

OPERATIONAL GUIDANCE NOTE

KENYA

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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. Caseowners must refer to the relevant Asylum 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 Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, caseowners 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.
- 1.4** With effect from 27 July 2007 Kenya is a country listed in section 94 of the Nationality, Immigration and Asylum Act 2002 in respect of men only. 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 Kenya, made on or after 27 July 2007, 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. Kenya 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. The information set out below contains relevant country information, the most common types of claim and guidance from the courts, including guidance on whether cases are likely to be clearly unfounded.

Source documents

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

2. Country assessment

- 2.1 Kenya became a British protectorate in 1895 and a colony in 1920. White settlement was encouraged and by the 1940s European settlers had achieved considerable prosperity. African population growth resulted in increasing pressure for land. Jomo Kenyatta formed the first national organisation in 1944. But when the Mau Mau rebellion erupted in 1952, a state of emergency was declared, parties were banned and Kenyatta was tried and sent to prison. African members were elected to the legislative council in 1957 and the state of emergency was lifted in 1960. Political parties were legalised and Africans formed a majority on the legislative council. Two parties emerged: the Kenya Africa National Union (KANU) and the Kenya African Democratic Union (KADU). KANU won a general election in 1961 but refused to form an administration until the release of Kenyatta.¹
- 2.2 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.²
- 2.3 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.³
- 2.4 The first years of NARC's rule have proved difficult due to the fracturing 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.⁴
- 2.5 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.

¹ COI Kenya Key Documents 15 January 2007 (Recent history)

² COI Kenya Key Documents 15 January 2007 (Key facts, Political system) [FCO profile & BBC]

³ COI Kenya Key Documents 15 January 2007 (Key facts, Political system) [FCO profile & BBC]

⁴ COI Kenya Key Documents 15 January 2007 (Key facts, Political system) [FCO profile & BBC]

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 2007.⁵

- 2.6** The government in many areas respected the human rights of its citizens or attempted to institute reforms to address deficiencies in 2006. 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.⁶ Amnesty International's (AI) annual report of 2006 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.⁷
- 2.7** 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.⁸
- 2.8** Incidents of government corruption and frequent press reports fuelled a widespread public perception that large-scale corruption at the highest levels of government and in parliament continued in 2006, and that little official action had been taken against the most corrupt. In January 2006 John Githongo, the former permanent secretary for governance and ethics known as the anti-corruption czar, released a report providing details of a massive corruption scandal which took place during the current administration. A further report in February reported on a scandal under the Moi government. Both reports implicated a number of former and current government officials, renewing public frustration that little progress had been made to improve the country's record on corruption. Three ministers resigned following their inclusion in the reports but one was declared immune from prosecution due to double jeopardy provisions. Despite laws and institutions intended to fight corruption, no ministers were arrested or suspended from office by the end of 2006.⁹
- 2.9** A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases in 2006. With the exception of the police, 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. 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. A number of

⁵ COI Kenya Key Documents 15 January 2007 (Key facts, Political system) [FCO profile & BBC]

⁶ USSD Country Report 2006 (released 6 March 2007)

⁷ COI Kenya Key Documents November 2006 (Human rights general) [AI 2006]

⁸ COI Kenya Key Documents November 2006 (Freedom of speech)

⁹ USSD Country Report 2006

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. The government allowed human rights organisations to witness autopsies of persons who died in police custody.¹⁰

- 2.10** Although all forms of violence against women are prohibited, domestic violence against women was a serious and widespread problem in 2006. 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 is still practised, 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
- 2.11** The country's population was divided into more than 40 ethnic groups in 2006, 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 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 Asylum Instruction 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 Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the 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 Asylum Instruction 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.

¹⁰ USDD Country Report 2006

¹¹ USSD Country Report 2006

¹² USSD Country Report 2006

- 3.4** This guidance is **not** designed to cover issues of credibility. Caseowners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the Asylum Instruction on Assessing the Claim)
- 3.5** All Asylum Instructions can be accessed via the Border and Immigration Agency website:
<http://www.ind.homeoffice.gov.uk/>
- 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 is still practised 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 practise FGM. 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** In 2006 there were more public awareness and programmes to stop the practice, in which government officials often participated. 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. A media report in January 2006 noted that the frequency had dropped in one district to 54 per cent compared to 93 per cent in 1999. In 2005 there were a number of arrests of individuals accused of applying forced FGM. In 2006 government officials continued to attempt to stem FGM. In December 2006 the provincial commissioner of the Rift Valley Province was quoted as having declared that any civil servant condoning or supporting FGM (such as nurses or local chiefs) would be fired. He added that the parents of girls subjected to the practice would be arrested.¹⁴
- 3.6.4** 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
- 3.6.5 *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

¹³ USSD Country Report 2006

¹⁴ USSD Country Report 2006

¹⁵ COI Kenya Key Documents 15 January 2007 (Women; FGM) [UNICEF August 2006]

¹⁶ USSD Country Report 2006

3.6.6 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. Government officials continued to attempt to stem FGM. In December, the provincial commissioner of the Rift Valley Province declared that any civil servant condoning or supporting FGM (such as nurses of local chiefs) would be fired. He added that parents of girls subjected to the practice would be arrested.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.

3.6.7 *Internal relocation.* The law provides for freedom of movement and the government generally respected this right in practice. Police routinely stopped vehicles and checked vehicle safety and driver documents on roads throughout the country. FGM is a regionalised practice mainly in Eastern, Nyanza, and Rift Valley provinces.¹⁸ Having regard to the guidance given in FK (below), it is unlikely to be unduly harsh for those who fear being forced to undergo or perform FGM to internally relocate to another region to escape this threat.

3.6.8 *Caselaw*
FK (FGM Risk and Relocation) Kenya CG UKAIT 00041 [2007]

The key issues were sufficiency of protection and internal relocation to avoid FGM. The AIT concluded as follows:

- It is important to determine whether the claimant belongs to an ethnic group amongst which group FGM is practised. If so, she may be a member of a particular social group for the purposes of the 1951 Geneva Convention.
- All uncircumcised women in Kenya, whether Kikuyu or not, are not as such at real risk of FGM. FGM is on the decline in Kenya and the Tribunal saw no reason to depart from the findings in JM (IFA sufficiency of protection) Kenya 2005. The objective evidence shows an increasing pressure to abstain from such a practice both by many of the churches and communities, by the government and non-governmental agencies, by the promotion of an alternative 'initiation rite'.
- A woman will only be at real risk in her own home area if she comes from an ethnic group (or sub-group) where FGM is practised and the evidence shows she is reasonably likely to be required by her parents or others in a position of power and influence over her to undergo FGM.
- There is no evidence that the Mungiki seek to impose FGM upon women or communities other than those who have been initiated into their particular sect. The Mungiki appear to be more involved in criminal activities and business interests than in seeking to enforce FGM (Para 82). The sect generally is not found in areas occupied by those tribes whose ethnic groups are not Kikuyu or significantly so. There are areas of Kenya occupied by the Kikuyu where FGM is not practised and the Mungiki would not be welcomed. (Para 103). There are many areas of Kenya where the Mungiki have either no or no significant influence. (Para 104)
- Internal relocation will be available in Kenya to a woman who is at real risk of FGM in her home area if the evidence shows; (i) she is not reasonably likely to encounter anyone in the place of relocation who would be in a position of power and influence over her and who would use that power and influence to require her to undergo FGM; and (ii) she can reasonably be expected to live in that place, having regard to the general circumstances prevailing in it and to the personal circumstances of the appellant. Such circumstances will include being able to survive economically (Para 112 (a) to (e)). The Tribunal found there

¹⁷ USSD Country Report 2006

¹⁸ USSD Country Report 2006

was little objective evidence to support the proposition that a Kikuyu woman would not be tolerated in a non Kikuyu area or would be without support to the level of basic human rights (Para 87).

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 in 2006 continued to be harsh and life threatening in some cases, although the government made some improvements in prison conditions. Most prisons, especially the men's facilities, continued to be severely overcrowded. In March 2006, 93 prisons housed 50,000 thousand inmates more than three times their intended capacity of 16,000.. A backlog of cases in the judicial system also contributed to prison overcrowding. On 4 August 2006 the Vice President Moody Awori announced the government's plan to hire more judges and magistrates to expedite cases, and to expand the community service order programmed used to sentence petty offenders to community service, rather than confinement. Implementation of the programme was too slow to effectively address overcrowding, although Awori stated in July that 56,000 offenders had benefited from it.¹⁹

3.7.4 Reforms improved conditions in some prisons in 2006. In early September the prisons department established a health unit, to improve the delivery of health services to inmates. Some facilities offered access to academic classes, enabling a number of prisoners 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 2006. 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.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 2006. A media report in June indicated that it was not uncommon for prison officials to rape female inmates. There was an increasing incidence of HIV/AIDS among the prison population, although statistics were difficult to obtain since there were no voluntary counselling or testing services in most prisons.²¹

¹⁹ USSD Country Report 2006

²⁰ USSD Country Report 2006

²¹ USSD Country Report 2006

- 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. An NGO reported that citizens were more likely to face extortion attempts by members of the prison service than by employees of any other government agency.²²
- 3.7.7** There were no separate facilities for minors in pre-trial detention in 2006. By the end of 2006 there were no known developments in the August 2005 petitions by 31 pretrial detainees in Embu prison to separate young boys from their adult counterparts because of allegations of sodomy. In January 2006, a judiciary subcommittee report recommended that judges and magistrates visit prisons regularly to ensure that children are not confined with adult inmates. A number of children under the age of four lived with their mothers in the 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 during 2006. The UNCHR conducted 19 visits during 2006, the IMLU conducted 5 visits and the Oscar Foundation Free Legal Aid Clinic Kenya conducted one visit. There were no ICRC visits during 2006. Members of the media 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. Only where it clearly cannot be argued that an individual will face treatment which reaches the Article 3 threshold, should a claim of this kind be certified.

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instruction on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instruction 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

²²USSD Country Report 2006

²³USSD Country Report 2006

²⁴USSD Country Report 2006

covered by the categories below which warrant a grant of DL - see the Asylum Instruction on Discretionary Leave and the Asylum Instruction 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 as set out in the relevant Asylum Instruction.

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 on 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 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

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

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

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]

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. Only where it clearly cannot be argued that an individual will face treatment which reaches the Article 3 threshold, should a claim of this kind be certified.

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)
- 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 2006 at:
<http://www.state.gov/g/drl/rls/hrrpt/2006/78740.htm>
- World Health Organisation (WHO) Country profile Kenya 2006 at:
<http://www.who.int/countries/ken/en>
- COI Key Documents 15 January 2007

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