



OPERATIONAL GUIDANCE NOTE

KENYA

CONTENTS

| | |
|-------------------------------------|-------------------|
| 1. Introduction | 1.1 – 1.4 |
| 2. Country assessment | 2.1 – 2.10 |
| 3. Main categories of claims | 3.1 – 3.5 |
| Female genital mutilation (FGM) | 3.6 |
| Prison conditions | 3.7 |
| 4. Discretionary Leave | 4.1 – 4.2 |
| Minors claiming in their own right | 4.3 |
| Medical treatment | 4.4 |
| 5. Returns | 5.1 – 5.2 |
| 6. List of source documents | |

1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Kenya and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers must refer to the relevant Asylum Policy Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Kenya Country of Origin Information at:

http://www.homeoffice.gov.uk/rds/country_reports.html

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the API on Article 8 ECHR. If, following consideration, a claim is to be refused, caseworkers should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

Source documents

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

2. Country assessment

- 2.1** At independence from the UK in 1963, Kenyatta became Prime Minister. The following year Kenya African Democratic Union (KADU) dissolved itself and Kenya became a republic with Kenyatta as its first President. A new opposition party was banned in 1969 and Kenya remained a de facto one-party state for the remainder of Kenyatta's rule. On his death in 1978 Daniel arap Moi became President and later turned Kenya into a de jure one-party

state under the Kenya Africa National Union (KANU). In 1991, under pressure from Kenyan activists and the international community, this was reversed. With multi-partyism restored, several opposition parties emerged: FORD Kenya, FORD Asili, Democratic Party, Social Democratic Party, National Development Party of Kenya and other smaller parties. However KANU retained control, winning contentious elections in 1992 and 1997 against a divided opposition and amidst allegations of election abuse. The Kenyan political environment remained turbulent throughout the 1990s.¹

- 2.2** President Moi stepped down in 2002, as required by the 1991 constitution. Uhuru Kenyatta, son of Jomo, secured the leadership of KANU and stood for the Presidency, but a group of MPs broke with KANU to form the Liberal Democratic Party (LDP). For the first time, all the opposition parties united under the banner of the National Rainbow Coalition (NARC) and behind a single presidential candidate. President Kibaki's general election victory on 27 December 2002 ended nearly 40 years of KANU rule. The elections were the cleanest and most peaceful in Kenya's history and were followed by a smooth transfer of power to NARC. President Kibaki secured 62% of the popular vote and NARC won 132 seats in the unicameral parliament of 222 seats.²
- 2.3** The first years of NARC's rule have proved difficult due to the facturing of the NARC coalition. Since June 2004 the government has included representatives from KANU and FORD People. The biggest disagreements have been over completion of the constitutional review process started under Moi. A lengthy public consultation process produced a new draft constitution (known as the Bomas draft) in March 2004. But its provisions, notably those reducing the executive powers of the Presidency, proved unacceptable to the government.³
- 2.4** After a protracted legal wrangle the government secured Parliamentary approval for certain key amendments to be made and a new Constitution Bill was published. However, the new draft was rejected by 58% of voters when it was put to a referendum in November 2005. This prompted Kibaki to sack his entire government and start with a new team in December, which excluded all those Ministers who voted against the draft. The "No" campaigners are forming up as new opposition alliance known as the Orange Democratic Movement. Problems over the constitutional review have dominated political debate to the detriment of other government business. Progress in tackling corruption has also been disappointing. Corruption re-emerged as a major public concern in mid-2004 and represents a major threat to achieving social and economic reform. Next elections are due by December 2007.⁴
- 2.5** The government in many areas respected the human rights of its citizens or attempted to institute reforms to address deficiencies in 2005. However, serious problems remained, particularly with regard to abuses by the police service. The following human rights problems were reported: unlawful killings by police, police beatings and torture of detainees, impunity, harsh and life-threatening prison conditions, arbitrary arrest and detention, use of excessive force, prolonged pre-trial detention; executive interference in the judiciary, restrictions on freedom of speech, the press, and assembly; government corruption; abuse of and discrimination against women; female genital mutilation (FGM), child prostitution and labour, trafficking of persons, vigilante justice and interethnic violence and lack of enforcement of workers' rights.⁵ Amnesty International's (AI) annual report covering 2005 referred to occasional attacks on the independent media, widespread violence and discrimination against women, some restrictions on the activities and demonstrations of domestic human rights groups and a few instances of torture and unlawful killing by state agents as areas of concern.⁶

¹ COIS Kenya Key Documents November 2006 (Key facts, Political system) [FCO profile & BBC]

² COIS Kenya Key Documents November 2006 (Key facts, Political system) [FCO profile & BBC]

³ COIS Kenya Key Documents November 2006 (Key facts, Political system) [FCO profile & BBC]

⁴ COIS Kenya Key Documents November 2006 (Key facts, Political system) [FCO profile & BBC]

⁵ COIS Kenya Key Documents November 2006 (Human rights general) [USSD 2005]

⁶ COIS Kenya Key Documents November 2006 (Human rights general) [AI 2005]

- 2.6** Kenya has many active civil society groups and a vigorous free press. The NARC government has established a National Commission on Human Rights which has successfully raised the profile of human rights. A major reform of the judiciary, law and order and penal sector is underway. But standards of policing are variable and conditions for prisoners remain poor. The UK Foreign and Commonwealth Office supports a range of human rights activities throughout East Africa.⁷
- 2.7** Incidents of government corruption and frequent press reports fueled a widespread public perception that large-scale corruption at the highest levels of government and in parliament continued, and the problem had worsened from 2004. Throughout 2005 several high-ranking government officials publicly charged that a number of their colleagues were involved in high-level corruption. On 7 February 2005, Permanent Secretary for Governance and Ethics John Githongo (popularly known as the anti-corruption czar), abruptly resigned while on an official overseas trip. In December, President Kibaki eliminated the position of the Permanent Secretary for Ethics and Governance during restructuring of the cabinet. The government created the KACC in 2003 and appointed a chairman and other staff in 2004. On 15 December 2005, the KACC reported that there was corruption in a police recruitment programme which operated 5-13 December 2005 throughout the country. On 16 December 2005, the government cancelled all of the appointments made during the recruitment process. The police commissioner suspended approximately 100 officers for taking bribes.⁸ Three senior ministers were prevailed upon to stand aside following their implication in grand corruption in February 2006.⁹
- 2.8** A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases in 2005. Government officials were usually co-operative and responsive to their queries. However, there were some reports that government officials intimidated and threatened to disrupt NGO activities, and that less-established NGOs (particularly those in rural areas) were subjected to interference from provincial administrators and security forces in 2005. Approximately 15 domestic organisations actively advocated for human rights in the country; 14 were independent of the government. Several NGOs maintained comprehensive files on human rights abuses in 2005. A number of attorneys represented the indigent and human rights advocates without compensation, although they could handle only a small percentage of those who needed assistance and were concentrated chiefly in Nairobi and other large cities. Some local human rights NGOs complained that the Attorney General's Office and other government offices sometimes were not responsive to their inquiries in 2005.¹⁰
- 2.9** Although all forms of violence against women are prohibited, domestic violence against women was a serious and widespread problem in 2005. The penal code does not specify domestic violence, but treats domestic violence as an assault. Police generally would not investigate in cases of domestic violence. The law prohibits FGM; but it remained widespread, particularly in rural areas. According to the government's August 2004 Demographic and Health Survey, 32% of women had undergone FGM. The government was generally committed to the rights and welfare of children and there was legislation and developed policies to promote education and protect children's rights. The government lacked the resources to implement its policies fully.¹¹
- 2.10** The country's population was divided into more than 40 ethnic groups in 2005, among which there were frequent allegations of discrimination and occasional violence. Unofficial results of the 1999 census indicated that the Kikuyu constituted 21% of the population, the Luhya 16%, the Kalenjin 12%, the Luo 11%, and the Kamba 10% of the population. The

⁷ COIS Kenya Key Documents November 2006 (Freedom of speech) [FCO profile & USSD 2005]

⁸ COIS Kenya Key Documents November 2006 (Corruption) [USSD 2005]

⁹ COIS Kenya Key Documents November 2006 (Corruption) [FCO profile]

¹⁰ COIS Kenya Key Documents November 2006 (Human rights institutions...) [USSD 2005]

¹¹ COIS Kenya Key Documents November 2006 (Women) [USSD 2005]

Kikuyu and the closely related Kamba, Meru, and Embu groups made up more than one-third of the country's population; members of these groups dominated much of private commerce and industry. In private business and in the public sector, members of virtually all ethnic groups commonly discriminated in favour of other members of the same group in 2005. Neighbourhoods in large cities tended to be segregated ethnically, although interethnic marriage has become fairly common in urban areas. Political disputes in 2005 tended to correlate with ethnic differences.¹²

3. **Main categories of claims**

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Kenya. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant APIs, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)
- 3.5** All APIs can be accessed via the IND website at:
http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html
- 3.6 Female genital mutilation (FGM)**
- 3.6.1** Many female claimants make asylum and/or human rights claims based on them being forced to undergo or perform FGM by family members or community members (usually who belong to the Kikuyu ethnic group and/or who are part of the proscribed Mungiki sect).
- 3.6.2 *Treatment.*** The law prohibits FGM; but it remained widespread, particularly in rural areas. According to the government's August 2004 Demographic and Health Survey, 32% of women had undergone FGM. FGM usually is performed at an early age. In September 2004, an international conference on FGM in Nairobi reported that, of the country's 42 ethnic groups, only four (the Luo, Luhya, Teso, and Turkana) did not practice FGM.

¹² COIS Kenya Key Documents November 2006 (Ethnic groups) [USSD 2005]

According to the NGO Maendeleo Ya Wanawake (Development of Women), the percentage of girls undergoing the procedure was 80 to 90% in some districts of Eastern, Nyanza, and Rift Valley Provinces.¹³

- 3.6.3** Some churches and NGOs provided shelter to girls fleeing their homes to avoid the practice, but community elders and some politicians frequently interfered with attempts to stop the practice. On 17 April 2005 girls in Marakwet District fled to avoid FGM and were given shelter in Eldoret by the NGO Centre for Human Rights and Democracy. On 20 April 2005, police forcibly removed the girls from the shelter and returned them to their villages. In July 2005 a district officer in West Pokot District attempted to stop the Pokot community from performing FGM on 70 girls, but a local politician used his influence to thwart the initiative. The *Mungiki*, a banned cultural and political movement and criminal protection racket based in part on Kikuyi traditions and frequently cited in Kenyan FGM claims, was less organised in 2005 and was implicated in fewer violent crimes than in the past due to a police crackdown.¹⁴
- 3.6.4** The reported evidence relating the practice of FGM in Kenya refers to tribal or community leaders or leading family members as the individuals who usually perform FGM. There is no evidence to indicate that those who are involved in carrying out circumcision do so against their will. It is therefore unlikely that a claimant who claims to fear being forced to perform FGM will have a genuine fear of mistreatment at the hands of tribal or community leaders or other family members.
- 3.6.5** UNICEF reported in August 2006 that it is helping communities in northern and eastern provinces where FGM which is still inflicted upon the vast majority of girls. While FGM is not as prevalent in the rest of the country, a 2003 nationwide survey revealed that almost a third of Kenyan women aged 15 to 49 had undergone genital mutilation. But the same survey also showed a 30% reduction in the practice. The reduction is largely due to increased education, female economic empowerment and the introduction of so-called 'alternative rites of passage' – which replace FGM with rituals that retain the cultural significance of a coming-of-age ceremony without physically harming the young women involved.¹⁵
- 3.6.6** ***Sufficiency of protection.*** FGM is illegal in Kenya and there have been numerous examples of the state authorities arresting and prosecuting those accused of performing FGM. In December 2005 there were a number of arrests of individuals accused of applying forced FGM. On 23 December 2005, four parents were arrested along with a man who performed the FGM. In mid-December a woman in Nyandarua District plead guilty in court for subjecting four girls to FGM. During the same month the Kuria district commissioner called for police to arrest parents who forced their daughters to undergo the procedure.¹⁶
- 3.6.7** On 18 December 2005, rescuers hid 140 girls in a school in Meru North District and planned to engage them in an alternative rite ceremony, while another 330 completed a "no cut" initiation rite in Marakwet District. Various communities have instituted "no cut" initiation rites for girls as an alternative to FGM. According to The Family Planning Association of Kenya, its "no cut" programme called Ntanira na Kithomo (initiate me through education) contributed to a 13% decline in the prevalence of FGM in Meru North District.¹⁷ The authorities actively prevent FGM and there is clear evidence that those in fear of undergoing, or being forced to perform FGM may seek and receive adequate protection from the state authorities.
- 3.6.8** ***Internal relocation.*** The law provides for freedom of movement and the government generally respected them in practice in 2005. Police routinely stopped vehicles and

¹³ COIS Kenya Key Documents November 2006 (Women; FGM) [USSD 2005]

¹⁴ COIS Kenya Key Documents November 2006 (Women; FGM) [USSD 2005]

¹⁵ COIS Kenya Key Documents November 2006 (Women; FGM) [UNICEF August 2006]

¹⁶ COIS Kenya Key Documents November 2006 (Women; FGM) [USSD 2005]

¹⁷ COIS Kenya Key Documents November 2006 (Women; FGM) [USSD 2005]

checked vehicle safety and driver documents on roads throughout the country in 2005. FGM is a regionalised practice mainly in Eastern, Nyanza, and Rift Valley provinces.¹⁸ There is no evidence to suggest that it would be unduly harsh for those in fear of undergoing or being forced to perform FGM to internally relocate to another region to escape this threat.

3.6.9 Conclusion. Though an average of 32% of Kenyan women have undergone FGM, with a prevalence rate of between 80%-90% in some rural districts, the practice is illegal and the availability of adequate state protection and a viable internal relocation alternative means it is unlikely that a claimant who is in fear of undergoing, or in fear of being forced to perform FGM by family, community or *Mungyiki* sect members will engage the UK's obligations under the ECHR. A grant of Humanitarian Protection in such cases is therefore unlikely to be appropriate.

3.7 Prison conditions

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

3.7.2 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 claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

3.7.3 Consideration. Prison conditions continued to be harsh and life threatening in 2005, although the government made some improvements in prison conditions. Most prisons, especially the men's facilities, continued to be severely overcrowded. In September 2005, 93 prisons housed 50 thousand inmates, a decrease from 2004, but still more than three times their intended capacity of 16 thousand. Overcrowding was also a problem in Meru prison which had three times as many inmates as its intended capacity. To decrease congestion, the government began sentencing petty offenders to community service, imposing fines rather than confinement, and offering probation, but the implementation of this program was too slow and weak to effectively address overcrowding. Prison overcrowding was also due to a backlog of cases in the judicial system.¹⁹

3.7.4 Reforms begun in 2003 improved conditions in some prisons. All women's prisons, and some men's prisons, opened or expanded health clinics during 2005. Some facilities received expanded access to academic classes, enabling a number of inmates to sit for national exams, or vocational training, such as carpentry or tailoring. Charitable associations organised occasional medical clinics for inmates. Prisoners generally received three meals per day, but portions were inadequate, and prisoners were sometimes given half rations as punishment. Water shortages continued to be a problem in 2005. Civil society organisations began visiting prisons in 2003, and these visits revealed harsh conditions as well as allegations by prisoners of inhumane treatment and torture. Such treatment, perpetrated by police, prison guards, and inmates at times resulted in deaths in 2005.²⁰

3.7.5 Prison personnel said that rapes of both male and female inmates, primarily by fellow inmates, continued to be a problem in 2005. There was an increasing incidence of HIV/AIDS, although statistics were difficult to obtain since there were no voluntary counseling or testing services in most prisons. Hundreds of prisoners died in prisons from

¹⁸ COIS Kenya Key Documents November 2006 (Women; FGM) [USSD 2005]

¹⁹ COIS Kenya Key Documents November 2006 (Prison conditions) [USSD 2005]

²⁰ COIS Kenya Key Documents November 2006 (Prison conditions) [USSD 2005]

infectious diseases caused by overcrowding and inadequate medical treatment. According to government statistics, 536 prisoners died in 2002, primarily as a result of pulmonary tuberculosis, gastroenteritis, pneumonia, and malaria. Dysentery, anemia, malaria, heart attack, typhoid fever, and HIV/AIDS also were common causes of death among prisoners.²¹

- 3.7.6** Prisoners sometimes were kept in solitary confinement far longer than the maximum 90 days allowed by law. Prisoners and detainees sometimes were denied the right to contact relatives or lawyers. Family members who visited prisoners faced numerous bureaucratic and physical obstacles, each requiring a bribe. In August 2004 the *People Daily* reported that prison officers at Thika Prison routinely released prisoners and colluded with them to commit crimes. The newspaper added that torture, illegal sales of hard drugs, and sexual abuse were routine in the prison. There were no investigations of the prison during 2005. In September 2004, 3 prison guards at Naivasha prison went on trial for helping 28 pre-trial detainees accused of capital offences escape from that prison; the escapees were later captured.²²
- 3.7.7** There were no separate facilities for minors in pre-trial detention in 2005. As a result, teenage detainees were routinely confined with adult detainees. On 31 August 2005, pretrial detainees in Embu prison petitioned the government to separate young boys from their adult counterparts, citing allegations of sodomy in the cells. There was no further information on the petition by the end of 2005. Minors were sometimes confined with adult prisoners. A 5 February 2005 media report noted that high court judges touring King'ong'o maximum security prison discovered several minors, one only 15-years-old, serving long sentences among adult prisoners. The judges ordered the prison to provide information on the minors' conviction and jailing in order to conduct a review. There was no further information on the review by the end of 2005. A total of 369 children under the age of four accompanied their mothers in the country's 14 prisons for women.²³
- 3.7.8** The Kenyan National Commission for Human Rights (KNCHR), as well as the International Committee of the Red Cross (ICRC), had the authority to inspect prison facilities on demand at any time, but the government did not permit consistent independent monitoring of prison conditions in 2005. The KNCHR conducted four visits, and the IMLU conducted six visits. There were no ICRC visits during 2005. Although media coverage of prisons increased compared to 2004, media members were selectively allowed visits.²⁴
- 3.7.9** **Conclusion.** Whilst prison conditions in Kenya are poor with overcrowding, poor sanitation and unhealthy conditions being particular problems, these conditions will not normally be sufficiently severe to meet the high Article 3 threshold. In addition to these adverse conditions there are reports that officials act with impunity and regularly mistreat inmates. The information available does not suggest that particular groups of inmates are more at risk of such mistreatment than others. There is no evidence that the mistreatment is of such a systematic nature as to make removal a breach of Article 3 on these grounds.
- 3.7.10** Even where claimants can demonstrate a real risk of imprisonment on return to Kenya a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

²¹ COIS Kenya Key Documents November 2006 (Prison conditions) [USSD 2005]

²² COIS Kenya Key Documents November 2006 (Prison conditions) [USSD 2005]

²³ COIS Kenya Key Documents November 2006 (Prison conditions) [USSD 2005]

²⁴ COIS Kenya Key Documents November 2006 (Prison conditions) [USSD 2005]

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the API on Article 8 ECHR.
- 4.2** With particular reference to Kenya the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave and the API on Article 8 ECHR.
- 4.3 Minors claiming in their own right**
- 4.3.1** Minors claiming in their own right who have not been granted asylum or Humanitarian Protection can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.
- 4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18th birthday, whichever is the shorter period.
- 4.4 Medical treatment**
- 4.4.1** Claimants may claim they cannot return to Kenya due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.4.2** Kenyan health care services delivery is based at three levels—national, provincial and district. A referral system exists whereby the patient can be referred from district to provincial to national level, dependent on the nature and complication of their illness. In principle, most primary health care services are offered at district level while secondary and tertiary health care services are offered at provincial and national levels respectively. However, in practice the distinction is not so clear.²⁵
- 4.4.3** Kenya's health care facilities comprise dispensaries, health centres and hospitals. There are 234 hospitals, 660 health centres and 2,722 dispensaries. The health services offered in these facilities include outpatient and inpatient and general as well as specialized services and cover primary, secondary and specialized health care. Community health care services are also offered with the health care facility serving as base. The services provided include promotional, preventive, curative and rehabilitative work and these are integrated as far as possible.²⁶
- 4.4.4** Although Kenya adopted mental health as its ninth essential element of primary health care way back in 1982, very little implementation has since occurred. The district health management team is supposed to take charge of mental health provision in this respect. In principle, mental health care is integrated into general health care at the district level and

²⁵ Taylor and Francis Group: Kenya mental health care country profile

²⁶ Taylor and Francis Group: Kenya mental health care country profile

community mental health care services developed alongside other primary health care activities. However, most district health management teams do not include a mental health worker. The large majority of patients visit traditional health practitioners when they become sick.²⁷

- 4.4.5** Kenya's primary and secondary healthcare is overseen by the Ministry of Health.²⁸ Kenya continues to treat more TB patients each year. Widespread HIV coinfection may explain part of the growing case-load, but it is also possible that the NTP is detecting a higher proportion of cases. With increased funding for planned activities - including mechanisms to improve treatment outcomes, TB/HIV management, community-based care.²⁹
- 4.4.6** Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.2** Kenyan nationals may return voluntarily to any region of Kenya at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Kenya. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Kenyan nationals wishing to avail themselves of this opportunity for assisted return to Kenya should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

6. List of source documents

- Afrol News: Kenya announces free AIDS, malaria drugs, 2 June 2006 <http://www.afrol.com/articles/19609>
- Amnesty International (AI) Annual Report covering 2005: Kenya at: <http://web.amnesty.org/report2006/ken-summary-eng>
- BBC Kenya Timeline. Last updated 17 October 2006 at: http://news.bbc.co.uk/1/hi/world/africa/country_profiles/1026884.stm
- Integrated Regional Information Networks (IRIN), Plus News – The HIV/AIDS News Service: Kenya Country Profile, updated March 2006 <http://www.plusnews.org/AIDS/kenya.asp>
- Taylor and Francis Group: Kenya mental health care country profile [http://taylorandfrancis.metapress.com/\(qkxhfay4e03lqp55zengl455\)/app/home/contribution.asp?referer=parent&backto=issue,5,17;journal,15,40;linkingpublicationresults,1:100633,1](http://taylorandfrancis.metapress.com/(qkxhfay4e03lqp55zengl455)/app/home/contribution.asp?referer=parent&backto=issue,5,17;journal,15,40;linkingpublicationresults,1:100633,1)

²⁷ Taylor and Francis Group: Kenya mental health care country profile

²⁸ COIS Kenya KDs November 2006 (Medical issues) [WHO country profile]

²⁹ COIS Kenya KDs November 2006 (Medical issues) [WHO country profile, IRIN, Afrol]

- UK Foreign and Commonwealth Office (FCO) Kenya Country Profile 15 October 2006 at:
<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1019744960156>
- US Department of State Country Report on Human Rights Practices in Kenya in 2005 at:
<http://www.state.gov/g/drl/rls/hrrpt/2005/61575.htm>
- World Health Organisation (WHO) Country profile Kenya 2006 at:
<http://www.who.int/countries/ken/en>

**Asylum and Appeals Policy Directorate
8 December 2006**