



Home Office

Country Information and Guidance

The Gambia: Sexual orientation and gender identity

Version 1.0

January 2016

Preface

This document provides country of origin information (COI) and guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as ‘clearly unfounded’ under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the guidance contained within this document; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Country Information

The COI within this document has been compiled from a wide range of external information sources (usually) published in English. Consideration has been given to the relevance, reliability, accuracy, objectivity, currency, transparency and traceability of the information and wherever possible attempts have been made to corroborate the information used across independent sources, to ensure accuracy. All sources cited have been referenced in footnotes. It has been researched and presented with reference to the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the [European Asylum Support Office’s research guidelines, Country of Origin Information report methodology](#), dated July 2012.

Feedback

Our goal is to continuously improve the guidance and information we provide. Therefore, if you would like to comment on this document, please [e-mail us](#).

Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office’s COI material. The IAGCI welcomes feedback on the Home Office’s COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy.

IAGCI may be contacted at:

Independent Chief Inspector of Borders and Immigration,
5th Floor, Globe House, 89 Eccleston Square, London, SW1V 1PN.

Email: chiefinspectorukba@icinspector.gsi.gov.uk

Information about the IAGCI’s work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s website at <http://icinspector.independent.gov.uk/country-information-reviews/>

Contents

Preface	2
Contents.....	3
Guidance.....	4
Updated: October 2015	4
1. Basis of claim.....	4
1.2 Other points to note.....	4
2. Consideration of Issues	4
2.1 Is the person's account a credible one?	4
2.2 Do LGBT persons constitute a particular social group?	4
2.3 Are LGBT persons at risk of persecution or serious harm?	5
2.4 Are those at risk able to seek effective protection?	6
2.5 Are those at risk able to internally relocate?	6
2.6 If refused, is the claim likely to be certifiable as 'clearly unfounded'?	7
2.7 Policy summary	7
Country Information.....	8
3. Legal context	8
3.1 The Gambian Criminal Code	8
3.2 October 2014 amendments to section 144 of criminal code	9
3.3 Gender identity	11
4. Treatment by, and attitude of, state authorities.....	12
4.2 Homophobic rhetoric	12
4.3 Arrests and detention	14
5. Societal treatment and attitudes	18
Version Control and Contacts.....	20

Guidance

Updated: 30 November 2015

1. Basis of claim

- 1.1.1 Fear of persecution or serious harm by the state and/or non-state actors because of the person's actual or perceived sexual orientation and/or gender identity.

1.2 Other points to note

- 1.2.1 This instruction refers to lesbian, gay, bisexual and transgender and Intersex (LGBT) persons collectively, although the experiences of members of each group may differ.
- 1.2.2 Decision makers should also refer to the Asylum Instructions on [Sexual Identity Issues in the Asylum Claim](#); [Gender Identity Issues in Asylum Claims](#); and [Gender Recognition in Asylum Claims](#).
- 1.2.3 Where a claim by a male applicant falls to be refused, it must be considered for certification under section 94 of the Nationality, Immigration and Asylum Act 2002 as The Gambia is listed as a designated state in respect of men only.

[Back to Contents](#)

2. Consideration of Issues

2.1 Is the person's account a credible one?

For guidance on assessing credibility, see sections 4 and 5 of the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

- 2.1.1 Decision makers must also ensure that each asylum application has been checked to establish if there has been a previous UK visa or other application for leave. Asylum applications matched to visas should be investigated prior to the asylum interview. See [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#).

[Back to Contents](#)

2.2 Do LGBT persons constitute a particular social group?

- 2.2.1 LGBT persons in The Gambia form a particular social group (PSG) within the meaning of the Refugee Convention because they share a common characteristic that cannot be changed and have a distinct identity which is perceived as being different by the surrounding society.
- 2.2.2 Although LGBT persons in The Gambia form a PSG, this does not mean that establishing such membership will be sufficient to make out a case to be recognised as a refugee. The question to be addressed in each case will be whether the particular person will face a real risk of persecution on account of their membership of such a group.
- 2.2.3 For further guidance on particular social groups, see section 7.6 of the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

2.3 Are LGBT persons at risk of persecution or serious harm?

Decision makers must establish whether or not the person, if returned to their country of origin, will live freely and openly as an LGBT person. This involves a wide spectrum of conduct which goes beyond merely attracting partners and maintaining relationships with them. If it is found that the person will in fact conceal aspects of his or her sexual orientation if returned, decision makers must consider why the person will do so. If this will simply be in response to social pressures or for cultural or religious reasons of his or her own choosing and not because of a fear of persecution, then they may not have a well-founded fear of persecution. But if the reason why the person will resort to concealment is that they genuinely fear that otherwise they will be persecuted, it will be necessary to consider whether that fear is well founded (see Section 3.2 of the Asylum Instruction on Sexual Identity Issues in the Asylum Claim).

State treatment

- 2.3.1 Consensual same-sex sexual activity for both men and women is illegal in The Gambia and carries a sentence of between 5 and 14 years in prison. In October 2014, the president signed into law an amendment to the Criminal Code which introduced a new offence of ‘aggravated homosexuality’, punishable by life imprisonment. The amendment defines aggravated homosexuality to include serial offenders or persons with a previous conviction for homosexuality, persons who administer drugs or substances in order to have “unlawful carnal connection” with a person of the same sex, persons having same-sex relations with someone under the age of 18 or with a person who has a disability, or a person with HIV having same-sex sexual relations. (See [Legal context](#)).
- 2.3.2 An April 2013 amendment to section 167 of the Criminal Code criminalizes men who dress as women and male sex workers with punishments of fines and up to 5 years in prison. (See [Legal context](#)).
- 2.3.3 Inflammatory homophobic rhetoric from the president and senior officials is frequently reported. (See [Homophobic rhetoric](#))
- 2.3.4 Despite being illegal, however, there have been no reported prosecutions under the law until it was amended in 2014, although there have been reports of arrests but which did not lead to prosecutions. Following the introduction of the amendment to the Criminal Code in 2014, there was a crackdown on (perceived) LGBT persons, with reports of a number of arrests and detentions, ranging from 4 to dozens and at least three people charged under the new law. Those arrested were reportedly subjected to torture and ill-treatment, including beatings, sensory deprivation and threats of rape to force them to confess and to reveal information about other individuals perceived to be gay or lesbian. Three women who were arrested were subsequently released but their identity cards were confiscated and they were not allowed to leave the country. (See [Treatment by, and attitude of, state authorities](#))

- 2.3.5 LGBT persons have reportedly fled the country to avoid being arrested and there was one report that a person's relatives in the Gambia were threatened with arrest by security forces. According to one source, since the introduction of the new legislation arrests and harassment of gay men and lesbians has increased. (See [Treatment by, and attitude of, state authorities](#))

Societal treatment

- 2.3.6 The Gambia is a culturally and religiously conservative country, and sources indicate that there is strong societal intolerance of LGBT persons. Anti-LGBT rhetoric by the President, in particular, plays on and may have magnified existing societal homophobia. (See [Societal treatment and attitudes](#))
- 2.3.7 Sources report that there are no known LGBT organisations operating in the Gambia. (See [Societal treatment and attitudes](#) and [LGBT Advocacy](#))

[Back to Contents](#)

2.4 Are those at risk able to seek effective protection?

- 2.4.1 As the person's fear is of persecution or serious harm at the hands of the state, it is unreasonable to consider that they would be able to avail themselves of the protection of the authorities.
- 2.4.2 If the person is at risk from a non-state actor, the state will not provide protection. (See [Treatment by, and attitude of, state authorities](#))
- 2.4.3 For further guidance on assessing the availability or not of state protection, see section 8.1 of the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

[Back to Contents](#)

2.5 Are those at risk able to internally relocate?

- 2.5.1 As the person's fear is of persecution or serious harm at the hands of the state, it is unreasonable to consider that they would be able to avail themselves of the protection of the authorities.
- 2.5.2 Where the threat is from a non-state actor, since homophobic attitudes and intolerance are prevalent throughout the country a person is not likely to be able to relocate to escape the risk (See [Treatment by, and attitude of, state authorities](#) and [Societal treatment and attitudes](#))
- 2.5.3 Decision makers must also take account that the Supreme Court in the case of [HJ \(Iran\)](#) made the point 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.
- 2.5.4 For further guidance on considering internal relocation and the factors to be taken into account, see section 8.2 of the [Asylum Instruction on Assessing Credibility and Refugee Status](#)

[Back to Contents](#)

2.6 If refused, is the claim likely to be certifiable as 'clearly unfounded'?

- 2.6.1 Where a claim falls to be refused, it is not likely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002. This is because the majority of claims are not so clearly without substance that they are bound to fail.
- 2.6.2 For further information on certification, see the [Asylum Instruction on Non-Suspensive Appeals: Certification Under Section 94 of the NIA Act 2002](#).

[Back to Contents](#)

2.7 Policy summary

- 2.7.1 Same-sex physical relations are criminalised and sanctions against LGBT persons were increased during 2014 with the introduction of the offence of 'aggravated homosexuality' which led to a number of arrests and ill-treatment of (perceived) LGBT persons, including incidents of beatings and torture. Homophobic rhetoric, including calls by President Jammu and senior politicians for 'homosexuals' to be killed, and societal intolerance is widespread.
- 2.7.2 While each case needs to be considered on its individual merits, and the onus is on the person to demonstrate that they are at real risk, the cumulative impact of anti-LGBT legislation and widespread societal intolerance is likely to amount, in individual cases, to persecution.
- 2.7.3 There is no effective state protection and internal relocation is not likely to be an option.
- 2.7.4 Where a claim is based on a person's sexual orientation or gender identify, it is not likely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

[Back to Contents](#)

Country Information

Updated: 16 October 2015

3. Legal context

3.1 The Gambian Criminal Code

- 3.1.1 Same-sex sexual relations (both in public and private) for men and women are illegal under sections 144 and 147 of the Criminal Code, and are punishable by between 5 to 14 years in prison.¹
- 3.1.2 The Human Dignity Trust stated: 'Under Gambia's pre-existing Criminal Code, 1965, consensual sexual activity between same-sex adults in private is criminalised. Section 144 provides that those who commit "carnal knowledge of any person against the order of nature" are guilty of an offence and are liable to fourteen years' imprisonment. Section 147 provides that two persons of the same sex, whether in public or in private, who commit an "act of gross indecency" commit an offence and are liable to five years' imprisonment. In 2005 the Criminal Code (Amendment) Act, 2005, expressly interpreted "carnal knowledge... against the order of nature" and "gross indecency" as including "any homosexual act". The 2005 amendment also expressly extended sections 144 and 147 to acts between two females.'²
- 3.1.3 International Lesbian, Gay, bisexual, trans and intersex Association (ILGA) observed that:

'Gambia's Penal Code contains much broader offences relating to same-sex sexual conduct than those contained in other countries' Penal Codes. The traditional offence of committing "carnal knowledge against the order of nature" in Gambia extends beyond cases of anal penetration to include penetration of the mouth and penetration by an object, whilst any other "homosexual acts" fall under the offence of gross indecency.'³
- 3.1.4 Human Rights Watch in its September 2015 report State of Fear: Arbitrary arrests, torture and killings stated:

'In 2005, the government amended sections 144 and 147 of the Criminal Code to outlaw private consensual same-sex relations by women specifically, including the attempt by a woman to commit an act of "gross indecency" with another woman. Section 147 defines an act of gross indecency as "any homosexual act," and section 144 goes further to

¹ International Lesbian, Gay, Bisexual, Trans and Intersex Association ILGA, State Sponsored Homophobia, p102, 14 May 2015, http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2015.pdf accessed on 20 October 2015

² Human Dignity Trust noted in Gambia: Criminal Code (Amendment) Act, 2014, dated 31,03,2015 http://www.humandignitytrust.org/uploaded/Library/Other_Material/Gambia_-_Criminal_Code_Act_2014_briefing_note.pdf, date accessed 21 October 2015

³ ILGA, State Sponsored Homophobia, p102, 14 May 2015, http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2015.pdf date accessed 15 July 2015

describe “carnal knowledge of any person against the order of nature” as including “through the anus or mouth of the person; inserting any object or thing into the vulva or anus of the person for the purpose of stimulating sex; and committing any other homosexual act with the person.”

- 3.1.2 On October 9, 2014, the government again amended section 144. Gambia’s 2014 Criminal Code (Amendment) Act introduced a series of new “aggravated homosexuality” offenses that impose sentences of up to life in prison.’⁴

[Back to Contents](#)

3.2 October 2014 amendments to section 144 of criminal code

- 3.3.1 The Foreign and Commonwealth Office in March 2015 observed that:

‘In early 2014, President Jammeh called for additional legislation to protect Gambian “traditional values and religious sensitivities”. This led to the Gambian National Assembly unanimously passing the Aggravated Homosexuality Bill in August 2014, which was lifted word for word from the Ugandan Anti-Homosexuality Act (which has since been annulled by the Ugandan Constitutional Court)... The legislation was signed off by President Jammeh on 9 October [2014] and publicly confirmed on 19 November [2014].’⁵

- 3.3.2 The FCO also noted in the same March 2015 report that:

‘The word “aggravated” appears only in the title of the amendment, but as there is no definition for the terms used, it is unclear what this means. The law states that those who commit acts of homosexuality as “serial offenders” will be subject to life imprisonment. The term “serial offender” is worryingly vague, and could be applied to consensual activity between same-sex partners. The discriminatory nature of the new legislation, its harsh sentencing, and lack of clarity over application sets The Gambia apart from other regional countries on LGB&T issues.’⁶

- 3.2.1 Section 144A of the criminal code states ‘aggravated homosexuality’ is committed where the:

‘a) “person against whom the offence is committed is below the age of eighteen years”;

‘b) “offender is a person living with HIV Aids”;

‘c) “offender is a parent or guardian of the person against whom the offence is committed”;

⁴ Human Rights Watch: State of Fear: Arbitrary arrests, torture and killings, September 2015. <https://www.hrw.org/report/2015/09/16/state-fear/arbitrary-arrests-torture-and-killings> accessed on 21 October 2015

⁵ FCO Human Rights and Democracy Report 2014, 12 March 2015, <https://www.gov.uk/government/case-studies/country-case-study-the-gambia> accessed on 15 September 2015

⁶ FCO Human Rights and Democracy Report 2014, 12 March 2015, <https://www.gov.uk/government/case-studies/country-case-study-the-gambia> accessed on 15 September 2015

'd) "offender is a person in authority over the person against whom the offence is committed";

'e) "victim of the offence is a person with disability";

'f) "offender is a serial offender"; or

'g) "offender applies, administers or causes to be administered by any man or woman, any drug, matter or substance with intent to stupefy or over power him or her, so as to enable any person to have un-lawful carnal connection with any person of the same sex".'⁷

3.2.2 The Human Dignity Trust considered the impact of the amendment, stating:

'... The law is blatantly discriminatory against gay people. Section 144A applies only to same-sex sex; there is no equivalent provision for heterosexual sex... Legislation to combat the sexual abuse of vulnerable people would be welcome in Gambia, but the Act's reference to minors and disabled people does not achieve this. The Act's coverage of consensual conduct between adults is a further violation of LGBT persons' rights under the Gambian Constitution and the country's international law obligations... Disabled people who engage in homosexual acts are automatically deemed 'victims' regardless of whether they have consented. The disabled person's same-sex partner will be liable to the increased sanction of life imprisonment merely due to his or her partner's disability. The Act further diminishes the standing of disabled LGBT people in Gambian society and increases their vulnerability...

'Likewise, a person living with HIV or AIDS who engages in homosexual acts is deemed to have committed the offence of aggravated homosexuality regardless of whether consent is given, the HIV status of the 'victim', or whether the offender knows his or her own HIV status. The 'offender' is liable to the increased sanction of life imprisonment merely due to his or her HIV-status. The Act further diminishes the standing of people living with HIV/AIDS in Gambian society and increases their vulnerability... Serial offenders' are also liable to this increased sanction merely for maintaining their LGBT identity. The Act further diminishes the standing of LGBT people in Gambian society for merely living their lives and increases their vulnerability.'⁸

3.2.3 Human Rights Watch in its September 2015 report State of Fear: Arbitrary arrests, torture and killings commented on the 2014 amendments to the law that:

'The law also conflates sex with minors and sex without consent. The aggravated homosexuality offense applies where the "victim" of the act is below 18. The legal age of heterosexual consent for a woman is 16 (there is

⁷ Government of Gambia, section 144a, [Gambia Criminal Code \(Amendment\) Act, 2014](#), accessed on 9 September 2015

⁸ Human Dignity Trust noted in Gambia: Criminal Code (Amendment) Act, 2014, dated 31,03,2015 [http://www.humandignitytrust.org/uploaded/Library/Other_Material/Gambia - Criminal Code Act 2014 briefing note.pdf](http://www.humandignitytrust.org/uploaded/Library/Other_Material/Gambia_-_Criminal_Code_Act_2014_briefing_note.pdf), date accessed 14 August 2015

no age of consent for men) and sex with a girl under 16 is punishable by 14 years in prison. Consensual homosexual acts with a person under 18 is criminalized and punishable by life in prison. While Gambian law rightly protects children and non-consenting adults from sexual abuse, it should treat LGBT people equally with regard to consensual sexual relations between people who are over 16, the age of consent. The law presents a discriminatory double standard. The amendment includes the offense of drugging another person in order to have “unlawful carnal connection” with a person of the same sex. While the provision correctly protects people from abuse, the wording of the clause is overly vague and could easily be manipulated to discriminate against LGBT people – or those perceived to be LGBT – who are engaging in consensual relations. Further, the punishment of life in prison for any of these new offenses is also a far harsher penalty than punishments for similar crimes and, as such, is discriminatory and violates the Gambian constitution’s provisions to protect all Gambians from discrimination.⁹

- 3.2.4 The UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated that the amendment ‘... contributes to the existing climate of hostility against LGBT persons’¹⁰. While the UN High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, denounced the Criminal Code (Amendment) Act: ‘This law violates fundamental human rights – among them the right to privacy, to freedom from discrimination and freedom from arbitrary arrest and detention. It adds to the stigma and abuses that lesbian, gay, bisexual and transgender (LGBT) people already face in The Gambia...’¹¹

[Back to Contents](#)

3.3 Gender identity

- 3.3.1 The Foreign and Commonwealth Office observed in its travel advice for British nationals that ‘Gambian law criminalises the act of men dressing as women with a 5-year jail term.’¹² Human Rights Watch stated that:
- ‘An April 2013 amendment to section 167 of the Criminal Code also criminalizes men who dress as women and male sex workers with punishments of up to five years in prison and fines of 20,000 dalasi ([US]\$497). Laws that bar men from dressing as women discriminate against transgender women and violate their rights to freedom of expression of their identity and equal protection before the law. They expose an already

⁹ Human Rights Watch: State of Fear: Arbitrary arrests, torture and killings, September 2015. <https://www.hrw.org/report/2015/09/16/state-fear/arbitrary-arrests-torture-and-killings> Accessed 21 October 2015

¹⁰ UN Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns – Mission to The Gambia 11 May 2015, accessed on 15 September 2015

¹¹ United Nations Human Rights, Office of the High Commissioner for Human Rights (OHCHR), [The Gambia: Zeid criticizes harsh legal amendment, violence and arrests targeting gay men and lesbians](#), undated, dated accessed 14 August 2015

¹² Foreign and Commonwealth Office (FCO), Local laws and customs, [Foreign Travel Advice, Gambia](#), updated 14 August 2015

vulnerable group to further harassment and abuse, where state security forces can easily target them on the basis of their clothing or gender presentation.¹³

[Back to Contents](#)

4. Treatment by, and attitude of, state authorities

4.1.1 Freedom House noted in its Freedom in the World report, The Gambia 2015, that the country ‘received a downward trend arrow due to an amendment to the criminal code that increased the penalty for “aggravated homosexuality” to life in prison, leading to new arrests of suspected LGBT people and an intensified climate of fear.’

4.1.2 Where 1.0 was best and 7.0 the worst, the Gambia scored

- 6.0 on the Freedom rating;
- 6.0 on the Civil Liberties scale; and
- 6.0 on the Political Rights scale.¹⁴

4.2 Homophobic rhetoric

4.2.1 In November 2014, Amnesty International reported that

‘The Gambian authorities also continue to make public statements attacking LGBTI rights. In October, President Jammeh described “homosexuality” as “satanic behaviour”, while in September an officer of the ruling party, Alliance for Patriotic Reorientation and Construction (APRC), stated in a newspaper interview that: “homosexuals should be killed because they are enemies of humanity”.’¹⁵

4.2.2 The Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, dated May 2015 stated:

‘The Special Rapporteur received concerning reports about hate speech, persecution and violence against LGBT persons in the Gambia. Numerous reports have emerged of threatening and inflammatory public speeches by Mr. Jammeh against homosexuals. Such messages include threats to decapitate any homosexuals found in the country, depictions of gay people as “vermin” who should be treated worse than mosquitoes, threats to kill anyone who seeks asylum who claims to be persecuted for his or her sexual orientation, and assessments of homosexuals as more deadly than all natural disasters put together.... The Special Rapporteur warns that hate speech and discriminatory legislation

¹³ Human Rights Watch: [State of Fear: Arbitrary arrests, torture and killings](#), 16 September 2015, , page 56, date accessed 21 October 2015

¹⁴ Freedom House, [Freedom in the World 2015, The Gambia](#), published 10 July 2015, date accessed 14 August 2015

¹⁵ Amnesty International, Gambia must stop wave of homophobic arrests and torture, 18 November 2014 <https://www.amnesty.org/en/latest/news/2014/11/gambia-must-stop-wave-homophobic-arrests-and-torture/>. Date accessed 21 October 2015

risks inciting societal misconceptions and violence against LGBT persons, putting them at great risk of attacks, humiliation and even murder, and recalls the responsibility of States to respect the human rights of LGBT persons and to avoid discrimination, as well as to prevent and punish violence and abuses against them by third parties.¹⁶

- 4.2.3 United States Department of State stated in its Country Report into Human Rights Practices, 2014, The Gambia, (USSD report for 2014) published 26 June 2015:

‘On February 17 [2014], President Jammeh, in a televised address, said, “Homosexuality will never be tolerated and in fact will attract the ultimate penalty, since it is intended to bring humanity to an inglorious extinction. We will fight these vermin called homosexuals or gays the same way we are fighting malaria-causing mosquitoes, if not more aggressively.” President Jammeh said that “L.G.B.T can only stand for Leprosy, Gonorrhea, Bacteria, and Tuberculosis, all of which are detrimental to human existence.” He added that no diplomatic immunity would be respected for any diplomat found guilty or accused of being gay and the country would not accept diplomats who are gay.

‘The mayor of Kanifing Municipality, Yankuba Colley, who also doubles as the national mobiliser of the ruling APRC party, said in an interview published in The Standard on September 26 that “homosexuality is such a grave crime against nature that homosexuals should be killed.”¹⁷

- 4.2.4 The Foreign and Commonwealth Office (FCO), in its travel advice for British nationals to Gambia, up dated as of August 2015 reported that ‘There is a zero tolerance towards LGBT people in The Gambia... There is increasing inflammatory homophobic rhetoric from the Gambian President and senior officials. Foreign nationals have been detained by the police in relation to suspected or alleged homosexuality.’¹⁸

- 4.2.5 ThinkProgress reported on 13 May 2015: ‘Yahya Jammeh, the virulently anti-gay dictator who has ruled the Gambia for the last decade made some of his most hateful comments on the country’s LGBT community last week.

“If you do it [in The Gambia] I will slit your throat,” he said according to a translation obtained by VICE News. “[I]f you are a man and want to marry another man in this country and we catch you, no one will ever set eyes on you again, and no white person can do anything about it.”

¹⁶ UN Human Rights Council, [Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns](#), paras 78-79, accessed on 9 September 2015

¹⁷ United States Department of State, Country Report into Human Rights Practices, The Gambia 2014, Section 6, published 26 June 2015,

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#section5>, date accessed 15 July 2015

¹⁸ Foreign and Commonwealth Office (FCO), Travel Advice, The Gambia, local laws and customs, current at 4 September 2015, <https://www.gov.uk/foreign-travel-advice/gambia/local-laws-and-customs>, date accessed 4 September 2015

‘...This is not the first time the country’s enigmatic leader has expressed homophobic vitriol. In October, he railed against homosexuality as “satanic behavior.”¹⁹

4.2.6 Human Rights Watch in its September 2015 report noted:

‘President Jammeh has a long history of virulent anti-gay hate speech... In a March 2013 speech at the opening of parliament, Jammeh said that “homosexuality is anti-god, anti-human, and anti-civilization. Homosexuals are not welcome in the Gambia. ... If we catch you, you will regret why you are born.” Jammeh told the UN General Assembly in September 2013, that homosexuality is “very evil, anti-human” and that “[t]hose who promote homosexuality want to put an end to human existence.” In his December 2013 Christmas address, he referred to homosexuality as an “evil and strange social cancer”.’²⁰

4.2.7 Human Rights Watch in its September 2015 report *State of Fear: Arbitrary arrests, torture and killings*, stated that:

‘A lawyer told Human Rights Watch that Jammeh’s public statements have a significant impact on a judiciary that is largely lacking in independence: “It is not direct interference in the case. It is very indirect. Because of statements made – by the president, by ministers – about gay people, judges are very cautious.” The president’s relentless tirade of hate speech evidently spurs the state security forces to harass, arbitrarily arrest and detain, and commit violence against LGBT Gambians.’²¹

[Back to Contents](#)

4.3 Arrests and detention

4.3.1 The US State Department reported that:

‘On April 6 [2012], police arrested 18 men and two women for alleged same-sex sexual conduct at a dance ceremony for tourists at the village of Kololi. Members of the group were predominantly Gambian but also included one Nigerian and one Senegalese. The dance in question reportedly involved men dressing up as women, and police charged the group with “unnatural offences” and “conspiracy to commit a felony”; all pled not guilty. Authorities detained them for two weeks and later granted bail of 100, 000 dalasi ([US]\$2,940) each. After a trial lasting several weeks, on August 1 [2012], the state withdrew the charges due to lack of evidence.’²²

¹⁹ ThinkProgress, *Gambian Dictator On LGBT People: ‘If You Do It Here, I Will Slit Your Throat’*, 13 May 2015, <http://thinkprogress.org/world/2015/05/13/3658007/lgbt-africa/>, date accessed 13 August 2015

²⁰ Human Rights Watch: *State of Fear: Arbitrary arrests, torture and killings*, September 2015. <https://www.hrw.org/report/2015/09/16/state-fear/arbitrary-arrests-torture-and-killings> Accessed 21 October 2015

²¹ Human Rights Watch: *State of Fear: Arbitrary arrests, torture and killings*, September 2015. <https://www.hrw.org/report/2015/09/16/state-fear/arbitrary-arrests-torture-and-killings> Accessed 21 October 2015

²² United States Department of State, [Country Report on Human Rights Practices](#) for 2012, The

- 4.3.2 The same source also referred to the enforcement of a law in 2012, ‘... nicknamed Operation Bulldozer, designed to enforce harsh penalties for criminals but also directed at gay men.’²³
- 4.3.3 In the United States Department of State Country Report into Human Rights Practices, The Gambia, covering events in 2013 (USSD for 2013) noted that the criminal law had never been applied.²⁴ However following the amendment to the criminal code in October 2014, the USSD for 2014 observed that:
- ‘In October [2014] the National Intelligence Agency (NIA) arrested three suspected persons on suspicion of homosexual activities, following a security operation targeting persons practicing illegal acts. At year’s end the High Court had yet to set a trial date.
- ‘In November, NIA officers reportedly conducted door-to-door inquiries to identify, arrest, and detain individuals believed to be homosexual. The UN Office of the High Commissioner for Human Rights reported many of those detained were “subjected to violent attacks and mistreatment.”²⁵
- 4.3.4 The Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, dated May 2015 stated: ‘The approval of the amendment [in October 2014] was followed by rounds of arrests, prosecutions and attacks, and humiliation and even torture of persons, because of their presumed sexual orientation. In addition, some were detained in the security wing of Mile 2 Prison.’²⁶
- 4.3.5 Amnesty International reported on 18 November 2014 that eight individuals, including a 17-year-old boy, were arrested for crimes of homosexuality in November 2014.. It stated that:
- ‘All those arrested were taken and detained at the NIA headquarters in Banjul, the capital, and were told they were under investigation for “homosexuality” but have not been formally charged. They were subjected to torture and ill-treatment to force them to confess their so called “crimes” and to reveal information about other individuals perceived to be gay or lesbian. As a means to obtain information the NIA have been using methods such as beatings, sensory deprivation and the threat of rape. The detainees were told that if they did not “confess,” a device would be forced into their anus or vagina to “test” their sexual orientation... Several other men and women

Gambia, Section 5, April 2013, accessed 30 November 2015

²³ United States Department of State, [Country Report on Human Rights Practices](#) for 2012, The Gambia, Section 5, April 2013, accessed 30 November 2015

²⁴ United States Department of State, Country Report into Human Rights Practices , The Gambia 2013, Section , published 27 February 2014,, <http://www.state.gov/j/drl/rls/hrrpt/2013humanrightsreport/index.htm#section6societalabuses>, date accessed 14 September 2015

²⁵ United States Department of State, Country Report into Human Rights Practices , The Gambia 2014, Section 6, published 26 June 2015, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#section5>, date accessed 15 July 2015

²⁶ UN Human Rights Council, [Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns](#), paras 78-79, accessed on 9 September 2015

managed to escape as they were tipped off by their relatives that the security forces were targeting them. A young woman who recently fled Gambia to Senegal told Amnesty International that several civilian security forces came to her family's home on 12 November to ask about her whereabouts. "They threatened to break in the doors. As they could not find me, they also threatened to arrest one of my relatives. They finally left the house promising to kill me if ever they caught me".²⁷

- 4.3.4 Reuters noted in the article 'Lesbians flee to Senegal as Gambia cracks down on homosexuality', 21 November 2014, that President Yahya Jammeh's men in black, the National Intelligence Agency (NIA) have a list of 200 homosexuals to arrest and imprison under new anti-gay laws passed by the government in October. It also reported that three women arrested during the crackdown in November 2014 were released but remain under investigation and had their identity cards confiscated. They were not allowed to leave the country.²⁸
- 4.3.5 The Guardian reported in 'Net tightening on gay and lesbian west Africans', 4 December 2014, the story of a lesbian who fled the country in the middle of the night, following a tip off that she would be targeted in a raid a few hours later. She later sought refuge in neighbouring Senegal, where being gay or lesbian is punishable with five year jail terms. The report continued: 'In a heated televised statement, the foreign minister announced last weekend that the Gambia would sever all dialogue with the European Union, which has cut aid over its human rights record and criticised its anti-gay laws. Bala Garba Jahumpa said homosexuality was "ungodly" and against African tradition, and that the Gambia would work with other countries on the continent to oppose it. "Gambia's government will not tolerate any negotiation on the issue of homosexuality with the EU or any international bloc or nation," Jahumpa told state television. "We would rather die than be colonised twice."'²⁹
- 4.3.6 76 Crimes.com reported in '15 were arrested in anti-gay Gambia; all are now free' on 1 August 2015:
- 'Everyone who was arrested in last year's anti-gay crackdown in the Gambia has now been released, according to former Gambian official Fatou Camara.
- '...Camara, formerly the press secretary for Gambian President Yahya Jammeh, fled to the U.S. in 2013 after Gambian authorities accused her of seeking to undermine the government...

²⁷ Amnesty International, Gambia must stop wave of homophobic arrests and torture, 18 November 2014 <https://www.amnesty.org/en/latest/news/2014/11/gambia-must-stop-wave-homophobic-arrests-and-torture/>. Date accessed 21 October 2015

²⁸ Reuters, Lesbians flee to Senegal as Gambia cracks down on homosexuality, 21 November 2014, <http://www.reuters.com/article/2014/11/21/gambia-lesbians-idUSL6N0TB2M320141121>, date accessed 14 August 2015

²⁹ Guardian News, Net tightening on gay and lesbian west Africans, 4 Decemeber 2014, <http://www.theguardian.com/world/2014/dec/04/gay-lesbian-west-africans-homophobia>, date accessed 4 September 2015

‘Camara... previously said that the other 12 allegedly LGBT people arrested in the crackdown were released by January [2015]. Alieu Sarr, Morr Sowe and Kemo Sanyang were charged with Gambia’s newly enacted crime of “aggravated homosexuality.”

“All three are home now, but they were tortured really badly,” Camara said.’

- 4.3.7 The 76Crimes.com website contained a link to a You-tube video showing footage from Fatu Radio Network of the three men, with their faces obscured, being shown on national television.³⁰

- 4.3.9 The same report stated:

‘The 2014 amendments had an immediate negative impact. Police and intelligence agents promptly rounded up dozens of men and women on suspicion of their sexual orientation. In early November 2014, at least five people – three men, one woman and a 17-year-old boy – were detained at NIA headquarters for several weeks, held incommunicado, and physically abused. At least two men were prosecuted for homosexual acts, and transferred to the maximum security wing at Mile 2 prison while on trial. On July 31, 2015, the men were acquitted due to lack of evidence and released from jail. Since the arrests, scores of LGBT Gambians have scattered, hiding in rural villages or leaving the country. Human Rights Watch documented over 20 LGBT Gambians who had fled the country since October 2014, and has received reports of many more seeking safety in remote areas within the country. Human Rights Watch interviewed 11 LGBT people, five women and six men between the ages of 18 and 29, who fled the 2014 wave of arrests in Gambia. They described regular arrests and harassment because of their sexual orientation or gender identity by the Gambian authorities over the past few years, even before the 2014 amendments. They said, since the new law passed in October, law enforcement harassment of gay men and lesbians turned into a “witch hunt.” They described the panic in the community after many of them received calls from friends in state security agencies who warned them to leave the country to avoid arrest.

‘One lesbian woman told Human Rights Watch that in November 2014, shortly after the new law was passed, the authorities repeatedly arrested and twice detained her at NIA headquarters for weeks at a time. Two men she described as Junglers, took her from her cell and beat her: “They wanted me to say that I am a lesbian and to tell them the names of the lesbians I knew. They said they would kill me; they took me behind the NIA building and beat me with a fan belt. They forced me to say that I was a lesbian.” She believes the list of names she gave was then used by authorities to track down and arrest supposed gay and lesbian Gambians.’³¹

³⁰ 76 Crimes.com, 15 were arrested in anti-gay Gambia; all are now free, dated 01/08/2015, <http://76crimes.com/2015/08/01/15-were-arrested-in-anti-gay-gambia-all-are-now-free/>, date accessed 16 October 2016

³¹ Human Rights Watch: State of Fear: Arbitrary arrests, torture and killings, September 2015. <https://www.hrw.org/report/2015/09/16/state-fear/arbitrary-arrests-torture-and-killings> Accessed 21 October 2015

- 4.3.6 The FCO noted that 'The first test case [of the section 144 amendment] took place in December [2014], when three men were charged with "engaging in homosexual activity" in violation of the Criminal Code's "aggravated homosexuality" provision. The case is ongoing.'³²

[Back to Contents](#)

5. Societal treatment and attitudes

- 5.1.1 USSD report for 2014 noted: 'There was strong societal discrimination against LGBT individuals. There were no LGBT organizations in the country.'³³
- 5.1.2 The Daily Observer, Gambia reported that thousands, including President Jammeh took to the streets to protest against homosexuality on 9 December 2014.

'Protesters carried banners saying "Homosexuality is Inhuman"; "Even cows don't do it!" "Homosexuality is forbidden in Islam". It was [a] calculated move by the demonstrators in a way to show to Gambian development partners and the rest of the world that the West African nation is one of God-fearing people who will under no circumstances accept homosexuality, lesbianism and the likes.

'a petition against homosexualism was read on behalf of protesters by the permanent secretary at the Ministry of Lands and Regional Government, Saihou Sanyang:

'It reads: "Your Excellency Mr. President, it is important to contextualise such a lofty statesmanship within the overall provisions of the Constitution of the Republic of The Gambia 1997. This, in clear terms and provisions has stipulated that The Gambia is an independent sovereign state on equal status with all other nations irrespective of geographic size, economic or political might or wherewithal.

'It is on the basis of principles of the equality, self-determination, and mutual co-existence that our foreign policies, which are but extensions of our domestic policies, are based. It is important to state that the spirit of the Constitution irrespective of its legalistic architecture in both its totality and otherwise is not the voice of the philosophical, religious, ethical, moral, and social values. As a country of religious people who live by the dictate of Allah as commanded in the religious preachings and their protractors, the stance on the principle of secularity in no way admits or accepts the principle to immoralities.

³² FCO Human Rights and Democracy Report 2014, 12 March 2015, <https://www.gov.uk/government/case-studies/country-case-study-the-gambia> accessed on 15 September 2015

³³ United States Department of State, Country Report into Human Rights Practices , The Gambia 2014, Section 6, published 26 June 2015, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#section5>, date accessed 15 July 2015

"Your Excellency Mr. President, it goes without saying that our intolerance with the unnatural and abominable malpractices of homosexuality and lesbianism on the one hand, and the other, our government's position are not negotiable. It is on the basis of such religious, social, moral and ethical upbringing built on high moral grounds that we stand by our government's position to zero tolerance to either homosexuality or lesbianism or both. There shall not be any turning point and that the people are ready for eventuals in good defence of the people and country's independence".

'The Daily Observer also sampled the views of some demonstrators and they were unanimous in their views against these menaces.

"Homosexuality should not be tolerated in The Gambia because it is against the teachings of the Holy Qur'an," a grade 11 student of Muslim Senior School stated.

'Making a contrast view on homosexuality as a human rights issue, Miss Jatta remarked: "We will never allow it and we are fully behind our President."

'Another demonstrator, Aji Kaddy Marenah, said Gambians should be more God-fearing and denounce homosexuality. "We are all created by God and let's be contented in what we have," she said, urging for all to rally behind the President.

'Talibo Konjira of Latrikunda Sabiji said: "The Gambia is a decent country of decent people. Man to man marriage or woman to woman marriage will not be accepted because it is not acceptable by our tradition and cultures. Even animals know that it is not decent"³⁴

5.1.3 Human Rights Watch in its September 2015 report State of Fear: Arbitrary arrests, torture and killings, reported that 'Lesbian and gay Gambians told Human Rights Watch that President Jammeh's homophobic diatribes are increasingly polarizing Gambian society, playing on and magnifying homophobia in the country.'³⁵

5.1.4 The same report quoted an interview with a gay man who escaped the country in September 2014 who 'described a general state of fear among LGBT people: "Before I left the Gambia, there was a lot of fear. There hadn't been the mass arrests, but because the president was speaking out a lot of threats, there was a lot of fear. The president has the last say, he is the authority, and he has put this hatred between the public and the LGBT community."³⁶

[Back to Contents](#)

³⁴ The Daily Observer (Banjul), Gambia: Thousands March to Say 'No to Homosexuality', 10/12/2014, <http://allafrica.com/stories/201412101751.html>, accessed 11 September 2015

³⁵ Human Rights Watch: State of Fear: Arbitrary arrests, torture and killings, September 2015. <https://www.hrw.org/report/2015/09/16/state-fear/arbitrary-arrests-torture-and-killings> Accessed 21 October 2015

³⁶ Human Rights Watch: State of Fear: Arbitrary arrests, torture and killings, September 2015. <https://www.hrw.org/report/2015/09/16/state-fear/arbitrary-arrests-torture-and-killings> Accessed 21 October 2015

Version Control and Contacts

Contacts

If you have any questions about the guidance and your line manager or senior caseworker cannot help you or you think that the guidance has factual errors then email [the Country Policy and Information Team](#).

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance then you can email [the Guidance, Rules and Forms Team](#).

Clearance

Below is information on when this version of the guidance was cleared:

- version **1.0**
- valid from **30 November 2015**
- this version approved by **Sally Weston, Head of Legal Strategy Team, International and Immigration Policy Directorate**
- approved on: **30 November 2015**

Changes from last version of this guidance

N/A

[Back to Contents](#)