



Home Office

# OPERATIONAL GUIDANCE NOTE

## THE GAMBIA

| CONTENTS                                                                                                                                       |                   |
|------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| <b>1. Introduction</b>                                                                                                                         | <b>1.1 – 1.7</b>  |
| <b>2. Country assessment</b>                                                                                                                   | <b>2.1</b>        |
| <a href="#">Actors of protection</a>                                                                                                           | 2.2               |
| <a href="#">Internal relocation</a>                                                                                                            | 2.3               |
| <a href="#">Country guidance caselaw</a>                                                                                                       | 2.4               |
| <b>3. Main categories of claims</b>                                                                                                            | <b>3.1 – 3.15</b> |
| <a href="#">Female Genital Mutilation (FGM)</a>                                                                                                | 3.16              |
| <a href="#">Political opponents or those perceived to be in opposition to the government, including NGO members and human rights defenders</a> | 3.17              |
| <a href="#">Journalists</a>                                                                                                                    | 3.18              |
| <a href="#">Lesbian, Gay, Bisexual and Transgender people</a>                                                                                  | 3.19              |
| <a href="#">Women (domestic violence, forced marriage, trafficking &amp; discrimination)</a>                                                   | 3.20              |
| <a href="#">Prison Conditions</a>                                                                                                              | 3.21              |
| <b>4. <a href="#">Minors claiming in their own right</a></b>                                                                                   | <b>4.1 – 4.5</b>  |
| <b>5. <a href="#">Medical treatment</a></b>                                                                                                    | <b>5.1 – 5.7</b>  |
| <b>6. Returns</b>                                                                                                                              | <b>6.1 – 6.4</b>  |

### 1. Introduction

- 1.1** This document provides Home Office 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 (AIs) 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.
- 1.3** 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 country of origin information (COI) and any other pertinent data, such as country caselaw.

- 1.4** COI is published by the [Country of Origin Information Service \(COIS\)](#) and is available on the intranet.
- 1.5** 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.
- 1.6** 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.
- 1.7** 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 and caseworkers should take account of the fact that the human rights situation in The Gambia has deteriorated in recent years. 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.

## **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 [Foreign & Commonwealth \(FCO\) Human Rights and Democracy Report](#), which examines developments in countries where human rights issues are of greatest concern.

## **2.2 Actors of protection**

- 2.2.1** Caseworkers must refer to section 7 of the AI - [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.
- 2.2.2** 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.

- 2.2.3** 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.
- 2.2.4** IHS Jane's, Sentinel Security Country Assessments, Gambia, provided the following information, dated 27 September 2012: 'The Gambia Police Force (GPF) reports to the secretary of state for the interior and is headed by an inspector general of police. The president announced in January 2006 that the GPF was to become an armed force and to be divided into regional structures. According to Interpol, the GPF consists of around 5,000 uniformed and plain-clothes officers.'<sup>1</sup>
- 2.2.5** 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.<sup>2</sup> In October 2013, IRIN reported that "Human rights organisations have repeatedly denounced the Gambian regime for forced disappearances, illegal detention, denial of due process, and the abuse and harassment of critics. Yet little progress has been achieved, and local activists are seeing their ability to act recede".<sup>3</sup>
- 2.2.6** Security force members were frequently corrupt and ineffective. Impunity was a problem, and police sometimes defied court orders.<sup>4</sup>
- 2.2.7** A repressive political environment, aided by security agencies like the 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.<sup>5</sup>
- 2.2.8** 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

<sup>1</sup> IHS Jane's <http://www.ihs.com/products/janes/index.aspx>; Gambia; Security and foreign forces, dated 27 September 2012

<https://janes.ihs.com/CustomPages/Janes/DisplayPage.aspx?DocType=Reference&ItemId=+++1305441> ; date accessed: 2 September 2013; subscription only; hard copy available on request

<sup>2</sup> 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>

<sup>3</sup> IRIN, Gambia, Living in fear, 8 October 2013 <http://www.irinnews.org/report/98893/gambia-living-in-fear>

<sup>4</sup> 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>

<sup>5</sup> Freedom House, Countries at Crossroads 2012; The Gambia 20 September 2012, Accountability and public voice, <http://www.freedomhouse.org/report/countries-crossroads/2012/gambia>

without a warrant in the name of state security. Prisons are overcrowded and unsanitary, and inmates suffer from inadequate nutrition and lack of medical attention. Torture of prisoners has been reported as routine.<sup>6</sup>

- 2.2.9** 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.<sup>7</sup>
- 2.2.10** 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 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.<sup>8</sup>
- 2.2.11** 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.<sup>9</sup>
- 2.2.12** 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.<sup>10</sup>
- 2.2.13** 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

<sup>6</sup> Freedom House, Freedom in the World 2013; The Gambia, 9 May 2013 <http://www.freedomhouse.org/report/freedom-world/2012/gambia>

<sup>7</sup> Freedom House, Freedom in the World 2013 – Gambia, The, 9 May 2013 <http://www.freedomhouse.org/report/freedom-world/2013/gambia>

<sup>8</sup> Freedom House, Freedom in the World 2013 – Gambia, The, 9 May 2013 <http://www.freedomhouse.org/report/freedom-world/2013/gambia>

<sup>9</sup> Freedom House, Countries at Crossroads 2012; The Gambia 20 September 2012, Rule of Law, <http://www.freedomhouse.org/report/countries-crossroads/2012/gambia>

<sup>10</sup> 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>

state.<sup>11</sup>

- 2.2.14** 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.<sup>12</sup>
- 2.2.15** Judges who rule against the regime are sometimes 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.<sup>13</sup>
- 2.2.16** 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 favour and hand out stiff prison sentences and exorbitant fines.<sup>14</sup>
- 2.2.17** 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.<sup>15</sup>
- 2.2.18** 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.<sup>16</sup>
- 2.2.19** 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

<sup>11</sup> Freedom House, Countries at Crossroads 2012; The Gambia 20 September 2012, Anti-Corruption and Transparency, <http://www.freedomhouse.org/report/countries-crossroads/2012/gambia>

<sup>12</sup> Freedom House, Freedom in the World 2013 – Gambia, The, 9 May 2013 <http://www.freedomhouse.org/report/freedom-world/2013/gambia>

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

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

<sup>15</sup> Freedom House, Countries at Crossroads 2012; The Gambia 20 September 2012, Rule of Law, <http://www.freedomhouse.org/report/countries-crossroads/2012/gambia>

<sup>16</sup> Freedom House, Countries at Crossroads 2012; The Gambia 20 September 2012, Rule of Law, <http://www.freedomhouse.org/report/countries-crossroads/2012/gambia>

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 AI 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.
- 2.3.2** It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum.
- 2.3.3** 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.
- 2.3.4** 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.
- 2.3.5** Where a category of applicant's 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 as 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.
- 2.3.6** 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, whether from state or non-state actors, and it would not be unreasonable to expect them to do so, then asylum or humanitarian protection should be refused.
- 2.3.7** The constitution and law provide for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights.<sup>17</sup>
- 2.3.8** 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

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<sup>17</sup> 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&dld=204123>



travelling abroad.<sup>18</sup>

- 2.3.9** 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 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).

<sup>18</sup> 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&dld=204123>

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.

**Supreme Court. HJ & HT v SSHD [2010] UKSC31 7 July 2010**

The Supreme Court hereby established the test which should be applied when assessing a claim based on fear of persecution because of an applicant's sexual orientation which is as follows:

- (i) Is the applicant gay or someone who would be treated as gay by potential persecutors in the country of origin?
- (ii) If yes, would gay people who live openly be liable to persecution in that country of origin?
- (iii) How would the applicant behave on return? If the applicant would live openly and be exposed to a real risk of persecution, he has a well-founded fear of persecution even if he could avoid the risk by living discreetly.
- (iv) If the applicant would live discreetly, why would he live discreetly? If the applicant would live discreetly because he wanted to do so, or because of social pressures (e.g. not wanting to distress his parents or embarrass his friends) then he is not a refugee. But if a material reason for living discreetly would be the fear of persecution that would follow if he lived openly, then he is a refugee [paragraph 35]

### **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.
- 3.2** 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.
- 3.3** All asylum instructions (AIs) can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at [asylum policy instructions](#).
- 3.4** Each claim should be assessed to determine whether there is a reasonable likelihood 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 AI '[Considering the asylum claim and assessing credibility](#)').

- 3.5** For any asylum cases which involve children either as dependants or as the main applicants, caseworkers must have due regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. The Home Office instruction '[Every Child Matters; Change for Children](#)' sets out the key principles to take into account.
- 3.6** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of humanitarian protection is appropriate. (See AI on [humanitarian protection](#)). Where an application for asylum and humanitarian protection falls to be refused, 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.
- 3.7** They must also consider whether there are any compelling reasons for granting discretionary Leave (DL) to the individual concerned. (See AI on [discretionary leave](#)).

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

- 3.8** 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).
- 3.9** 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**

- 3.10** 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.
- 3.11** 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.
- 3.12** 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

- 3.13** Caseworkers will need to assess credibility issues based on all the evidence available to them from the interview, documentary evidence and country of origin information. 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 AI [‘Considering the asylum claim and assessing credibility’](#).
- 3.14** 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 Home Office file.
- 3.15** In all other cases, the caseworkers 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.
- 3.16 Female Genital Mutilation (FGM)**
- 3.16.1** 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.
- 3.16.2 Treatment.** The law does not prohibit female genital mutilation/cutting (FGM/C), and the practice remained widespread.<sup>19</sup> According to a UN Population fund report, dated 22 October 2013, on Female Genital Mutilation/Cutting in the Gambia 76% of women aged 15-49 have undergone some form of FGM/C. The report also states that the prevalence of FGM/C had decreased by 3% between 2005 and 2010. However, the prevalence of FGM/C among girls 15-19 (77%) is higher than the prevalence of FGM/C among women 15-49 (76%).<sup>20</sup> UNHCR reports that refugee girls and women may come from some regions where the FGM prevalence might be even higher than the national average. For instance, while the national FGM prevalence in Gambia is 78.3%, the highest prevalence rises to 99%.<sup>21</sup>
- 3.16.3** 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

<sup>19</sup> 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>

<sup>20</sup> UN Population Fund (UNFPA), *Female Genital Mutilation/Cutting Country Profile: Gambia*, 22 October 2013, <http://www.refworld.org/docid/527a04724.html>

<sup>21</sup> UN High Commissioner for Refugees (UNHCR), *Too Much Pain: Female Genital Mutilation & Asylum in the European Union - A Statistical Overview*, February 2013 <http://www.refworld.org/docid/512c72ec2.html>

protection and scope for internal relocation to escape such risks. These figures are based on 2005 data. Prevalence rates of FGM/C by ethnicity of household head are available for 2010.<sup>22</sup>

**3.16.4** The Orchid Project reports that “There is a vested interest in continuing this practice in The Gambia. Many of the cutters are traditional practitioners or trained health attendants. They supplement their income with the money and other articles they receive from work as cutters. In fact, the income they earn from performing this procedure is often higher than what they earn as midwives or nurses. Their social status also improves as a cutter”.<sup>23</sup> Freedom House notes in its 2013 human rights report that “Local groups working to combat FGM reported being harassed in 2012 by judicial authorities”.<sup>24</sup> During the 2012 trial of Gambia Committee on Traditional Practices Affecting the Health of Women and Children (GAMCOTRAP) members for theft, the prosecutor repeatedly made depreciating comments about the work of GAMCOTRAP's programme to eradicate female genital mutilation.<sup>25</sup>

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

**3.16.5 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.

**3.16.6** According to the findings in [K and others \(FGM\) Gambia CG \[2013\]](#) 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 and 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.

**3.16.7** Where applicants are granted asylum the accompanying parents may be eligible for a grant of leave. According to the findings in [K and others \(FGM\) Gambia CG \[2013\]](#) the act of enforced FGM on a child, where the parents are opposed to the act and where there is a real risk that FGM may be enforced and that FGM is prevalent in that country and where there is no sufficiency of protection could

<sup>22</sup> UNICEF, The Gambia: Multiple Indicator Cluster Survey 2010, Table CP.8: Female genital mutilation/cutting (FGM/C) among women, page 164  
[http://www.childinfo.org/files/Gambia\\_2010\\_MICS\\_Final\\_Report.pdf](http://www.childinfo.org/files/Gambia_2010_MICS_Final_Report.pdf)

<sup>23</sup> Orchid Project, The Gambia Country Profile, undated (posted on 5 February 2013)  
<http://orchidproject.org/category/resources/country-pages/page/8/>

<sup>24</sup> Freedom House, Freedom in the World 2013 – Gambia, The, 9 May 2013  
<http://www.freedomhouse.org/report/freedom-world/2013/gambia>

<sup>25</sup> 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/>



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.

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

**3.17.1** 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)

**3.17.2 Treatment.** The Gambia is a multiparty democratic republic. In November 2011 voters re-elected President Alhaji Yahya Jammeh to a fourth term in a peaceful, orderly election; however, international observers criticised it as neither free nor fair. President Jammeh's party, the Alliance for Patriotic Reorientation and Construction (APRC), continued to dominate the political landscape, winning an overwhelming majority of National Assembly seats in the parliamentary elections on 29 March 2012. Six of the seven opposition parties boycotted the elections in protest over government intervention and intimidation of opponents.<sup>26</sup>

**3.17.3** 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.<sup>27</sup> On 6 February 2013 he was released on bail.<sup>28</sup>

**3.17.4** 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 though a climate of fear generated by the state dissuades workers from taking action.<sup>29</sup> 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

<sup>26</sup> US State Department, Country Report on Human Rights Practices 2012; The Gambia, Executive Summary, 19 April 2013 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204123>

<sup>27</sup> 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>

<sup>28</sup> Foroyaa Newspaper, Gambia: Mambury Njie Released On Bail, 8 February 2013, <http://allafrica.com/stories/201302111475.html>

<sup>29</sup> Freedom House, Freedom on the world 2012; The Gambia 4 July 2012 <http://www.freedomhouse.org/report/freedom-world/2012/gambia>



documented cases occurred in December alone. Open and free private discussion is limited by fears of government surveillance and retaliation.<sup>30</sup>

- 3.17.5** 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.<sup>31</sup>
- 3.17.6** The government continues to instil fear and use intimidation through arbitrary arrests and detention with the purpose of stifling expression and dissenting voices. 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.<sup>32</sup>
- 3.17.7** 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 the end of 2012. 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.<sup>33</sup> Amnesty International reports that 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.”<sup>34</sup>
- 3.17.8** The National Intelligence Agency (NIA) and police routinely carried out arbitrary arrests. Individuals were often held without charge and beyond the 72-hour time limit within which a suspect must be brought before a court, in violation of the Constitution. In January 2012, the former Minister of Information and Communication, Dr Amadou Scattered Janneh, was sentenced to life imprisonment with hard labour after being convicted of treason. Modou Keita, Ebrima Jallow and Michael Uche Thomas were each sentenced to three years with hard labour for sedition. The four were arrested in June 2011 for being in possession of T-shirts which featured the slogan “End Dictatorship Now”. Michael Uche Thomas died in prison in July 2012 due to illness and reported lack of medical care. In September

<sup>30</sup> Freedom House, Freedom in the World 2013 – Gambia, The, 9 May 2013

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

<sup>31</sup> 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>

<sup>32</sup> 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>

<sup>33</sup> 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>

<sup>34</sup> 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>

2012, Dr Janneh was granted presidential pardon and expelled from the country. A month later, Modou Keita was also released. Ebrima Jallow remained in prison.<sup>35</sup>

- 3.17.9** In October 2013 Amnesty International reported that, criticising the government in the Gambia often carries an enormous cost. Forcing political opponents to 'confess' to crimes on national TV seems to be the latest callous strategy by the authorities to prevent anyone from criticising them.<sup>36</sup>
- 3.17.10** Three men were arrested after one of them attempted to flee the country and claim asylum abroad in September 2013. The men are held incommunicado, have no access to lawyers or their relatives and are believed to have been tortured. Malang Fatty was arrested at Amdallai Border Post by The Gambia's National Intelligence Agency (NIA) as he tried to leave the country on 19 September 2013. He was in possession of a document provided by the other men in support of his asylum claim. Amadou Sanneh, National Treasurer of The Gambia's opposition United Democratic Party (UDP), was arrested on 25 September by the NIA. He had written a letter supporting the asylum application of UDP member Malang Fatty. In the letter, Sanneh claimed Malang Fatty had received death threats from government security services and that the UDP was routinely persecuted by the Gambian government. The NIA also arrested Malang's brother, Alhagie Sambou Fatty, who asked Sanneh to write the document. Amnesty International called for the sedition charges to be dropped against the three to make way for their immediate release, pointing to allegations the three men were tortured to "confess" on national TV.<sup>37</sup> On 18 December 2013, all three were convicted of sedition and sentenced to up to five years of imprisonment. All three allege they were tortured while being held incommunicado prior to their trial and two of them – who pleaded guilty in October – had no legal representation throughout their incarceration and trial.<sup>38</sup> The Commissioner of Oaths who authorised the document, Bakary Baldeh, was also arrested and forced to confess on TV. Bakary Baldeh has not been charged, but continues to be held incommunicado by the NIA as a witness.
- 3.17.11** According to Amnesty International every year journalists, human rights activists and political opponents are harassed, unlawfully arrested, tortured, and put through unfair trials in the Gambia as a way of stopping them from criticising the authorities. In October 2013, President Yahya Jammeh made negative public statements about those engaged in opposition parties saying that; "Tarnishing the image of this country is treasonable and all those engaged in this would pay a high price. Hating one's country is ungodly. In any religion mounting a smear campaign against one's country on behalf of outside powers is Treason."<sup>39</sup>
- 3.17.12** According to the 2012 US State Department's Human Rights Report the government harassed, arrested, and detained human rights workers.<sup>40</sup> IRIN

<sup>35</sup> Amnesty International, Amnesty International Report 2013 - The State of the World's Human Rights - Gambia, 23 May 2013

<https://www.amnesty.org/en/region/gambia/report-2013>

<sup>36</sup> Amnesty International, The Gambia: Release political opponents who made TV 'confessions' under torture, 22 October 2013, <http://www.refworld.org/docid/527107614.html>

<sup>37</sup> Amnesty International, The Gambia: Release political opponents who made TV 'confessions' under torture, 22 October 2013, <http://www.refworld.org/docid/527107614.html>

<sup>38</sup> Amnesty International, The Gambia must immediately release three opposition members convicted of sedition, 18 December 2013

<http://www.amnesty.org/en/news/gambia-must-immediately-release-three-opposition-members-convicted-sedition-2013-12-18>

<sup>39</sup> Amnesty International, The Gambia: Release political opponents who made TV 'confessions' under torture, 22 October 2013, <http://www.refworld.org/docid/527107614.html>

<sup>40</sup> US State Department, Country Report on Human Rights Practices 2012; The Gambia, Section 5, 19 April 2013

reported in October 2013 that human rights organizations have repeatedly denounced the Gambian regime for forced disappearances, illegal detention, denial of due process, and the abuse and harassment of critics. Yet little progress has been achieved, and local activists are seeing their ability to act recede. Many Gambians live in fear, and few are able to criticise government officials or policies.<sup>41</sup>

**3.17.13** 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.<sup>42</sup>

**3.17.14** 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.<sup>43</sup> On 3 July 2013, Gambia's Information and Communications Act was amended to create new offences including "inciting dissatisfaction" and "making derogatory statements against government officials", to deter the media and activists from publicly criticising the authorities. A revision of the country's Criminal Code further reinforces the authority of the government over citizens. The implications are that any government official can make a judgement call on information they consider 'false' and take individuals to court on that basis. These measures are part of a broader trend in which the government consistently threatens, intimidates and harasses journalists, dissenters and human rights defenders.<sup>44</sup>

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

<sup>41</sup> IRIN, Gambia, Living in fear, 8 October 2013 <http://www.irinnews.org/report/98893/gambia-living-in-fear>

<sup>42</sup> 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&dlid=204123>

<sup>43</sup> 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>

<sup>44</sup> Inter Press Service, Gambia Media Crackdown Continues, 23 September 2013 <http://www.ipsnews.net/2013/09/gambia-media-crackdown-continues/>

**3.17.15** 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".<sup>45</sup> 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.<sup>46</sup>

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

**3.17.16 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.

**3.17.17** 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.

## **3.18 Journalists**

**3.18.1** 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.

**3.18.2 Treatment.** Conditions for press freedom and freedom of expression deteriorated slightly in 2012. The press continued to operate in a climate of fear due to legal and extralegal pressure, while the government of President Yahya Jammeh ignored calls for accountability regarding past cases of murder and abuse targeting journalists.<sup>47</sup>

<sup>45</sup> 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-Gamnbia--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>

<sup>46</sup> Available from COI Service on request

<sup>47</sup> Freedom House, Freedom of the Press 2013 - Gambia, The, 17 July 2013, <http://www.refworld.org/docid/51e7d0c014.html>

- 3.18.3** 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 established a newspaper registration process that extracts excessive bonds from media institutions, as well as a 2004 criminal law that mandates stiff penalties for offenses including publication of false information, sedition, and libel. Journalists are regularly arrested and detained on flimsy, superficial charges.<sup>48</sup>
- 3.18.4** Despite a 2005 press law that guarantees the right of citizens to obtain information and prohibits censorship, 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. 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.<sup>49</sup>
- 3.18.5** Journalists are regularly victims of arbitrary arrest and detention. Strict laws on libel, sedition and false information are used to inhibit freedom of speech. Newspapers and radio stations are routinely closed; in 2012, radio station Teranga FM. Reporters Without Borders ranked the country 152 out of 179 countries in its 2013 Press Freedom Index.<sup>50</sup>
- 3.18.6** 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. 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.<sup>51</sup>
- 3.18.7** In January 2012, reporter Mamadou S. Jallow of the private Daily News was arrested, detained, and charged with defamation for a story alleging that a local chief gave a state-sponsored travel voucher to his lover. Three journalists covering judicial decisions faced arrest and detention on contempt-of-court charges during 2012. In June 2012, a lower court ordered the arrest of Abdul Hamid Adiamoh, the managing editor of the newspaper Today, for an article that allegedly misrepresented a cross-examination in a criminal trial. He was later convicted and

<sup>48</sup> Freedom House, Freedom of the Press 2013 - Gambia, The, 17 July 2013, <http://www.refworld.org/docid/51e7d0c014.html>

<sup>49</sup> Freedom House, Freedom of the Press 2013 - Gambia, The, 17 July 2013, <http://www.refworld.org/docid/51e7d0c014.html>

<sup>50</sup> IRIN, Gambia - living in fear, 8 October 2013, <http://www.irinnews.org/report/98893/gambia-living-in-fear>

<sup>51</sup> 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>



ordered to pay a fine of 100,000 dalasi (\$3,200) or serve six months in prison with hard labour. Also in June, the deputy editor of the Daily News, Lamin Njie, was arrested and held for three days for a story about the court proceedings in a case regarding economic crimes. In July 2012, journalist Sidiq Asemota of the Daily Observer was arrested on the orders of the presiding judge of the Banjul High Court and detained for a day for allegedly misreporting the facts of a forgery case.<sup>52</sup> In September 2012, a BBC journalist, a French national, was held for more than five hours at Banjul airport. He was told to leave the country within 48 hours without any explanation and despite the fact that he had obtained previous authorization to report from the Gambia. He had come to report on the August executions.<sup>53</sup>

- 3.18.8** Plainclothes officers of the Gambia's National Intelligence Agency (NIA) arrested photographer Pa Sulay Jadama on 20 June 2013, at the premises of the Banjul Magistrates' Court and detained him incommunicado for six days, according to news reports. Jadama had been taking pictures of ex-Attorney General Lamin Jobarteh and ex-Solicitor General Pa Harry Jammeh as they arrived at court, where they faced trial on a 10-count criminal charge.<sup>54</sup> Fatou Camara, a broadcast journalist and TV host of the popular "Fatou Show," a weekly current affairs show that airs on the state-owned Gambia Radio and Television Services, was arrested by agents from the National Intelligence Agency on 15 September and released on 17 September, according to news reports. She was then re-arrested and held incommunicado. News reports said that Camara is being investigated on accusations of "espionage and breach of national security." The reports said that her arrest was linked to allegations that she was "passing information to the international media" that was critical of Jammeh.<sup>55</sup> On 11 October 2013, she was formally accused of spreading false news on the internet and defaming the President of the Republic during a court hearing. On 21 October, it was reported that Camara was smuggled out of the country along with the guarantors of her bail deposit.<sup>56</sup>
- 3.18.9** In October 2012 two journalists, Baboucarr Ceesay and Abubaccar Saidykan, 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 2012. The charges were dropped in early October 2012.<sup>57</sup> Another critic of the executions, Muslim cleric Baba Leigh, was arrested in December 2012 and detained for five months.<sup>58</sup>
- 3.18.10** 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

<sup>52</sup> Freedom House, Freedom of the Press 2013 - Gambia, The, 17 July 2013

<http://www.refworld.org/docid/51e7d0c014.html>

<sup>53</sup> Amnesty International, Annual Report 2013; The Gambia, 23 May 2013

<http://www.amnesty.org/en/region/gambia/report-2013#section-52-5>

<sup>54</sup> Committee to Protect Journalists, Gambian photographer detained for six days, 31 July 2013

<http://www.cpj.org/2013/07/gambian-photographer-detained-for-six-days.php>

<sup>55</sup> Committee to Protect Journalists, Broadcast journalist held without charge in Gambia, 3 October 2013

<http://www.cpj.org/2013/10/broadcast-journalist-held-without-charge-in-gambia.php>

<sup>56</sup> Article 19, Gambia: Journalist accused of spreading false news flees country, 21 October 2013

<http://www.refworld.org/docid/526672ba4.html>

<sup>57</sup> 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](http://en.rsf.org/gambia-two-journalists-threatened-with-26-10-2012_43595.html)

<sup>58</sup> IRIN, Gambia - living in fear, 8 October 2013, <http://www.irinnews.org/report/98893/gambia-living-in-fear>



president's supporters are prepared to resort to murder when journalists dare to criticize the government."<sup>59</sup>

**3.18.11** 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.<sup>60</sup>

**3.18.12** Freedom of information took a turn for the worse in 2013 with the banning of internet services such as Skype and Viber in April 2013, and the passage of amendment to the Information and Communication Act in July 2013 condemning the online spread of "false news" about the government or officials. Caricatures or derogatory statements that incite dissatisfaction or instigate violence against the government are punishable by 15 years' detention or a fine of \$85,000.<sup>61</sup> The Committee to Protect Journalists reported that according to reports, the penalties apply to individuals living in the country or abroad.<sup>62</sup> The Inter Press Service reports that journalists are increasingly being forced to resort to self-censorship as critical reporting – more often than not – elicits a backlash from government. In most cases, groups working on human rights issues have had to close down completely or 'self-censor' public reports on the state of human rights to avoid government reprisals. Members and partners have told CIVICUS, the global civil society alliance that they are scared to speak out lest they face the wrath of the state. Some journalists critical of the government have fled the country to avoid persecution and those that have remained are regularly targeted by the authorities.<sup>63</sup>

**3.18.13** The ECOWAS Court of Justice has intervened in individual cases - for instance in the disappearances of journalists "Chief" Ebrima Manneh and Musa Saidykhan. Saidykhan, editor-in-chief of the online website Kibaaro and ex-editor of The Independent newspaper, disappeared following his arrest by the National Intelligence Agency. He was allegedly tortured. The court demanded the government pay US\$100,000 in the former case and \$200,000 in the latter, but thus far nothing has been paid to the journalists' families. Saidykhan is now living in the US. At least the onus is now on the government to do something, said Lisa Sherman-Nikolaus, a researcher with Amnesty International.<sup>64</sup>

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

**3.18.14 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

<sup>59</sup> 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](http://en.rsf.org/gambia-two-journalists-threatened-with-26-10-2012_43595.html)

<sup>60</sup> 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>

<sup>61</sup> IRIN, Gambia - living in fear, 8 October 2013, <http://www.irinnews.org/report/98893/gambia-living-in-fear>

<sup>62</sup> Committee to Protect Journalists, Amended Gambian media law restricts Internet freedom, 10 July 2013

<http://www.cpi.org/2013/07/amended-gambian-media-law-restricts-internet-freedom.php>

<sup>63</sup> Inter Press Service, Gambia Media Crackdown Continues, 23 September 2013

<http://www.ipsnews.net/2013/09/gambia-media-crackdown-continues/>

<sup>64</sup> IRIN, Gambia - living in fear, 8 October 2013, <http://www.irinnews.org/report/98893/gambia-living-in-fear>

to harass and detain journalists incommunicado who write or publish articles which are considered unfavourable to the authorities or “un-Islamic”. Journalists are also at risk of being disappeared and face death threats, arrest on superficial charges and ill-treatment by the government.

**3.18.15** 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.

### **3.19 Lesbian, Gay, Bisexual and Transgender people**

**3.19.1** 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.

**3.19.2 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 are anti-discrimination laws, but they did not provide protection to LGBT individuals.<sup>65</sup>

**3.19.3** 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”<sup>66</sup>

**3.19.4** The Criminal Code Section 147(2) (as amended by the 2005 Act amending the Criminal Code) provides: that “any female person who, whether in public or private, commits any act of gross indecency with another female person, or procures another female person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with herself or with another female person, whether in public or private, is guilty of a felony and liable to imprisonment for a term of five years. Section 147(3) further specifies that ‘act of indecency includes any homosexual act’.”<sup>67</sup>

<sup>65</sup> 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>

<sup>66</sup> 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>

<sup>67</sup> Copies of the Criminal Code (in English) published in the Gambian Gazette are available on the ILO website. [http://www.ilo.org/dyn/natlex/natlex\\_browse.details?p\\_lang=en&p\\_country=GMB&p\\_classification=01.04&p\\_origin=COU&p\\_sortby=SORTBY\\_COUNTRY](http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=GMB&p_classification=01.04&p_origin=COU&p_sortby=SORTBY_COUNTRY)

- 3.19.5** Many Gambians live in fear, and few are able to critique government officials or policies. For example, homosexuality is an offence punishable by 14 years in prison. In April 2012, 20 individuals were arrested on charges of “unnatural offences” and “conspiracy to commit a felony.” They were eventually acquitted; 11 of them subsequently fled to neighbouring countries.<sup>68</sup> Even following their acquittal defendants still have the stigma of being “outed” as homosexual, having had their photographs published along with their names. This has led to retribution from the general public and also from some of the defendant’s family who feel that they have dishonoured them. One of the defendants’ parents - despite knowing that he is gay - are trying to force him to get married to a woman to try and restore family honour and show that he has repented his actions. He feels that he will have to leave Gambia because of this and the publicity of the trial.<sup>69</sup>
- 3.19.6** Amnesty International expressed concern regarding section 167 of the 16 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”.<sup>70</sup>
- 3.19.7** 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.<sup>71</sup>
- 3.19.8** 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”.<sup>72</sup> In a January 2011 speech to army officers, President Jammeh announced he wanted a professional army “free of gays and saboteurs.”<sup>73</sup>
- 3.19.9** 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.<sup>74</sup>
- 3.19.10** In February 2012 President Jammeh said those who think gay rights are human rights in the African state are making a “great mistake”. Jammeh previously

<sup>68</sup> IRIN, Gambia - living in fear, 8 October 2013, <http://www.irinnews.org/report/98893/gambia-living-in-fear>

<sup>69</sup> Erasing 76 Crimes, Free after Gambian ‘homosexual dance’ trial, but lives in ruins, 8 August 2012 <http://76crimes.com/2012/08/08/free-after-gambian-homosexual-dance-trial-but-lives-in-ruins/>

<sup>70</sup> 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>

<sup>71</sup> Freedom House, Countries at Crossroads 2012; The Gambia, 20 September 2012, Civil Liberties, <http://www.freedomhouse.org/report/countries-crossroads/2012/gambia>

<sup>72</sup> 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/>

<sup>73</sup> 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>

<sup>74</sup> 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>

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 president retracted a threat to decapitate gays but said they would be driven out of their homes.<sup>75</sup>

**3.19.11** 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."<sup>76</sup> 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".<sup>77</sup>

**3.19.12** In September 2013 Pink news reported that the Gambia's President had used his address to the United Nations General Assembly to attack gay people, calling homosexuality one of the three "biggest threats to human existence". President Yahya Jammeh said homosexuality, greed and obsession with world domination "are more deadly than all natural disasters put together."<sup>78</sup> He also stated that; "Homosexuality in all its forms and manifestations... though very evil, antihuman as well as anti-Allah, is being promoted as a human right by some powers."<sup>79</sup>

**3.19.13** 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.<sup>80</sup>

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

**3.19.14 Conclusion.** Caseworkers must refer to the Asylum Instruction on sexual

<sup>75</sup> 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/>

<sup>76</sup> ILGA, Gambia's president says no gays allowed; if caught, "will regret being born", 3 April 2013

<http://ilga.org/ilga/en/article/o1VLiAB1wR>

<sup>77</sup> The Point, Gambia Govt. Reacts to UK Human Rights Report, 6 May 2013

<http://allafrica.com/stories/201305071348.html>

<sup>78</sup> Pink News, Gambian President: 'Homosexuality more deadly than all natural disasters put together', 27 September 2013, <http://www.pinknews.co.uk/2013/09/27/gambian-president-homosexuality-more-deadly-than-all-natural-disasters-put-together/>

<sup>79</sup> IRIN, Gambia - living in fear, 8 October 2013, <http://www.irinnews.org/report/98893/gambia-living-in-fear>

<sup>80</sup> 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>

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 some reports of homosexuals being arrested. LGBT people who live openly face widespread legal and social discrimination and may face the risk of being arrested. This treatment can amount to persecution and 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. The Supreme Court in the case of HJ (Iran) noted that internal relocation is not the answer if it depends on the person concealing their sexual orientation in the proposed new location for fear of persecution.

- 3.19.15** 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.
- 3.19.16** 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.
- 3.19.17** If an individual chooses to live discreetly because he/she fears persecution if he/she were to live as openly gay, lesbian or bisexual then he/she will have a well founded fear and should be granted asylum. It is important that gay, lesbian and bisexual people enjoy the right to live openly without fear of persecution. They should not be asked or be expected to live discreetly because of their well founded fear of persecution due to their sexual orientation.

## **3.20 Women (Domestic violence, forced marriage, trafficking & discrimination)**

- 3.20.1** 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.
- 3.20.2 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.<sup>81</sup>
- 3.20.3** 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

<sup>81</sup> 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>



authorities. The Gambia is a source, destination, and transit country for the trafficking of women and children for prostitution and forced labour.<sup>82</sup>

## Domestic Violence

- 3.20.4** The Social Institutions and Gender Index 2012 stated, 'There is no specific law dealing with domestic violence, although this can be prosecuted under laws prohibiting rape, spousal rape, and assault, and is considered grounds for divorce under civil law. There are no figures available as to rates of domestic violence (even where cases are reported), but it is believed to be quite common. Police rarely investigate, as domestic violence is treated as a family matter.'<sup>83</sup>
- 3.20.5** 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.<sup>84</sup>
- 3.20.6** 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.<sup>85</sup>
- 3.20.7** 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.<sup>86</sup>
- 3.20.8** 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

<sup>82</sup> Freedom House, Freedom in the World 2013 – Gambia, The, 9 May 2013

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

<sup>83</sup> Social Institutions and Gender Index <http://genderindex.org/>; Social Institutions and Gender Index 2012; Gambia, The; undated <http://genderindex.org/country/gambia>

<sup>84</sup> 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>

<sup>85</sup> 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>

<sup>86</sup> 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>

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.<sup>87</sup> The Domestic Violence Bill was passed on 18 December 2013.<sup>88</sup>

**3.20.9** Following a 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."<sup>89</sup>

**3.20.10** However, since October 2010, GAMCOTRAP, one of the leading women's rights NGOs in the country, has 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". GAMCOTRAP has 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.<sup>90</sup>

## Discrimination

**3.20.11** 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. The law prohibits sexual harassment and provides for a one-year mandatory prison sentence for offenders. No cases were reported during 2012, but sexual harassment remained an ongoing problem.<sup>91</sup> The 2012 OECD Social Institutions and Gender Index reports that gender inequality is accepted as a given by many women and men in Gambian society. Women occupy very low status in

<sup>87</sup> The Point (Banjul), Gambia: Gov't to Beef Up Laws Against Domestic Violence, Others, 8 March 2013

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

<sup>88</sup> The Daily Observer, Gambia Passes Domestic Violence Bill, 18 December 2013

<http://allafrica.com/stories/201312181239.html>

<sup>89</sup> Foroyaa Newspaper (Serrekunda) Gambia: Police Receive Gender Training Manual for Safeguarding Rights, 30 April 2013 [http://allafrica.com/stories/201304301249.html?aa\\_source=slideout](http://allafrica.com/stories/201304301249.html?aa_source=slideout)

<sup>90</sup> 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/>

<sup>91</sup> 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>

Gambian society, in part due to the incorporation of Sharia and customary law into the country's legal codes, enshrining discriminatory practices in matters relating to marriage, bodily integrity, and inheritance and ownership rights.<sup>92</sup>

**3.20.12** 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.<sup>93</sup>

**3.20.13** 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.<sup>94</sup>

## Forced Marriage

**3.20.14** 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.<sup>95</sup>

**3.20.15** 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.<sup>96</sup>

**3.20.16** 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.<sup>97</sup> According to the Multiple Indicator Cluster Survey 2010 Report of The Gambia, the prevalence of early marriage of young girls under the age of 15 is 8.6%, and those under age 18 constitute 46.5%.<sup>98</sup>

**3.20.17** 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 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.<sup>99</sup>

<sup>92</sup> Social Institutions and Gender Index <http://genderindex.org/>; Social Institutions and Gender Index 2012; Gambia, The; undated <http://genderindex.org/country/gambia>

<sup>93</sup> 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>

<sup>94</sup> 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>

<sup>95</sup> 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>

<sup>96</sup> The Point, Forced marriage, 18 April 2012 <http://thepoint.gm/africa/gambia/article/forced-marriage-1>

<sup>97</sup> UN Population Fund, Marrying Too Young: End Child Marriage, 2012, <http://www.refworld.org/docid/508fe73f2.html>

<sup>98</sup> Front Page International, Women and girls in The Gambia are victims of gender-based violence, 10 December 2013 <http://frontpageinternational.wordpress.com/2013/12/10/women-and-girls-in-the-gambia-are-victims-of-gender-based-violence/>

<sup>99</sup> UNICEF Gambia, The Children: Adolescence, undated current webpage, accessed May 2013 [http://www.unicef.org/gambia/children\\_1266.html](http://www.unicef.org/gambia/children_1266.html)

**3.20.18** 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.”<sup>100</sup>

## Trafficking

**3.20.19** The Gambia is a source, transit, and destination country for women and children subjected to forced labour and sex trafficking. Within The Gambia, women, 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.<sup>101</sup>

**3.20.20** The Government of the Gambia sustained modest anti-trafficking law enforcement efforts during the reporting period (April 2012 to March 2013). 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.<sup>102</sup>

**3.20.21** The Government of the Gambia does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Despite these efforts, the government did not demonstrate evidence of overall increasing efforts to address human trafficking since the previous reporting period (March 2011- February 2012). Although it opened some investigations into potential trafficking crimes, the government failed to initiate any prosecutions of alleged trafficking offenders or to formally identify any victims. Sixty potential foreign child trafficking victims were referred to a government-run shelter and the government demonstrated increased prevention efforts relating to the practice of forced begging and street vending by unscrupulous marabouts.<sup>103</sup>

**3.20.22** Law enforcement efforts remained hindered by a lack of resources, training, and organisation among various agencies. The government, in partnership with NGOs and international organisations, trained law enforcement officers to identify trafficking victims, interview victims, and prevent trafficking. The government did not report any investigations or prosecutions of public officials for alleged complicity in trafficking-related offenses.<sup>104</sup>

**3.20.23** The government efforts to protect victims of human trafficking were limited during the reporting period (1 April 2012 to 31 March 2013), as it did not formally identify any trafficking victims. The Department of Social Welfare operated a 24-hour multi-purpose hotline and allocated the equivalent of approximately \$11,500 to operating a shelter and drop-in centre; the government did not report the number

<sup>100</sup> 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>

<sup>101</sup> US State Department, 2013 Trafficking in Persons Report - The Gambia 19 June 2013

<http://www.state.gov/documents/organization/210739.pdf>

<sup>102</sup> US State Department, 2013 Trafficking in Persons Report - The Gambia 19 June 2013

<http://www.state.gov/documents/organization/210739.pdf>

<sup>103</sup> US State Department, 2013 Trafficking in Persons Report - The Gambia 19 June 2013

<http://www.state.gov/documents/organization/210739.pdf>

<sup>104</sup> US State Department, 2013 Trafficking in Persons Report - The Gambia 19 June 2013

<http://www.state.gov/documents/organization/210739.pdf>

of trafficking victims it may have cared for in these facilities. The department continued to maintain an electronic child protection database, which includes information on trafficking cases, although no cases were identified in 2012.<sup>105</sup>

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

**3.20.24 Conclusion** There is societal discrimination, violence against women and forced marriage in the Gambia. The authorities are unlikely to be able to offer effective protection to women, especially in cases of domestic violence and 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. It should be noted that women, especially single women with no support networks, are likely to be vulnerable and may be subjected to destitution. 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.

**3.20.25** 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.

**3.20.26** 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.

**3.20.27** When a victim of trafficking agrees to give evidence as part of a criminal prosecution, caseworkers must consider if: it is likely to affect the basis of the asylum claim (for example by increasing the risk of retribution), and if they should postpone the decision on the asylum claim until the trial is concluded.

<sup>105</sup> US State Department, 2013 Trafficking in Persons Report - The Gambia 19 June 2013  
<http://www.state.gov/documents/organization/210739.pdf>



The impact of the applicant giving evidence on the likelihood of future risk can then be assessed. It may be necessary to liaise with the police in these circumstances.

**3.20.28** 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 failed to initiate any prosecutions of alleged trafficking offenders. The government made limited efforts to prevent trafficking as it did not formally identify any trafficking victims. Some services for victims of trafficking do exist although the government did not report the number of trafficking victims it may have cared for in these facilities. 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.

### **3.21 Prison conditions**

**3.21.1** 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.

**3.21.2** 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.

**3.21.3 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.<sup>106</sup> Poor sanitation, illness, lack of medical care, overcrowding, extreme heat and malnutrition plagued Gambia's prisons. External monitors were not allowed access. Lack of equipment such as fire extinguishers put prisoners' safety at risk.<sup>107</sup>

**3.21.4** 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

<sup>106</sup> 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>

<sup>107</sup> Amnesty International, Annual Report 2013- The Gambia, 23 May 2013, <http://www.amnesty.org/en/region/gambia/report-2013>

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.<sup>108</sup>

- 3.21.5** The U.S. State Department reported, that during 2012 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.<sup>109</sup> Freedom House noted that “torture of prisoners has been reported as routine”.<sup>110</sup> In a previous report by Freedom House, it stated that “political prisoners and political and social activists suffer severe beatings, electric shock, and sometimes rape that sometimes end in death”.<sup>111</sup> The report also noted that “The NIA serves as the repressive arm of government, notorious for atrocious torture techniques used to extract confessions”.<sup>112</sup> 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.<sup>113</sup>
- 3.21.6** In October 2012, it was reported that four inmates had died from illness, including two death row prisoners, Abba Hydara and Guinea-Bissau national Sulayman Ceesay; further information was not available. According to sources, inmate Amadou Faal, known as Njagga, was severely beaten in October by a prison officer. He suffered the loss of his eye but was denied medical care for several days. The prison officer was not disciplined or charged.<sup>114</sup>
- 3.21.7** 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.<sup>115</sup>
- 3.21.8** Authorities occasionally held pretrial detainees with convicted prisoners.<sup>116</sup>

<sup>108</sup> 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>

<sup>109</sup> 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>

<sup>110</sup> Freedom House, Freedom in the World 2013 – Gambia, The, 9 May 2013 <http://www.freedomhouse.org/report/freedom-world/2013/gambia>

<sup>111</sup> Freedom House, Countries at Crossroads 2012; The Gambia, 20 September 2012, Civil Liberties [http://www.freedomhouse.org/report/countries-crossroads/2012/gambia#\\_edn1](http://www.freedomhouse.org/report/countries-crossroads/2012/gambia#_edn1)

<sup>112</sup> Freedom House, Countries at Crossroads 2012; The Gambia, 20 September 2012, Civil Liberties [http://www.freedomhouse.org/report/countries-crossroads/2012/gambia#\\_edn1](http://www.freedomhouse.org/report/countries-crossroads/2012/gambia#_edn1)

<sup>113</sup> 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>

<sup>114</sup> Amnesty International, Annual Report 2013- The Gambia, 23 May 2013, <http://www.amnesty.org/en/region/gambia/report-2013>

<sup>115</sup> 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>

<sup>116</sup> 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>

- 3.21.9** 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.<sup>117</sup>
- 3.21.10** Authorities sometimes investigated credible allegations of inhumane conditions. A Prisons Visiting Committee, which included representatives of several government agencies, is empowered to monitor detention centre 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.<sup>118</sup>
- 3.21.11** 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.<sup>119</sup>
- 3.21.12** The government did not permit the International Committee of the Red Cross or the media access to monitor prison conditions during 2012.<sup>120</sup>
- 3.21.13** In August 2012, the Gambia broke a 27-year moratorium on the death penalty when nine prisoners on death row were executed in secret.<sup>121</sup> Human rights groups say it was mostly political prisoners who died.<sup>122</sup> 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. 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.<sup>123</sup> Another 37 inmates remain on death row.<sup>124</sup> After a year, families still do not know where their beloved ones have been buried as the corpses of those executed have not been returned to their families, nor has the place of burial been disclosed.<sup>125</sup>

<sup>117</sup> 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>

<sup>118</sup> 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>

<sup>119</sup> 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>

<sup>120</sup> 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>

<sup>121</sup> 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/>

<sup>122</sup> BBC news, Gambia's President Jammeh halts executions amid outcry, 15 September 2012 <http://www.bbc.co.uk/news/world-africa-19610206>

<sup>123</sup> 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/>

<sup>124</sup> BBC news, Gambia's President Jammeh halts executions amid outcry, 15 September 2012 <http://www.bbc.co.uk/news/world-africa-19610206>

<sup>125</sup> Amnesty International, The Gambia: One year after the arbitrary executions of nine prisoners, still no justice, 23 August 2013 <http://www.amnesty.org/en/library/asset/AFR27/007/2013/en/d61ab9f6-7a55-4333-9f05-91aa5de535c5/afr270072013en.pdf>

**3.21.14** Prisoners on death row were not allowed visits by family or friends. Food in prisons was of poor quality but only remand prisoners were allowed food from outside. Rehabilitation programmes were non-existent.<sup>126</sup>

**3.21.15 Conclusion** Prison conditions were harsh and life-threatening and taking into account the incidence of torture, serious overcrowding, poor sanitation, inadequate food and medical facilities and deaths in detention, 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 from humanitarian protection is not justified, a grant of Humanitarian Protection will be appropriate. In other cases a grant of Discretionary or Restricted Leave may be appropriate.

#### **4. Unaccompanied minors claiming in their own right**

- 4.1** Unaccompanied minors claiming in their own right who have not been granted asylum or HP can only be returned where the Secretary of State is satisfied that safe and adequate reception arrangements are in place in the country to which the child is to be returned.
- 4.2** At present the Home Office does not have pre-approved arrangements in place with NGOs or other organisations in the Gambia to provide alternative adequate reception arrangements in cases where the minor cannot be returned to their family. Those who cannot be returned should be considered for leave as an Unaccompanied Asylum Seeking Children (UASC).
- 4.3** Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to endeavour to trace the families of UASC as soon as possible after the claim for asylum is made, while ensuring that those endeavours do not jeopardise the child's and/or their family's safety.
- 4.4** Information on the infrastructure within the Gambia which may potentially be utilised to assist in endeavouring to trace the families of UASC, can be obtained from the Country of Origin Information Service (COIS).
- 4.5** Caseworkers should refer to the AI: [Processing an Asylum Application from a Child](#), for further information on assessing the availability of safe and adequate reception arrangements, UASC Leave and family tracing. Additional information on family tracing can be obtained from the [interim guidance](#) on Court of Appeal judgment in [KA \(Afghanistan\) & Others \[2012\] EWCA civ1014](#).

#### **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.

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<sup>126</sup> Amnesty International, Annual Report 2013- The Gambia, 23 May 2013, <http://www.amnesty.org/en/region/gambia/report-2013>

- 5.2** 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).
- 5.3** 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.
- 5.4** 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, and the absence of resources through civil war or similar human agency.
- 5.5** 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.
- 5.6** 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.
- 5.7** 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 AI 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** Individuals can return voluntarily to their country of origin / place of habitual residence at any time in one of three ways:
- leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK
  - leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or
  - leaving the UK under one of the [Assisted Voluntary Return \(AVR\) schemes](#).

Country Specific Litigation Team  
Immigration and Border Policy Directorate  
Home Office  
January 2014