



OPERATIONAL GUIDANCE NOTE

THE GAMBIA

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1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in The Gambia and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service The Gambia Country of Origin Information at: http://www.homeoffice.gov.uk/rds/country_reports.html
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instructions on Article 8 ECHR. If, following consideration, a claim is to be refused, caseowners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.
- 1.4** With effect from 27 July 2007 The Gambia is a country listed in section 94 of the Nationality, Immigration and Asylum Act 2002 in respect of men only. Asylum and human rights claims must be considered on their individual merits. If, following consideration, a claim made on or after 27 July 2007 by a man who is entitled to reside in The Gambia is refused, caseowners must certify it 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. However, if a claim from a woman is refused, caseowners may certify it as clearly unfounded on a case-by-case basis if they are satisfied that it is so clearly without substance that it is bound to fail. Guidance on whether certain types of claim are likely to be clearly unfounded is set out below.

Source documents

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

2. Country assessment

- 2.1 The Gambia is a republic under multi-party democratic rule and the Constitution provides for the separation of the powers of the executive, legislative and judicial organs of state. The Constitution provides citizens with the right to change their government peacefully, and citizens exercise this right in practice through periodic, free, and fair elections held on the basis of universal suffrage.¹
- 2.2 The president incumbent is Colonel Dr Alhagi Yahya A. J. J. Jammeh, who was proclaimed Head of State on 26 July 1994, elected President on 26 September 1996, and re-elected on 18 October 2001. Three candidates were accepted for the elections of 2006, President Jammeh, Ousainou Darboe of the United Democratic Party (UDP) and Halifah Salah of the National Alliance for Democracy and Development (NADD). President Jammeh won the elections on 22 September with 66% of the vote to Darboe's 27%. The vote was considered by observers to have been free and fair on the day, although the Commonwealth Secretariat noted 'abuses of incumbency' in the lead up to the polls. President Jammeh's Alliance for Patriotic Reorientation and Construction (APRC) confirmed its overwhelming dominance of the political scene by winning 37 of the 43 elected seats in the legislative elections of January 2007. However, voter turn out was extremely low at 41 percent.²
- 2.3 The Constitution provides for an independent judiciary; however, in practice, the courts, especially at the lower levels, are corrupt and subject to executive branch pressure at times. Nevertheless, in 2006 the courts demonstrated independence on several occasions, including in significant cases.³
- 2.4 In March 2006, a coup attempt was uncovered and approximately 50 suspects were detained. A month after the coup plot was unearthed, the Government said 5 of the 19 suspects had escaped from custody while being transported to a prison 200 kilometres from the capital. Correspondents say nothing has been heard of them since, prompting fears that they may have been executed. In April 2007, ten suspected coup plotters were sentenced from ten years to life imprisonment by a military court. The foiled coup plot resulted in a more restrictive environment in 2006, and the Government's respect for the human rights of its citizens declined during the year. Although the Constitution and law provide for protection of most human rights, there were problems in many areas during 2006. Arbitrary arrests and detentions increased, particularly after the discovery of the coup plot. Security forces harassed and mistreated detainees, prisoners, opposition members, and civilians with impunity. Prisoners were held incommunicado, faced prolonged pre-trial detention, and were denied due process. Women experience violence and discrimination in the Gambia, and female genital mutilation (FGM) remains a problem. Child labour and trafficking in persons were also problems during 2006.⁴
- 2.5 In 2006, the Government infringed on privacy rights and restricted freedom of speech and press. The security forces also harassed and mistreated journalists with impunity. In October 2006, the FCO reported that several media representatives had been arrested without charge and held in detention since the coup attempt of March 2006. The FCO also

¹ Home Office Country of Origin Information (COI) Service The Gambia Country Report 2006 (State Structures: Political system), Foreign and Commonwealth Office (FCO) Country Profile 2007 & U.S. Department of State report on Human Rights Practices (USSD) 2006 (Introduction & Section 3)

² COI Service The Gambia Country Report 2006 (State Structures: Political system) & FCO Country Profile 2007

³ USSD 2006 (Section 1)

⁴ USSD 2006 (Introduction) & British Broadcasting Corporation (BBC) News 'Gambia jail terms for coup plot' dated 20 April 2007

reported that The Independent newspaper had not been allowed to publish for several months and the radio stations Sud FM and Citizens Raio had not been allowed to resume broadcasting. Juornalist Lamin Fatty was also held in detention after he wrote an article for The Independent in April 2006 about suspects arrested ni connection with the attempted coup.⁵

- 2.6** There were no confirmed reports that the Government or its agents committed arbitrary or unlawful killings during 2006. However, in April 2006 there were allegations that the Government had executed five detainees in connection with the March coup plot after the Government announced that they had escaped while being transferred to a minimum security prison. The Government denied the reports, but none of the escapees were seen or heard from during the year.⁶

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in The Gambia. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instructions on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Caseowners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the Asylum Instructions on Assessing the Claim)
- 3.5** All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:
<http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/>
- 3.6 Female Genital Mutilation (FGM)**
- 3.6.1** Some claimants will seek asylum or make a human rights claim on the basis that they would be forcibly required by family/tribal members to undergo female genital mutilation (FGM) and/or that FGM will be forced upon their children if they were to return to The Gambia.
- 3.6.2 *Treatment.*** The law does not prohibit Female Genital Mutilation (FGM). In 2006, the

⁵ USSD 2006 (Introduction & Section 2) & FCO Human Rights Report 2006 (page 281)

⁶ USSD 2006 (Section 1)

Government publicly supported efforts to eradicate FGM and discouraged it through health education; however, the practice remained widespread and entrenched. Between 60 and 90 percent of women have undergone FGM and approximately seven of the nine major ethnic groups have practiced FGM at ages varying from shortly after birth until age 16. In 2006, several NGOs conducted public education programs to discourage the practice and spoke out against FGM and harmful traditional practices in the media. The National Assembly Select Committee on Women and Children also continued its campaign against FGM and other harmful traditional practices affecting the lives of women and children.⁷

- 3.6.3** The frequency of FGM varies from one ethnic group to another. It is almost 100% amongst the Mandingoes (Manjagos) and the Sarakoles (Serahulis) and more than 90% amongst the Peuls (Fulas). Together these ethnic groups make up approximately 70% of the Gambian population. However, FGM is less frequent amongst the Jolas and very rare amongst the Wolofs who together make over a quarter of the population. On the religious front, FGM is almost unheard of amongst the 9 % of the population who are Christian.⁸
- 3.6.4** Of those who have undergone any of the four types of FGM procedures, twenty percent are below the age of five and fifty percent are between the ages of five and eighteen, with the average being approximately age twelve. The urbanised areas of the western division of The Gambia have a high concentration of ethnic Wolofs who do not practice any of these procedures.⁹
- 3.6.5** It is generally older women and excisors (those who perform the procedure) who are the major force behind maintaining the practice. The enticement of a big party, festive cooking and new clothes are commonly used as incentives for a girl to undergo the procedure. It is difficult for a young woman to resist in the face of powerful extended family members should she decide not to undergo FGM and in some cases older women have been known to pursue a reluctant young woman and force her to undergo the procedure. Occasionally, the procedure is performed without the parents' consent. Rural women in groups that practice any form of FGM strongly support the practice.¹⁰
- 3.6.6** The Gambia Committee against Traditional Practices (GAMCOTRAP) is the National Committee of the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children (IAC) in the country. It has the lead role in sensitising the public about the harmful effects of traditional practices such as FGM. It uses various strategies at the grassroots level using indigenous modes of communication and local languages.¹¹
- 3.6.7** GAMCOTRAP has organized training workshops and programmes, including video viewing, to provide information on the harmful effects of this practice. It has directed its campaign to eradicate this practice at women, community leaders, youth and children. It has carried out programmes on the harmful effects of the practice for traditional birth attendants (TBAs) in a number of villages. Lectures are held around the country to reach the entire populace. As a result, the once taboo subject is now openly discussed. GAMCOTRAP has also tried to reach school children through use of audio-visual materials and theatre. It has used the media. It is also developing new strategies to provide excisors with alternate ways of earning a living.¹²

⁷ USSD 2006 (Section 5)

⁸ COI Service The Gambia Country Report 2006 (Human Rights - Specific Groups: Women) & Central Intelligence Agency - The World Factbook: The Gambia

⁹ U.S. Department of State - The Gambia: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC)

¹⁰ U.S. Department of State - The Gambia: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC)

¹¹ U.S. Department of State - The Gambia: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC)

¹² U.S. Department of State - The Gambia: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC)

- 3.6.8** However, many Gambians, including State House Imam Abdoulie Fatty, support FGM. In his sermons, Imam Fatty has often stated that FGM 'Is good and should be encouraged by every Muslim.' He has described anti-FGM campaigners as 'enemies of the Islamic faith and infidels, paid to cause confusion among Gambian population.' Following national tension generated by the topic, President Jammeh issued an executive order a few years ago forbidding State radio and television from broadcasting views on FGM. It was not until recent years that the State media resumed reporting on the sensitive subject.¹³
- 3.6.9** In May 2004, the head of the Supreme Islamic Council stated that the practice is an 'honour for women to undergo,' but other, well-respected local Muslim leaders have continued to speak out against it, as have human rights activists and others. Although government programmes to promote girls' education and development quietly work to reduce the prevalence of FGM by changing societal attitudes, the Government's official stance is that FGM is a cultural issue which the Government cannot forbid.¹⁴
- 3.6.10** In June 2004, the National Assembly passed a Children's Bill, aimed at curbing violence against children, that outlaws social and cultural practices that affect the welfare, dignity, normal growth and development of the child and in particular, those customs and practices that are prejudicial to the health and life of the child and; discriminatory to the child on the grounds of sex or other status.¹⁵
- 3.6.11** ***Sufficiency of protection.*** Although the authorities do not condone FGM and publicly support efforts to eradicate it through health and education programmes, the practice remains legal and is widespread throughout The Gambia. It is generally considered a cultural issue in which the authorities do not interfere and therefore individuals may not be able to access sufficiency of protection.
- 3.6.12** ***Internal relocation.*** The Constitution provides for freedom of movement, but allows for 'reasonable restrictions.'¹⁶ A woman from an ethnic background where FGM is the tradition and who is seeking to avoid the threat of FGM may be able to relocate to the urbanised areas of the western division of The Gambia where there is a high concentration of ethnic Wolofs who do not practice FGM.¹⁷ In general, internal relocation to escape a localised threat from members of a family or tribe is an option. However, each case must be considered individually and some individuals may encounter a lack of acceptance by others in the new environment as well as lack of accommodation, land etc which may make internal relocation unduly harsh.
- 3.6.13** ***Conclusion.*** Although the National Assembly passed the Children's Bill in June 2004, aimed at curbing violence against children, which specifically outlaws the type of violence against children that is characteristic of FGM, the practice of FGM is not illegal. FGM is widespread in The Gambia and the Government's official stance is that FGM is a cultural issue that the Government cannot forbid or interfere with and therefore any protection that the authorities are able or willing to offer will be limited. However, the Gambian authorities publicly supports efforts to eradicate FGM and discourages it through health and education programmes. In addition, there are also a number of NGOs who work to promote women's rights and campaign against FGM.
- 3.6.14** The urbanised areas of the western division of The Gambia have a high concentration of ethnic Wolofs who do not practice FGM and a woman from an ethnic background where FGM is the tradition and who is seeking to avoid the threat of FGM may be able to relocate

¹³ COI Service The Gambia Country Report 2006 (Human Rights - Specific Groups: Women)

¹⁴ COI Service The Gambia Country Report 2006 (Human Rights - Specific Groups: Women)

¹⁵ COI Service The Gambia Country Report 2006 (Human Rights - Specific Groups: Women)

¹⁶ USSD 2006 (Section 2)

¹⁷ U.S. Department of State - The Gambia: Report on Female Genital Mutilation (FGM) or Female Genital Cutting (FGC)

there. Each case must be considered individually, and much will depend on the social standing of the woman and her ability to live independently of her family, the influence which could be exerted by her family or tribe, and the availability of other family members who might be able to offer protection. If it is considered that that an applicant could successfully internally relocate to another area of The Gambia in order to avoid the threat of FGM, a grant of asylum or Humanitarian Protection will not be appropriate. Women from tribes that practice FGM but who are 'intact' i.e. have not undergone FGM, will be members of a particular social group and individual claimants from these tribes who are able to demonstrate that they are at serious risk of facing such treatment and could not escape the risk by internal relocation should be granted asylum.

3.7 Involvement with opposition political organisations/non-governmental organisations (NGOs)

3.7.1 Some claimants will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of the authorities due to involvement with opposition political organisations/non-governmental organisations (NGOs).

3.7.2 *Treatment.* The Gambia is a republic under multi-party democratic rule and the Constitution provides for the separation of the powers of the executive, legislative and judicial organs of state. The Constitution provides citizens with the right to change their government peacefully, and citizens exercise this right in practice through periodic, free, and fair elections held on the basis of universal suffrage. Three candidates were accepted for the elections of 2006, President Jammeh, Ousainou Darboe of the UDP and Halifah Salah of the NADD. President Jammeh won the elections on 22 September with 66% of the vote to Darboe's 27%. President Jammeh's APRC confirmed its overwhelming dominance of the political scene by winning 37 of the 43 elected seats in the legislative elections of January 2007.¹⁸

3.7.3 With regard to the presidential elections of September 2006, the Commonwealth Observer Group expressed concerns regarding the ruling party using State resources to secure victory, and that a memorandum of understanding brokered between the parties before the election was not adhered to. However, the Commonwealth Observer Group concluded that the Independent Electoral Commission deserved to be congratulated for a job well done, that on the election day, the process was well organised and things went smoothly, and that overall the result of the election reflected the voters' wishes.¹⁹

3.7.4 The law provides for freedom of assembly, but the Government does not always respect this right in practice. In June 2006, the Government denied a request by the Association of Non-Governmental Organizations to hold a civil society forum on freedom of expression in association with the African Union Summit. In September 2006, the police reportedly sprayed teargas on participants in a UDP rally.²⁰

3.7.5 The Constitution and law provide for freedom of association, and in 2006 the Government generally respect this right in practice. The Armed Forces Provisional Ruling Council's Decree 81 requires NGOs to register with the National Advisory Council, which has the authority to deny, suspend, or cancel the right of any NGO to operate, including that of international NGOs. However, there were no reports of NGOs being denied the right to operate during 2006.²¹

3.7.6 Restrictions on political activities were revoked in July 2001,²² but during 2006 the

¹⁸ COI Service The Gambia Country Report 2006 (State Structures: Political system) FCO Country Profile 2007 & USSD 2006 (Introduction & Section 3)

¹⁹ Commonwealth Secretariat. The Gambia Presidential Election 2006 - Report of the Commonwealth Observer Group

²⁰ USSD 2006 (Section 2) & Freedom House - Freedom in the World 2007: The Gambia

²¹ USSD 2006 (Section 2)

²² COI Service The Gambia Country Report 2006 (Human Rights - Freedom of association and assembly)

Government arrested and detained opposition members who publicly criticised or who expressed views in disagreement with the Government, including an elected local official from the UDP. In February 2006, however, the Government released and withdrew charges against three NADD leaders detained in November 2005 for sedition and unauthorised possession of a diplomatic passport.²³

- 3.7.7** In March 2006, a coup attempt was uncovered and approximately 50 suspects were detained, 21 of whom remained in detention awaiting trial at the end of 2006. A month after the coup plot was unearthed, the Government said 5 of the 19 suspects had escaped from custody while being transported to a prison 200 kilometres from the capital. Correspondents say nothing has been heard of them since, prompting fears that they may have been executed. In April 2007, ten suspected coup plotters were sentenced from ten years to life imprisonment by a military court. The foiled coup plot resulted in a more restrictive environment in 2006 and many of those arrested have been detained without access to lawyers or international organisations, and well beyond the 72 hours allowed by law.²⁴
- 3.7.8 *Sufficiency of protection.*** As this category of claimants' fear is of ill-treatment/persecution by the State authorities they cannot apply to these authorities for protection.
- 3.7.9 *Internal relocation.*** As this category of claimants fear is of ill-treatment/persecution by the State authorities' relocation to a different area of the country to escape this threat is not feasible.
- 3.7.10 *Conclusion.*** The Gambia is a functioning multi-party democracy in which numerous political parties are able to contest elections. Human rights groups and other NGOs generally operate freely, although human rights workers and opposition members occasionally face harassment. There is freedom of association and assembly and the authorities generally respect these rights, though in 2006, the Government arrested and detained those who publicly criticised or who expressed views in disagreement with the Government. There were also arrests and prolonged detentions following the attempted coup of March 2006 and some fears that the 5 suspects who subsequently escaped from custody may have been executed. Still, there is no evidence that the 5 escapees were executed, some of those initially detained have since been released; and there is no corroborated information on whether those arrested for suspected involvement in the coup plot encountered mistreatment during detention. Similarly, there is no evidence that political opponents generally suffer persecution or treatment in breach of Article 3 at the hands of the authorities. In considering the above, claimants in this category should not simply qualify for asylum or Humanitarian Protection on grounds of political opposition. However, caseowners should assess on an individual case by case basis whether there may be a real risk that a political opponent will encounter ill-treatment amounting to persecution and in some cases a grant of asylum or humanitarian protection may be appropriate.

3.8 Journalists

- 3.8.1** Some claimants will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of the Gambian authorities due to them being journalists who have expressed anti-government views.
- 3.8.2 *Treatment.*** The law provides for freedom of speech and the press, however during 2006, the Government limited these rights by intimidation, detention, and restrictive legislation. Although the independent press practised a degree of self-censorship, opposition views regularly appeared in the independent press during 2006 and there was criticism of the Government. In June 2003, the National Media Commission was created and was given far-reaching powers, including the authority to imprison journalists for terms of up to six

²³ FCO Country Profile 2007 & USSD 2006 (Sections 1 & 2)

²⁴ USSD 2006 (Introduction & Section 1), FCO Country Profile 2007 & British Broadcasting Corporation (BBC) News 'Gambia jail terms for coup plot' dated 20 April 2007

months.²⁵

- 3.8.3** In 2006, the Government published one newspaper, *The Gambia Daily*. *The Daily Observer*, although privately owned, tended to favour the Government in its coverage. There were four other independent newspapers, including one published by an opposition political party. There was one independent bi-weekly magazine.²⁶
- 3.8.4** The deterioration of the country's media environment continued during 2006 and the Government harassed journalists and editors of newspapers that published articles it considered inaccurate or sensitive. In some cases, journalists from certain independent newspapers were denied access to public events due to official disapproval of their editorial stance.²⁷
- 3.8.5** There were reports in 2006 that media representatives were arrested without charge and held in detention, particularly after the coup attempt of March 2006. In October 2006, the FCO reported that The Independent newspaper had not been allowed to publish for several months and the radio stations Sud FM and Citizens Radio had not been allowed to resume broadcasting. Journalist Lamin Fatty was also held in detention after he wrote an article for The Independent in April 2006 about suspects arrested in connection with the attempted coup. However, there is little corroborated information on whether those journalists and media representatives arrested encountered mistreatment during detention.²⁸
- 3.8.6** **Sufficiency of protection.** As this category of claimants' fear is of ill-treatment/persecution by the State authorities they cannot apply to these authorities for protection.
- 3.8.7** **Internal relocation.** As this category of claimants fear is of ill-treatment/persecution by the State authorities' relocation to a different area of the country to escape this threat is not feasible.
- 3.8.8** **Conclusion.** The Constitution guarantees freedom of speech and the press and there are opposition newspapers and journals in circulation. However, there were occasions in 2006 when journalists who expressed views criticising the Government were harassed, arrested and detained by the authorities, and since the attempted coup in March 2006 restrictions on the media have increased. In considering the above, claimants in this category should not qualify for asylum or Humanitarian Protection simply on the grounds that they are a journalist. However, caseowners should assess on an individual case by case basis whether there may be a real risk that a journalist who has expressed anti-government views will encounter ill-treatment amounting to persecution. In some cases, therefore, a grant of asylum or humanitarian protection may be appropriate.

3.9 Prison conditions

- 3.9.1** Claimants 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.
- 3.9.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

²⁵ USSD 2006 (Section 2) & COI Service The Gambia Country Report 2006 (Human Rights – Freedom of speech and the media)

²⁶ USSD 2006 (Section 2)

²⁷ USSD 2006 (Section 2)

²⁸ USSD 2006 (Introduction & Section 2), FCO Human Rights Report 2006 (page 281) & Committee to Protect Journalists. Attacks on the Press in 2006: The Gambia

- 3.9.3 *Consideration.*** Prison conditions at Mile 2, Janjanbureh, and Jeshwang prisons generally met international standards during 2006. The Government permitted some visits by independent human rights observers, but they were not allowed to visit detained suspects connected to the foiled coup plot. Local jails were overcrowded during 2006, and inmates, including detainees awaiting trial, occasionally slept on the floor. Prison guards were reluctant to intervene in fights between prisoners, which resulted in injuries. Political prisoners were not held separately from other prisoners.²⁹
- 3.9.4** The Government permitted independent monitoring of prison conditions by some local and international human rights groups; however, neither the media nor the International Committee of the Red Cross (ICRC) was granted access to detainees or prisoners during the year.³⁰
- 3.9.5 *Conclusion.*** Prison conditions in the main national prisons have been judged to meet international standards. However, at a local level, conditions deteriorate with overcrowding and lack of adequate supervision being particular problems. However, in general conditions are unlikely to reach the minimum level of severity required to reach the Article 3 threshold. Therefore, even where claimants can demonstrate a real risk of imprisonment on return to The Gambia, a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his or her particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention, the likely type of detention facility, and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.
- 4.2** With particular reference to The Gambia the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR.
- 4.3 *Minors claiming in their own right***
- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.
- 4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

²⁹ USSD 2006 (Section 1)

³⁰ USSD 2006 (Section 1)

4.4 Medical treatment

- 4.4.1** Claimants may claim they cannot return to The Gambia due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.4.2** The public health service delivery system in The Gambia is three tiered, based on the primary health care strategy. Presently government services are provided by 3 hospitals, 36 health facilities at the secondary level which provide outreach services to an additional 223 villages. There are 428 Primary Health Care (PHC) villages, organised in 69 circuits, providing limited village-based care, and outpatient clinics with physicians in 38 of those PHC villages. Thirty four private and Non-Governmental Organization clinics complement the public health system. The public sector has 1,477 beds, 211 doctors and dentists, 8 pharmacists, 261 registered nurses, 250 enrolled nurses, 144 community health nurses and 122 public health officials.³¹
- 4.4.3** The main hospitals are the Royal Victoria Hospital situated in Banjul, a facility in Farafenni and the Bansang Hospital situated in the remote town of Bansang. There are additional primary health care clinics dotted around The Gambia; however these only provide basic health care facilities and are designed to deal with simple day to day health issues only.³²
- 4.4.4** HIV infection has been on the increase in The Gambia since the first AIDS case was diagnosed in the country in 1986.³³ The prevalence rate for adults between the ages of 15 and 49 is estimated at 2.4 percent. Although The Gambia has a relatively low HIV infection rate, in September 2005 it was reported that many humanitarian workers fear that the real HIV prevalence rate is much higher because of an increase in the sexual abuse of local children. An estimated 10 percent of HIV infected adults are reported to be receiving antiretroviral therapy.³⁴
- 4.4.5** There is evidence of societal discrimination against persons infected with the HIV/AIDS virus. Stigma and discrimination hinders disclosure and can lead to rejection from partners and relatives. In some cases, persons infected with HIV/AIDS are prevented from meeting visitors. In 2006, the Government took a multi-sectoral approach to fighting HIV/AIDS and updated the National Strategic Plan, which provides for care, treatment, and support to persons living with, or affected by, HIV/AIDS, and the protection of the rights of those at risk of infection. The National AIDS Secretariat (NAS), whose goal is to promote public awareness of HIV/AIDS, sponsored a television sensitization campaign during 2006 to educate people about HIV/AIDS and prevent discrimination. In October 2006, NAS and the local UN Development Program also jointly held the second annual partnership conference on HIV/AIDS, which focused on the education sector response to HIV/AIDS.³⁵
- 4.4.6** Treatment for mental health problems is available and mental health is being integrated into the primary health system. There is a community mental health service that conducts country wide mental health promotional activities. A good number of doctors and nurses were trained on the diagnosis, treatment and management of mental health disorders through WHO support in 2004 and some traditional healers have also been trained. The country has specific programmes for mental health for children.³⁶
- 4.4.7** Where a caseowner considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be

³¹ COI Service The Gambia Country Report 2006 (State Structures: Medical services)

³² COI Service The Gambia Country Report 2006 (State Structures: Medical services)

³³ COI Service The Gambia Country Report 2006 (State Structures: Medical services)

³⁴ COI Service The Gambia Country Report 2006 (State Structures: Medical services) & UNAIDS – Uniting the world against AIDS: The Gambia

³⁵ USSD 2006 (Section 5)

³⁶ COI Service The Gambia Country Report 2006 (State Structures: Medical services)

appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.2** Gambian nationals may return voluntarily to any region of The Gambia at any time by way of the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the Border and Immigration Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in The Gambia. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Gambian nationals wishing to avail themselves of this opportunity for assisted return to The Gambia should be put in contact with the IOM offices in London on 0800 783 2332 or www.iomlondon.org.

6. List of source documents

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