccg-and-civil-society-associations-welcomes-release-of-dr-amadou-scattred-janneh/>

²⁸ US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 1e, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

following the August 2012 execution of 9 death row prisoners, 38 people remained on death row and that “many have been sentenced to death after unfair or politically-motivated trials. Due process safeguards are frequently not observed - many people sentenced to death have not had access to legal advice or have not been able to pursue a proper appeals process.”²⁹

- 3.10.11** Men believed to be state security agents arrested and held without charge United Democratic Party (UDP) supporter Kanyiba Kanyi shortly before the 2006 presidential elections; he remained in prison at the end of 2012. The government has not permitted Kanyi's lawyer or international humanitarian organisations to have access to Kanyi. In 2008 Kanyi's lawyer, who maintained that the NIA was holding Kanyi, filed an application to force the state to comply with the 2006 high court rulings to free him. In 2009 the judge presiding over the case returned the case file to the Office of the Chief Justice in an apparent attempt to recuse himself from the trial; the judge provided no explanation. A relative reportedly sighted Kanyi in 2008 at the Royal Victoria Teaching Hospital, where he was being escorted by wardens from Mile 2 Central Prison.³⁰
- 3.10.12** According to the 2012 US State Department's Human Rights Report the government harassed, arrested, and detained human rights workers.³¹
- 3.10.13** A number of domestic and international human rights groups generally operated despite government restrictions, investigating and publishing their findings on human rights cases. However, government officials were seldom cooperative or responsive to their views. According to Annual Report 2011 of the Observatory for the Protection of Human Rights Defenders, the legal and institutional environment in the country continued to limit nongovernmental organisations (NGOs) and human rights monitoring activities. The NGO Decree of 1996 imposes a cumbersome registration process, allows the government to reject valid NGO registration, and requires annual submissions of budgets and work programs. The 2010 decision to place supervision of NGO activities under the Office of the President resulted in increased restrictions. Human rights organisations censored themselves and focused on non-sensitive problems. Several groups expressed concern over detainees held incommunicado, but the government did not respond.³²
- 3.10.14** On 12 November 2012, the magistrate's court in Banjul acquitted and discharged two prominent women's rights activists and campaigners against female genital mutilation/cutting (FGM/C), Isatou Touray, executive director of the NGO GAMCOTRAP, and the agency's program coordinator, Amie Bojang Sissoho. Touray and Sissoho were arrested in 2010 and charged with mismanaging a 30,000 euro (\$39,600) grant by the Spanish NGO Yolocamba Solidaridad. The two were subsequently denied bail and spent eight days in prison before their trial could proceed. The charges of theft were reportedly based on the findings of an investigative panel that looked into GAMCOTRAP's management of the

²⁹ Amnesty International, The Gambia: The Gambian government must not carry out any further executions of death row prisoners, 5 September 2012

<http://www.amnesty.org/en/library/asset/AFR27/009/2012/en/c0a433e9-8579-4536-a397-c3ad4e61a2eb/afr270092012en.pdf>

³⁰ US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 1e, 19 April 2013
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

³¹ US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 5, 19 April 2013
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

³² US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 5, 19 April 2013
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

Yolocamba grant. A previous panel set up by the Office of the President in 2010 concluded that the allegations of mismanagement were unfounded. In January 2011, during a hearing at Banjul Magistrate's Court, the director of the Spanish NGO denied accusing anyone associated with GAMCOTRAP of theft. Both Touray and Sissoho continued their work with GAMCOTRAP during 2012.³³

3.10.15 Unlawful detentions are also a concern. In June 2012, a critic of the President, Imam Ba-Kawsu Fofana, was detained and allegedly tortured. In December 2012, Imam Baba Leigh, who criticised the August 2012 executions, was also detained.³⁴ Amnesty International notes that Baba Leigh was 'effectively disappeared' as he was held at an unknown location for five months until his release in May 2013 without being charged with a crime, brought before a court, or allowed contact with a lawyer or his family.³⁵

3.10.16 Under Section 114 of the Criminal Code Act Cap 10 Vol.III Laws of The Gambia 2009 (Criminal Code), which deals with providing false information to a public servant, the Gambian authorities reportedly arrested and prosecuted journalists, human rights activists, political opponents or anyone who spoke out against the authorities. The new April 2013 'Criminal Code (Amendment) Act or 'Principal Act' broadens the definition of public servant in Section 114 to include the President, Vice President, Ministers and members of the National Assembly. The Act also increases the punishment for providing false information to a public servant from six months to five years imprisonment and/or a fine of 50,000 dalasi (roughly \$1515USD), up from 500 dalasi (roughly \$15USD). Many Gambian journalists, human rights defenders and lawyers have told Amnesty International they fear these changes to the law will facilitate further human rights violations by the authorities and allow them to impose harsher punishments for people who are exercising their right to freedom of expression.³⁶

3.10.17 Those perceived as political opponents of the Government are also subject to threats and monitoring while living outside of the country. For example, in January 2011, Gambia's Justice Minister, Edward Gomez, noted that any Gambian dissident who portrayed the country in a negative light while abroad would be prosecuted should they return home. He stated that "These are unfortunately evil members of The Gambian society who took refuge abroad putting every nonsensical story on papers and on radios to tarnish the good image of The Gambia government," and that "We will wait here for them to come".³⁷ Furthermore, Amnesty International has obtained a copy of a letter which appears to have been sent by the Gambian Police Force in February 2013 to the heads of all the security forces and which orders the surveillance of 12 Gambians living abroad in a variety of countries, including the UK.³⁸

³³ US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 5, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

³⁴ FCO, Human Rights and Democracy 2012; Case study: The Gambia – the death penalty, April 2013 <http://www.hrdreport.fco.gov.uk/promoting-british-values/criminal-justice-and-the-rule-of-law/the-death-penalty/case-study-the-gambia-the-death-penalty/>

³⁵ Amnesty International, Activist freed - journalist still missing in The Gambia, 14 May 2013 <http://www.amnesty.org/en/news/activist-freed-journalist-still-missing-gambia-2013-05-14>

³⁶ Amnesty International, Gambia: Principal Act raises serious human rights concerns, 7 May 2013 <http://www.amnesty.org/en/library/asset/AFR27/003/2013/en/a0022dff-4112-44f8-b1cf-a7aa7d42021a/afr270032013en.pdf>

³⁷ Freedom Newspaper, Backlash Against "Dissidents Using Internet Radio," The Minister Warns, 9 January 2011, <http://www.freedomnewspaper.com/Homepage/tabid/36/newsid367/5866/Breaking-News-Gambian-Justice-Minister-Gomez-Warn-Gambians-abroad-Portraying-The-Country-In-A-Negative-Light/Default.aspx> and see also <http://www.gambiacampaign.org/newsandreports/news/?page=9>

³⁸ Available from COI Service on request

See also: [Actors of protection](#) (section 2.2 above)
[Internal relocation](#) (section 2.3 above)
[Caselaw](#) (section 2.4 above)

3.10.18 Conclusion. The constitution and law provide for freedom of assembly and association. However, in practice a climate of fear exists in which individuals who are perceived to oppose the government, including members of the political opposition, human rights defenders, lawyers and NGO workers, have been intimidated, harassed, arbitrarily arrested, detained without due process and tortured. In some cases individuals have been victims of enforced disappearance and extra-judicial execution.

3.10.19 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 coming to the attention of the authorities based on their perceived political opinion, a grant of asylum will be appropriate.

3.11 Journalists

3.11.1 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.

3.11.2 Treatment. Although Article 34 of the constitution provides for freedom of the press and freedom of expression, the government does not respect these rights in practice. Constitutional protections are undermined by other legislation, primarily the 2004 Newspaper Amendment Act, which requires newspapers to reregister and imposes excessive bonds on media institutions, as well as a 2004 criminal law that mandates stiff penalties for offenses including publication of false information, sedition, and libel. These provisions give the authorities great power to silence dissent. A 2005 press law guarantees the right of citizens to obtain information and prohibits censorship, but there are broad restrictions on any content that is considered contrary to the principles of Islam or offensive to other religions. Media outlets are sometimes fined and journalists are occasionally arrested for disseminating "un-Islamic material," leading to self-censorship.³⁹

3.11.3 The government owns The Gambia Info newspaper, a national radio station, and the only national television station. Political news coverage at these outlets generally toes the official line. There are eight private newspapers and nine private radio stations. Private media outlets are subject to official pressure, and many have toned down coverage of the opposition. Most businesses avoid advertising with private media outlets for fear of government reprisals. A premium television network operates as a locally based satellite station. Foreign news services are rebroadcast on several local radio stations. The government did not interfere with access to foreign cable or satellite television news broadcasts in 2011, which were generally available to most citizens. About 11 percent of the population had

³⁹ Freedom House, Freedom of the Press 2012 - Gambia, 21 November 2012
<http://www.refworld.org/docid/50af4d1328.html>

access to the internet in 2011. The online news sites Freedom and The Gambia Echo, both based in the United States, have periodically been blocked by the authorities.⁴⁰

- 3.11.4** Attacks against the media increased in 2012. Newspapers and radio stations regularly face harassment and are sometimes closed without warning or explanation. Journalists and broadcasters can be detained on loose interpretations of the criminal law. In one case, two journalists were arrested for sedition when they applied for a permit to hold a peaceful demonstration. The UN investigation into the disappearance of another journalist, Chief Ebrima Manneh, is still ongoing.⁴¹ “Chief Ebrima Manneh, disappeared without trace into the sinister Mile Two prison on the Banjul sea front and the authorities have always denied holding him, despite numerous reports from prisoners and eye witnesses to the contrary.⁴²
- 3.11.5** The murder of the country’s most prominent journalist, editor of the weekly The Point, Deyda Hydera, on 16 December 2004, marked the end of a period when a well organised and rigorous private press could still stand firm against a government which did not hide its hostility towards it. Hydera was formerly president of the journalists’ union, correspondent for Reporters Without Borders and AFP, the doyen of the country’s journalists and a perceptive editorialist, pointing out the erring ways of the inexperienced and mystic young president. At the time he was killed, within a stone’s throw of a police barracks, Hydera was being permanently watched by the dreaded National Intelligence Agency (NIA), the head of state’s all-powerful intelligence service. Since his death, almost all those who were a thorn in the president’s side have fallen into step or have left the country.⁴³
- 3.11.6** As Gambians went to the polls in November 2011 to re-elect Jammeh to a fourth five-year term, he publicly vilified journalists who were demanding more press freedom. Reporters from news outlets that are perceived to be critical of the government are routinely denied access to public information and excluded from official events.⁴⁴
- 3.11.7** In September 2012 State security agents in the Gambia ordered two independent newspapers to cease publication immediately but provided no explanation, according to local journalists and news reports. Agents from the National Intelligence Agency (NIA) in the capital, Banjul, visited the offices of the daily ‘The Standard’ and the paper ‘Daily News’, which publishes three times a week, and told them that the president had ordered both papers to be shut down immediately. Both The Standard and Daily News have covered the controversy surrounding President Yahya Jammeh’s announcement in August 2012 to execute every prisoner on death row, resuming a practice not carried out since 1985. The Standard covered both sides of the controversy, including publishing interviews, letters from readers, and public statements opposing and supporting the executions. The Daily News has extensively covered opposition to the executions.

⁴⁰ Freedom House, Freedom of the Press 2012 - Gambia, 21 November 2012

<http://www.refworld.org/docid/50af4d1328.html>

⁴¹ FCO, Human Rights Report 2012; Case study: The Gambia – the death penalty, April 2013

<http://www.hrdreport.fco.gov.uk/promoting-british-values/criminal-justice-and-the-rule-of-law/the-death-penalty/case-study-the-gambia-the-death-penalty/>

⁴² Reporters Without Borders, World report; Gambia, updated April 2009 http://en.rsf.org/report-gambia_18.html

⁴³ Reporters Without Borders, World report; Gambia, updated April 2009 http://en.rsf.org/report-gambia_18.html

⁴⁴ Freedom House, Freedom of the Press 2012 - Gambia, 21 November 2012

<http://www.refworld.org/docid/50af4d1328.html>

The Standard has been targeted in the past with the government shutting down the paper for eight months between 2010 and 2011 without giving any explanation.⁴⁵

- 3.11.8** In October 2012 two journalists, Baboucarr Ceesay and Abubaccar Saidykhan, received death threats via e-mails. The two journalists were arrested and charged in early September 2012 after calling for a peaceful demonstration against a wave of executions of prisoners ordered by Jammeh in August. The charges were dropped in early October 2012. Reporters without Borders state in an article dated 26 October 2012 that “The conditions that journalists face in Gambia have deteriorated to alarming extent. Since August 2012, Yahya Jammeh, a predator of freedom of information, has been increasing judicial and administrative pressure on journalists working for independent news organisations. Encouraged by these methods, the Gambian president’s supporters are prepared to resort to murder when journalists dare to criticize the government.”⁴⁶
- 3.11.9** Journalists and other media workers were routinely subjected to harassment, arrests and threats of closure, making it extremely difficult for them to carry out their work. In July 2011, Nanama Keita was detained and charged with giving “false information” after he petitioned President Jammeh over his alleged wrongful dismissal from the Daily Observer newspaper, where he was sports editor. He fled the country after receiving death threats he believed to be from the government. Journalist Seikou Ceesay was detained in October for acting as a guarantor for Nanama Keita. Seikou Ceesay's wife was also arrested and briefly detained. No payment was made by the government in the case of Musa Saidykhan, who was awarded US\$200,000 damages by the ECOWAS court in December 2010. Musa Saidykhan, former editor-in-chief of The Independent, was tortured after state security agents raided the newspaper's offices in 2006, shut it down and imprisoned its staff.⁴⁷
- 3.11.10** Three Gambian journalists living in exile--former Gambian Press Union (GPU) president Ndey Tapha Sosseh, columnist Mathew Jallow, and Famara Demba--indicted in absentia, still had charges of treason and sedition pending against them at the end of 2012.⁴⁸

See also: [Actors of protection](#) (section 2.2 above)
[Internal relocation](#) (section 2.3 above)
[Caselaw](#) (section 2.4 above)

- 3.11.11 Conclusion.** The constitution and law provide for freedom of speech and of the press; however, the government limited these rights by intimidation, detention, restrictive legislation and the closure of media outlets. The Government continues to harass and detain journalists who write or publish articles which are considered unfavourable to the authorities or “un-Islamic”. Journalists are also risk of being disappeared and face death threats, arrest and ill-treatment by the government.

⁴⁵ Committee to Protect Journalists, Amid execution debate, the Gambia censors newspapers, 17 September 2012 <https://www.cpj.org/2012/09/amid-execution-debate-the-gambia-censors-newspaper.php>

⁴⁶ Reporters Without Borders, Two journalists threatened with death in hostile e-mails, 26 October 2012 http://en.rsf.org/gambia-two-journalists-threatened-with-26-10-2012_43595.html

⁴⁷ Amnesty International, Amnesty International Annual Report 2012 - Gambia, 24 May 2012, Freedom of expression <http://www.refworld.org/docid/4fbc393b37.html>

⁴⁸ US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 1e, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

3.11.12 While each case must be considered on its individual merits, where a journalist has expressed views which could be critical of the Government, then they are likely to be at real risk of ill treatment which may amount to persecution. In such cases a grant of asylum will be appropriate due to their imputed political opinion.

3.12 Lesbian, Gay, Bisexual and Transgender people

3.12.1 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.

3.12.2 Treatment The law establishes prison terms ranging from five to 14 years for any man who commits in public or private “any act of gross indecency,” engages a male sex worker, or has actual sexual contact with another man. There was no similar law applicable to women. There were anti-discrimination laws, but they did not apply to LGBT individuals.⁴⁹

3.12.3 Article 144 of The Gambia Criminal Code 1965, as amended in 2005 states that unnatural offences are;

(1) Any person who—

(a) has carnal knowledge of any person against the order of nature; or

(b) has carnal knowledge of an animal; or

(c) permits any person to have carnal knowledge of him or her against the order of nature;

is guilty of a felony, and is liable to imprisonment for a term of 14 years.

(2) In this section- “carnal knowledge of any person against the order of nature” includes-

(a) carnal knowledge of the person through the anus or the mouth of the person;

(b) inserting any object or thing into the vulva or the anus of the person for the purpose of simulating sex; and

(c) committing any other homosexual act with the person”⁵⁰

3.12.4 There are no laws to protect homosexuals, who are threatened with death, physical violence and incarceration. The president was vocal in his opposition to gays and lesbians and termed homosexuality “un-African,” and “unnatural”. Many have been forced underground for fear of violence.⁵¹

3.12.5 President Jammeh makes frequent calls for a crackdown on crime. His zero tolerance on homosexuality led to the arrest of 20 individuals for “attempting to commit an unnatural act”.⁵²

3.12.6 In a January 2011 speech to army officers, President Jammeh announced he

⁴⁹ US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 6, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁵⁰ International Lesbian, Gay, Bisexual, Trans and Intersex Association, State-sponsored Homophobia : A world survey of laws criminalising same-sex sexual acts between consenting adults, May 2012, <http://www.refworld.org/docid/50ae380e2.html>

⁵¹ Freedom House, Countries at Crossroads 2012; The Gambia, 20 September 2012, Civil Liberties, <http://www.freedomhouse.org/report/countries-crossroads/2012/gambia>

⁵² FCO, Human Rights Report 2012; Case study: The Gambia – the death penalty, April 2013 <http://www.hrdreport.fco.gov.uk/promoting-british-values/criminal-justice-and-the-rule-of-law/the-death-penalty/case-study-the-gambia-the-death-penalty/>

wanted a professional army “free of gays and saboteurs.”⁵³

- 3.12.7** There was strong societal discrimination against LGBT individuals, further enhanced by statements by President Jammeh and the enforcement of a law, nicknamed Operation Bulldozer, designed to enforce harsh penalties for criminals but also directed at gay men. There were no LGBT organisations in the country.⁵⁴
- 3.12.8** On 6 April 2012, police arrested 18 men and two women for alleged same-sex sexual conduct at a dance ceremony for tourists at the village of Kololi. Members of the group were predominantly Gambian but also included one Nigerian and one Senegalese. The dance in question reportedly involved men dressing up as women, and police charged the group with “unnatural offences” and “conspiracy to commit a felony”; all pled not guilty. Authorities detained them for two weeks and later granted bail of 100, 000 dalasi (\$2,940) each. After a trial lasting several weeks, on 1st August 2012, the state withdrew the charges due to lack of evidence.⁵⁵
- 3.12.9** In February 2012 Yahya Jammeh, the President of the Gambia, said those who think gay rights are human rights in the African state are making a “great mistake”. Jammeh previously threatened to decapitate gays and claims to be able to cure AIDS. The South Africa Press Association reports Jammeh saying: “We know what human rights are. Human beings of the same sex cannot marry or date.” He added that homosexuality came from alien cultures, saying: “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.” In 2008, Jammeh vowed to introduce laws which were stricter than those in Iran, where gay acts between men are punishable by death. The Gambia is a mainly Muslim country. The president retracted a threat to decapitate gays but said they would be driven out of their homes.⁵⁶
- 3.12.10** In April 2013, President Yahya Jammeh was quoted by the Freedom Newspaper as stating at the opening of Parliament that homosexuality “is “satanic,” “anti-god, anti-human, and anti-civilisation” and that “If you are convicted of homosexuality in this country, there will be no mercy for offenders.”⁵⁷ Responding to the 2012 UK Foreign and Commonwealth Office annual report in May 2013 the Gambian government stated that “the people of the Gambia object to homosexuality and all its tangential considerations on the ground of their culture and religion. A highly religious and God-fearing society such as ours (95 percent of who are Muslim) cannot encourage homosexuality to please any human right. Protecting Gambian society from the scourges of this phenomenon as a way of life has become the chosen duty of Gambians and their Government”.⁵⁸

3.12.11 Amnesty International also expressed concern regarding section 167 of the 16

⁵³ US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 6, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁵⁴ US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 6, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁵⁵ US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 6, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁵⁶ Pink News, Gambian president: Gay rights ‘destroy culture’, 15 February 2012 <http://www.pinknews.co.uk/2012/02/15/gambian-president-gay-rights-destroy-culture/>

⁵⁷ ILGA, Gambia’s president says no gays allowed; if caught, “will regret being born”, 3 April 2013 <http://ilga.org/ilga/en/article/o1VLiAB1wR>

⁵⁸ The Point, Gambia Govt. Reacts to UK Human Rights Report, 6 May 2013 <http://allafrica.com/stories/201305071348.html>

April 2013 “Criminal Code (Amendment) Act, 2013”, which criminalises men who dress as women, criminalises men who engage in sex work and imposes up to five years imprisonment and/or a fine of 20,000 dalasi (roughly \$610USD). It considers that this Act singles out members of a minority group that already face discrimination and marginalisation in the Gambia and notes that “Arrests and harassment of lesbian, gay, bisexual and transgender (LGBT) individuals are all too frequent in the Gambia”.⁵⁹

3.12.12 In The 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.⁶⁰

See also: [Actors of protection](#) (section 2.2 above)
[Internal relocation](#) (section 2.3 above)
[Caselaw](#) (section 2.4 above)

3.12.13 Conclusion. Caseworkers 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 President Jammeh has made repeated anti gay statements. Same sex relationships are illegal and there are no reports of homosexuals being arrested. LGBT people face widespread legal and social discrimination. Given the high level of societal hostility internal relocation is unlikely to be available, 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.

3.12.14 Each case must however be examined on its own merits. Where caseworkers 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.

3.12.15 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.

3.12.16 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.

⁵⁹ Amnesty International, Gambia: Principal Act raises serious human rights concerns, 7 May 2013
<http://www.amnesty.org/en/library/asset/AFR27/003/2013/en/a0022dff-4112-44f8-b1cf-a7aa7d42021a/afr270032013en.pdf>

⁶⁰ Isatou Toura, Sexuality and Women’s Sexual Rights in the Gambia, in Institute of Development Studies (IDS) Bulletin Volume 37 Number 5 October 2006, Lesbianism (p. 82)
<http://www.b-fair.net/wp-content/uploads/2010/12/DOWNLOAD-THE-ARTICLE.pdf>

3.13 Women (Domestic violence, forced marriage, trafficking & discrimination)

- 3.13.1** Some female applicants will apply for asylum or make a human rights claim based on the grounds that they fear or have been the victims of domestic violence, forced marriage, trafficking or discrimination based on their gender and are unable to seek protection from the authorities.
- 3.13.2 Treatment.** The constitution prohibits discrimination based on race, religion, gender, disability, language, or social status, and the government generally enforced these prohibitions. However, discrimination against women remained a problem.⁶¹
- 3.13.3** Women enjoy fewer opportunities for higher education and employment than men. While the vice president and several cabinet ministers are women, there are only 4 women in the 53-seat National Assembly. Rape and domestic violence are common. Sharia provisions regarding family law and inheritance restrict women's rights. Female genital mutilation (FGM) remains legal and widely practiced. Local groups working to combat FGM reported being harassed in 2012 by the judicial authorities. The Gambia is a source, destination, and transit country for the trafficking of women and children for prostitution and forced labour.⁶²

Domestic Violence

- 3.13.4** The penalty for rape is life imprisonment; however, rape, including spousal rape, was a widespread problem. The maximum penalty for attempted rape is seven years' imprisonment. At least six rape cases reported to police during 2012 were prosecuted; most prosecutions resulted in conviction. The law against spousal rape was difficult to enforce effectively, as many did not consider spousal rape a crime and failed to report it. Police generally considered reports of spousal rape to be domestic issues outside of their jurisdiction.⁶³
- 3.13.5** The law prohibits any form of violence against women; however, domestic violence was a problem. Domestic violence was underreported due to social stigma, and family elders usually settled incidents.⁶⁴
- 3.13.6** Officials of Gambia's Department of Social Welfare, under the Ministry of Health, said it recorded close to 376 cases of domestic violence, including violence against children and women, paternity and custody cases between January and October, 2012. Fanta Bai Secka, Director, Department of Social Welfare, said statistics showed that there were 127 cases against mothers; 87 cases against mothers and children; 16 against children; 10 cases involving children in forced or early marriages, physical abuse, homelessness, school fees; paternity dispute 36; and custody dispute 100.⁶⁵

⁶¹ US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 6, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁶² Freedom House, Freedom in the World 2013 – Gambia, The, 9 May 2013 <http://www.freedomhouse.org/report/freedom-world/2013/gambia>

⁶³ US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 6, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁶⁴ US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 6, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁶⁵ Panapress, Gambia recorded 376 cases on domestic violence from Jan-Oct, 2012, 21 November 2012 <http://www.panapress.com/Gambia-recorded-376-cases-on-domestic-violence-from-Jan-Oct,-2012--12-851863-25-lang2-index.html>

- 3.13.7** GAMCOTRAP, one of the leading women's rights NGOs in the country, included gender-based violence in its training modules for combating FGM/C. Another group, the Female Lawyers' Association of The Gambia, educated women on their rights and represented them, often pro bono, in domestic violence cases.⁶⁶ The World Organisation Against Torture (OMCT) reports that in November 2012, charges were finally dropped against the Executive Director and Programme Coordinator of GAMCOTRAP. Since October 2010 they had been prosecuted on charges of "theft" for the alleged embezzlement of 30,000 Euros received in 2009 from "Yolocamba Solidaridad", a Spanish development NGO, in what the OMCT describes as "uninterrupted judicial harassment". They had reportedly been summoned to 66 hearings, which took place in a hostile atmosphere and on completely unlawful grounds as the alleged victims denied accusing anyone of theft.⁶⁷
- 3.13.8** In March 2013 the Gambia government renewed its commitment to the fight against domestic violence and sexual offences. The renewed commitment made by the Vice President and Minister of Women's Affairs, Isatou Njie-Saidy, comes in the wake of government's formulation of two bills that are seeking to impose harsher penalties and severe punishments for domestic violence, and sexual offences like rape. In her statement to mark the International Women's Day celebrated on 8 March 2013, Vice President Njie-Saidy said the reason for introduction of the two bills are to combat domestic violence, provide protection for the victims of domestic violence, and to amend related laws and procedures related to the trial of rape and other sexual offences. The Gambia government has set up a broad-based mechanism for addressing violence against women and girls through domestication of international conventions such as Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the protocol of the African Charter on Human and Peoples' Rights on the Right of Women in Africa, as well as the Beijing Platform of Action," she added. The country, she further stated, has also fulfilled its obligation on the implementation of the CEDAW and other international and regional conventions and treaties such as the African Union Solemn Declaration on Gender Equality, African Women's Decade 2010 - 2020.⁶⁸
- 3.13.9** Following series of consultations for the development and integration of Gender Based Violence and Human Rights issues into the police training curriculum, the Women's Bureau with support from United Nations Population Fund (UNFPA) recruited a consultant to develop a gender training manual. The training manual has been developed and reviewed by stakeholders. The manual was presented to the senior police officers at a ceremony held at the Police Headquarters in Banjul 25 April 2013. In her statement, the police commissioner Marie Ndure thanked the Women's Bureau on behalf of the entire Gambia Police Force, for the valuable training manual incorporated into the training modules taught at the Police Academy. She stated that this development could not have come at a better time. "As the Gambia Police Force is undergoing a fundamental reform process dubbed "Force for Good."⁶⁹

⁶⁶ US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 6, 19 April 2013

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁶⁷ World Organisation Against Torture, Gambia: Justice prevails in a two year-long judicial harassment case against two Women Human Rights Defenders, 14 November 2012

<http://www.omct.org/human-rights-defenders/urgent-interventions/gambia/2012/11/d22024/>

⁶⁸ The Point (Banjul), Gambia: Gov't to Beef Up Laws Against Domestic Violence, Others, 8 March 2013

<http://allafrica.com/stories/201303081125.html>

⁶⁹ Foroyaa Newspaper (Serrekunda) Gambia: Police Receive Gender Training Manual for Safeguarding Rights, 30 April

Discrimination

3.13.10 The law provides equal rights to men and women and prohibits discrimination on grounds of gender; however, women experienced a wide range of discrimination in matrimonial rights, property ownership, and inheritance rights. Employment in the formal sector was open to women at the same salary rates as men, and no statutory discrimination existed in other kinds of employment, access to credit, or owning and managing a business; however, societal discrimination lingered, and women generally were employed in such pursuits as food vending or subsistence farming.⁷⁰ The law prohibits sexual harassment and provides for a one-year mandatory prison sentence for offenders. No cases were reported during the year, but sexual harassment remained an ongoing problem.⁷¹

3.13.11 Sharia (Islamic law) is applied in marriage, divorce, and inheritance cases for Muslims, who make up more than 90 percent of the population. Women normally receive a lower proportion of assets distributed through inheritance than men. The respective churches and the Office of the Attorney General settled civil marriage and divorce issues affecting Christians.⁷²

3.13.12 Marriages often were arranged and, depending on the ethnic group, polygyny was practiced. Women in polygynous unions had problems with property and other rights arising from the marriage. They also had the option to divorce, but no legal right to disapprove or be notified in advance of subsequent marriages by their husbands. The women's bureau under the Office of the Vice President oversees programs to ensure the legal rights of women. Active women's rights groups existed.⁷³

Forced Marriage

3.13.13 Carnal knowledge of a girl under the age of 16 is a felony except in the case of marriage, which can be as early as age 12. There are no laws against forced marriage, and in many villages girls were forced to marry at a young age.⁷⁴

3.13.14 The practice of forced marriage still exists in many parts of The Gambia, particularly in the rural areas. However, the practice is not as widespread as years back, thanks to the awareness being created by the activists, relevant government departments, and the media.⁷⁵

3.13.15 According to the UN Population Fund 2012 report, 35.9% of women aged 20-24 were married/ in a union before the age of 18.⁷⁶ UNICEF Gambia notes that many girls are not mentally and physically prepared for the adult lifestyle that early marriage imposes on them. Child marriage compromises a girl's health, often

2013 http://allafrica.com/stories/201304301249.html?aa_source=slideout

⁷⁰ US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 6, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁷¹ US State Department Human Rights Report 2012; The Gambia, Section 6, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁷² US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 6, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁷³ US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 6, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁷⁴ US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 6, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁷⁵ The Point, Forced marriage, 18 April 2012 <http://thepoint.gm/africa/gambia/article/forced-marriage-1>

⁷⁶ UN Population Fund, Marrying Too Young: End Child Marriage , 2012, <http://www.refworld.org/docid/508fe73f2.html>

resulting in early pregnancy which can lead to reproductive health complications, isolation, and sometimes death. The majority of married girls end up being children raising children. They miss out on education and perform heavy amounts of domestic work.⁷⁷

3.13.16 In October 2012, President Yahya Jammeh Tuesday vowed that his government will not encourage the idea of forced marriage in any form. President Jammeh stated that “Forcing somebody to marry someone because the individual is wealthy is illegal in both religions i.e. Muslim and Christianity.”⁷⁸

Trafficking

3.13.17 The Gambia is a source, transit, and destination country for women and children subjected to forced labour and sex trafficking. Within The Gambia, women and girls and, to a lesser extent, boys are subjected to sex trafficking and domestic servitude. Many Gambian boys attend Koranic schools led by marabouts (religious teachers). Corrupt or unscrupulous marabouts sometimes force such boys into street vending. Gambian trafficking victims have been identified in neighbouring West African countries, as well as in the United Kingdom.⁷⁹

3.13.18 The Government of The Gambia sustained modest anti-trafficking law enforcement efforts during March 2011- February 2012. Its 2007 Trafficking in Persons Act prohibits all forms of trafficking, and an October 2010 amendment increased the prescribed penalties to 50 years’ to life imprisonment for all forms of trafficking.⁸⁰

3.13.19 The Government of The Gambia does not fully comply with the minimum standards for the elimination of trafficking. The government did not demonstrate evidence of increasing efforts to address human trafficking over reporting period (March 2011- February 2012). Although the government established a national agency against trafficking in persons and convicted one trafficker, the sentence of a modest administrative fine did not adequately convey the serious nature of the crime. The government claimed to monitor boys in street vending and unaccompanied girls in resorts known to be destinations of sex tourists, but it did not identify any as victims of trafficking during the reporting period.⁸¹

3.13.20 The Gambian government undertook inadequate efforts to protect trafficking victims during the year, as it identified no Gambian trafficking victims and only two foreign victims of sex trafficking. Although it claimed to monitor the activities of boys in Koranic schools, it did not rescue or provide services to any victims of forced street vending or begging. The Ministry of Social Welfare operated a 24-hour multi-purpose hotline and allocated the equivalent of \$11,500 toward running a shelter and drop-in centre, although the government did not report the number of trafficking victims it may have cared for in these shelters.⁸²

⁷⁷ UNICEF Gambia, The Children: Adolescence, undated current webpage, accessed May 2013
http://www.unicef.org/gambia/children_1266.html

⁷⁸ The Point, My govt. will not encourage forced marriage, says Jammeh, 25 October 2012
<http://thepoint.gm/africa/gambia/article/my-govt-will-not-encourage-forced-marriage-says-jammeh>

⁷⁹ US State Department, 2012 Trafficking in Persons Report - The Gambia, 19 June 2012
<http://www.state.gov/documents/organization/192595.pdf>

⁸⁰ US State Department, 2012 Trafficking in Persons Report - The Gambia, 19 June 2012
<http://www.state.gov/documents/organization/192595.pdf>

⁸¹ US State Department, 2012 Trafficking in Persons Report - The Gambia, 19 June 2012
<http://www.state.gov/documents/organization/192595.pdf>

⁸² US State Department, 2012 Trafficking in Persons Report - The Gambia, 19 June 2012
<http://www.state.gov/documents/organization/192595.pdf>

See also: [Actors of protection](#) (section 2.2 above)
[Internal relocation](#) (section 2.3 above)
[Caselaw](#) (section 2.4 above)

- 3.13.21 Conclusion.** There is societal discrimination, violence against women and forced marriage in the Gambia. The authorities are unlikely to be able to offer sufficiency of protection especially in cases of spousal rape because the police generally consider it to be a domestic issue outside of their jurisdiction. President Yahya Jammeh has also expressed that his government will not encourage the idea of forced marriage in any form, however there are no laws against forced marriage and the practice continues. While, there are also NGOs who work to promote women's rights and campaign against discrimination and violence, GAMCOTRAP has experience serious judicial harassment in trying to carry out its work. Claimants may be able to internally relocate to escape localised threats from members of their family, but the reasonableness of internal relocation must be assessed on a case by case basis taking full account of the individual circumstances of the particular claimant.
- 3.13.22** Women applicants who can demonstrate that they have a well-founded fear of persecution as a result of domestic violence and have no recourse to state protection or internal relocation should be granted asylum as a member of a particular social group.
- 3.13.23** When considering claims from applicants who claim to have been trafficked, caseworkers must always refer to the Asylum Instruction on 'Victims of Trafficking'. That a person has been trafficked is not, in itself, a ground for refugee status. However, some trafficked women have been able to establish a 1951 Convention reason (such as a membership of a particular social group) and may have valid claims to refugee status. Forced recruitment of women for the purposes of forced prostitution or sexual exploitation is a form of gender-related violence and/or abuse and may amount to persecution. Trafficked women may face serious repercussions upon their return to their home country, such as reprisals or retaliation from trafficking rings or individuals, or discrimination from their community and families and there may be a risk of being re-trafficked. Each case should be considered on its individual merits and in the context of the country on which it is based.
- 3.13.24** Where a victim of trafficking has agreed to give evidence as part of a criminal prosecution, consideration should be given to whether this is likely to affect the basis of the asylum claim (for example by increasing the risk of retribution) and therefore whether the decision should be postponed until after the trial is concluded. The impact of the applicant's evidence at the trial on the likelihood of future risk can then be assessed. It may be necessary to liaise with the police in this situation.
- 3.13.25** The Government of the Gambia sustained modest anti-trafficking law enforcement efforts and its 2007 Trafficking in Persons Act prohibits all forms of trafficking with the prescribed penalty of 50 years' to life imprisonment for all forms of trafficking. However, the government made limited efforts to prevent trafficking although some services from victims of trafficking do exist. Victims may be able to access some support and protection from governmental and non-governmental sources in the Gambia and internal relocation may also be a viable option for some applicants

who fear reprisals from traffickers upon return. However, each case should be considered on its individual merits and where an applicant can demonstrate that the treatment they will face on return amounts to torture, inhuman or degrading treatment, they are unable to access protection from the authorities and internal relocation would be unduly harsh a grant of asylum or humanitarian protection will be appropriate.

3.14 Prison conditions

- 3.14.1** 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.
- 3.14.2** 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.
- 3.14.3 Consideration** Prison conditions were harsh and life-threatening. At the end of 2012 there were approximately 1,000 inmates in the prisons, more than double the intended capacity.⁸³
- 3.14.4** Prison conditions were poor, and cells were overcrowded, damp, and poorly ventilated. Inmates complained of poor sanitation and food. Inmates occasionally slept on the floor. Officials allowed detainees to receive food from the outside prior to conviction, but not afterwards. Medical facilities in prisons were poor, and authorities sent sick inmates to the Royal Victoria Teaching Hospital in Banjul or nearby health centres for examination and treatment. Former inmates and human rights NGOs reported that the prisoner mortality rate was high. Reports indicated that prisoners died of neglect or lack of access to healthcare. Water supply was adequate, but lighting in some cells was poor. During the summer, temperatures were extremely high, and there were no ceiling fans or other measures to reduce heat.
- 3.14.5** According to a press release by the Civil Society Associations Gambia, a prisoner named Amadou Faal (also known as Njagga) lost an eye due to severe beatings by prison officials on 16 October 2012.⁸⁴ The U.S. State Department reported in 2013 that the security forces tortured, beat, and mistreated persons in custody. In June 2012, a Muslim cleric, who was detained for nine days without charge by the National Intelligence Agency (NIA) claimed that he was severely tortured whilst in its custody. The same report documented two further cases of torture involving the police and the National Drug Enforcement Agency.⁸⁵ Freedom House noted that “torture of prisoners has been reported as routine”.⁸⁶ In a previous report by Freedom House, it stated that “political prisoners and political and social activists

⁸³ US State Department, Country Report on Human Rights Practices 2012; The Gambia Section 1c, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁸⁴ US State Department, Country Report on Human Rights Practices 2012; The Gambia Section 1c, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁸⁵ U.S. State Department, Country Report on Human Rights Practices 2012 –The Gambia, 19 April 2013, 1c <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁸⁶ Freedom House, Freedom in the World 2013 – Gambia, The, 9 May 2013 <http://www.freedomhouse.org/report/freedom-world/2013/gambia>

suffer severe beatings, electric shock, and sometimes rape that sometimes end in death”.⁸⁷ The report also noted that “The NIA serves as the repressive arm of government, notorious for atrocious torture techniques used to extract confessions”.⁸⁸ Amnesty International also has expressed concern that the use of “confessions” obtained under duress are prevalent, and that other international safeguards on the use of the death penalty are not followed.⁸⁹

- 3.14.6** On 27 October 2012, inmates in the Remand Wing of Mile 2 Central Prison attempted an escape, resulting in a riot, which prison guards brought under control with the help of soldiers from the nearby Hamza barracks. A Foroyaa newspaper report stated that the prisoners were demanding longer “rest hours” (when they are allowed out of their cells), a change in their diet, prompt and adequate medical attention, and speedy trials. They also protested prolonged detention without trial and poor conditions in congested cells such as bug infestation. The commissioner of prison administration at Mile 2 Central Prison, Ansumana Manneh, confirmed the attempted escape but denied that prison conditions were as bad as described by the newspaper. On 7 November 2012, 29 remand prisoners were brought before the Banjul Magistrate’s Court charged with conspiracy to commit a felony and willful damage to property. They pled not guilty, and their trial was ongoing at year’s end.⁹⁰
- 3.14.7** In October 2011 inmates in the security wing of Mile 2 Central Prison went on a hunger strike to protest overcrowding, poor hygiene conditions, poor diet, restrictions on the number of visits by family members, failure by prison authorities to comply with medical recommendations from doctors, and denial of access to television and radio. Prison authorities denied that a hunger strike had occurred.⁹¹
- 3.14.8** Authorities occasionally held pretrial detainees with convicted prisoners.⁹²
- 3.14.9** Officials generally allowed prisoners access to visitors, although there were occasional reports that they denied lawyers and family members access to detainees at Mile 2 Central Prison. Prisoners were permitted religious observance. Prisoners and detainees could transmit complaints to judicial authorities through their lawyer, if they could afford one, or relatives.⁹³
- 3.14.10** Authorities sometimes investigated credible allegations of inhumane conditions. A Prisons Visiting Committee, which included representatives of several government agencies, is empowered to monitor detention center conditions. Ousman Sonko, the minister of interior, claimed that the committee visited the central prison weekly and submitted reports on substandard conditions. The claims of weekly committee visits could not be verified.⁹⁴

⁸⁷ Freedom House, Countries at Crossroads 2012; The Gambia, 20 September 2012, Civil Liberties http://www.freedomhouse.org/report/countries-crossroads/2012/gambia#_edn1

⁸⁸ Freedom House, Countries at Crossroads 2012; The Gambia, 20 September 2012, Civil Liberties http://www.freedomhouse.org/report/countries-crossroads/2012/gambia#_edn1

⁸⁹ Amnesty International, The Gambia: Conditional moratorium on executions is not enough, 17 September 2012 <http://www.amnesty.org/en/news/gambia-death-penalty-moratorium-must-lead-abolition-2012-09-17>

⁹⁰ US State Department, Country Report on Human Rights Practices 2012; The Gambia Section 1c, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁹¹ US State Department, Country Report on Human Rights Practices 2012; The Gambia Section 1c, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁹² US State Department, Country Report on Human Rights Practices 2012; The Gambia Section 1c, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁹³ US State Department, Country Report on Human Rights Practices 2012; The Gambia Section 1c, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁹⁴ US State Department, Country Report on Human Rights Practices 2012; The Gambia Section 1c, 19 April 2013

- 3.14.11** The Office of the Ombudsman can investigate all complaints brought before it, including those concerning bail conditions, pretrial detention, and confinement of juvenile offenders. However, it cannot negotiate alternatives to detention for detainees or convicts. The Office of the Ombudsman did not publish findings from any investigations it conducted during 2012.⁹⁵
- 3.14.12** The government did not permit the International Committee of the Red Cross or the media access to monitor prison conditions during 2012.⁹⁶
- 3.14.13** In August 2012, The Gambia broke a 27-year moratorium on the death penalty when nine prisoners on death row were executed in secret.⁹⁷ Human rights groups say it was mostly political prisoners who died.⁹⁸ The executions were condemned by the international community, including the UK and The Gambia's neighbours in West Africa. As a result the moratorium was restored several weeks later and there have been no executions since. There is a risk that it might be suspended again depending upon a rise or fall in the rate of violent crime. The episode served to highlight the deterioration in human rights in The Gambia, which is attracting increasing international concern. During the immediate aftermath, several journalists were arrested for trying to apply for a permit to protest against the executions.⁹⁹ Another 37 inmates remain on death row.¹⁰⁰
- 3.14.14 Conclusion** Prison conditions were harsh and life-threatening and taking into account the incidence of torture, overcrowding, poor sanitation and inadequate medical facilities are likely to breach the Article 3 threshold. Where an individual applicant is able to demonstrate a real risk of significant period of detention or imprisonment on return to the Gambia, and exclusion under Article 1F is not justified, a grant of Humanitarian Protection will be appropriate.

4. Minors claiming in their own right

- 4.1** 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 and it is appropriate for the minor to return to them; or (b) there are adequate alternative reception and care arrangements. Caseworkers should refer to the Asylum Instruction: [Processing an Asylum Application from a Child](#), which is the main guidance document on UASC return consideration.
- 4.2** Caseworkers should refer to the Agency's guidance on Family Tracing following the Court of Appeal's conclusions in the case of [KA \(Afghanistan\) & Others \[2012\] EWCA civ1014](#). In this case the Court found that Regulation 6 of the Asylum

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁹⁵ US State Department, Country Report on Human Rights Practices 2012; The Gambia Section 1c, 19 April 2013

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁹⁶ US State Department, Country Report on Human Rights Practices 2012; The Gambia Section 1c, 19 April 2013

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

⁹⁷ FCO, Human Rights Report 2012; Case study: The Gambia – the death penalty, April 2013

<http://www.hrdreport.fco.gov.uk/promoting-british-values/criminal-justice-and-the-rule-of-law/the-death-penalty/case-study-the-gambia-the-death-penalty/>

⁹⁸ BBC news, Gambia's President Jammeh halts executions amid outcry, 15 September 2012

<http://www.bbc.co.uk/news/world-africa-19610206>

⁹⁹ FCO, Human Rights Report 2012; Case study: The Gambia – the death penalty, April 2013

<http://www.hrdreport.fco.gov.uk/promoting-british-values/criminal-justice-and-the-rule-of-law/the-death-penalty/case-study-the-gambia-the-death-penalty/>

¹⁰⁰ BBC news, Gambia's President Jammeh halts executions amid outcry, 15 September 2012

<http://www.bbc.co.uk/news/world-africa-19610206>

Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to endeavour to trace the families of Unaccompanied Asylum Seeking Children (UASCs).

- 4.3 At present there is insufficient information to be satisfied that there are adequate alternative reception, support and care arrangements in place for minors with no family in Gambia. Those who cannot be returned should be considered for leave as a UASC as set out in the relevant [Asylum Instruction](#).

5. Medical treatment

- 5.1 Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR. Caseworkers should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to the COI Service (COIS).
- 5.2 The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the country of origin. According to the House of Lords' judgment in the case of [N \(FC\) v SSHD \[2005\] UKHL31](#), it is "whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.
- 5.3 That standard continues to be followed in the Upper Tribunal (UT) where, in the case of [GS and EO \(Article 3 – health cases\) India \[2012\] UKUT 00397\(IAC\)](#) the UT held that a dramatic shortening of life expectancy by the withdrawal of medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, the absence of resources through civil war or similar human agency.
- 5.4 The improvement or stabilisation in an applicant's medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion will therefore not in itself render expulsion inhuman treatment contrary to Article 3 ECHR. All cases must be considered individually, in the light of the conditions in the country of origin, but an applicant will normally need to show exceptional circumstances that prevent return, namely that there are compelling humanitarian considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.
- 5.5 Where a caseworker considers that the circumstances of the individual applicant and the situation in the country would make removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave. Caseworkers must refer to the Asylum Instruction on [Discretionary Leave](#) for the appropriate period of leave to grant.

6. Returns

- 6.1** 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.
- 6.2** 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.
- 6.3** Any medical conditions put forward by the person as a reason not to remove them and which have not previously been considered, must be fully investigated against the background of the latest available country of origin information and the specific facts of the case. A decision should then be made as to whether removal remains the correct course of action, in accordance with [chapter 53.8 of the Enforcement Instructions and Guidance](#).
- 6.4** 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.
- 6.5** The AVR scheme is implemented on behalf of UKBA 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.choices-avr.org.uk.

**Country Specific Litigation Team
Operational Policy and Rules Unit
Operational Systems Transformation
Home Office
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