



Home Office

# **Country Policy and Information Note**

## **The Gambia: Sexual orientation and gender identity or expression**

**Version 2.0**

**August 2019**

# Preface

## Purpose

This note provides country of origin information (COI) and analysis of COI for use by Home Office decision makers handling particular types of protection and human rights claims (as set out in [the basis of claim](#) section). It is not intended to be an exhaustive survey of a particular subject or theme.

It is split into two main sections: (1) analysis and assessment of COI and other evidence; and (2) COI. These are explained in more detail below.

## Assessment

This section analyses the evidence relevant to this note – i.e. the COI section; refugee/human rights laws and policies; and applicable caselaw – by describing this and its inter-relationships, and provides an assessment on whether, **in general**:

- A person is reasonably likely to face a real risk of persecution or serious harm
- A person is able to obtain protection from the state (or quasi state bodies)
- A person is reasonably able to relocate within a country or territory
- Claims are likely to justify granting asylum, humanitarian protection or other form of leave, and
- If a claim is refused, it is likely or unlikely to be certifiable as ‘clearly unfounded’ under section 94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers **must**, however, still consider all claims on an individual basis, taking into account each case’s specific facts.

## Country of origin information

The country information in this note has been carefully selected in accordance with the general principles of COI research as set out in the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the Austrian Centre for Country of Origin and Asylum Research and Documentation’s (ACCORD), [Researching Country Origin Information – Training Manual, 2013](#). Namely, taking into account the COI’s relevance, reliability, accuracy, balance, currency, transparency and traceability.

The structure and content of the country information section follows a [terms of reference](#) which sets out the general and specific topics relevant to this note.

All information included in the note was published or made publicly available on or before the ‘cut-off’ date(s) in the country information section. Any event taking place or report/article published after these date(s) is not included.

All information is publicly accessible or can be made publicly available and is from generally reliable sources. Sources and the information they provide are carefully considered before inclusion.

Factors relevant to the assessment of the reliability of sources and information include:

- the motivation, purpose, knowledge and experience of the source
- how the information was obtained, including specific methodologies used
- the currency and detail of information, and
- whether the COI is consistent with and/or corroborated by other sources.

Multiple sourcing is used to ensure that the information is accurate, balanced and corroborated, so that a comprehensive and up-to-date picture at the time of publication is provided of the issues relevant to this note.

Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source, however, is not an endorsement of it or any view(s) expressed.

Each piece of information is referenced in a brief footnote; full details of all sources cited and consulted in compiling the note are listed alphabetically in the [bibliography](#).

## Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email the [Country Policy and Information Team](#).

## 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 support him in reviewing the efficiency, effectiveness and consistency of approach of COI produced by the Home Office.

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. The IAGCI may be contacted at:

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Information about the IAGCI's work and a list of the documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's pages of the [gov.uk website](#).

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# Assessment

Updated: 1 August 2019

## 1. Introduction

### 1.1 Basis of claim

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

### 1.2 Points to note

- 1.2.1 This note provides an assessment of the general situation for gay men, lesbians, bisexuals, trans and intersex persons, as well as those perceived as such. They are referred hereafter collectively as 'LGBTI persons', although the experiences of each group may differ. However, no specific information amongst the sources consulted (see [Bibliography](#)) referred to trans or intersex persons.
- 1.2.2 For general guidance on considering claims LGBTI persons, decision makers should refer to the Asylum Instructions on [Sexual orientation in asylum claims](#) and [Gender identity issues in the asylum claim](#).

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## 2. Consideration of issues

### 2.1 Credibility

- 2.1.1 For information on assessing credibility, see the instruction on [Assessing Credibility and Refugee Status](#).
- 2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).
- 2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

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### 2.2 Exclusion

- 2.2.1 Decision makers must consider whether one (or more) of the exclusion clauses is applicable. Each case must be considered on its individual facts and merits.
- 2.2.2 For further guidance on the exclusion clauses and restricted leave, see the [Asylum Instruction on Exclusion: Article 1F of the Refugee Convention](#) and the [Asylum Instruction on Restricted Leave](#).

## 2.3 Refugee Convention reason

- 2.3.1 LGBTI persons in The Gambia form a particular social group (PSG) within the meaning of the Refugee Convention because they share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience (their sexual orientation and / or gender identity or expression) that they should not be forced to renounce it and have a distinct identity which is perceived as being different by the surrounding society.
- 2.3.2 Although LGBTI persons in The Gambia form a PSG, establishing such membership is not sufficient to be recognised as a refugee. The question is whether the particular person will face a real risk or a well-founded fear of persecution on account of their membership of such a group.
- 2.3.3 For further guidance on convention reasons, including PSGs, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

## 2.4 Assessment of risk

### a. General points

- 2.4.1 Paragraphs 35 and 82 of the determination of the Supreme Court's ruling in [HJ \(Iran\) and HT \(Cameroon\) v Secretary of State for the Home Department \[2010\] UKSC 31](#) set out the approach to take and established the test that should be applied when assessing a claim based on a person's sexual orientation and / or gender identity / expression.
- 2.4.2 For further information, see the Asylum Instructions on [Sexual orientation in asylum claims](#) and [Gender identity and expression, including intersex issues in asylum claims](#).

### b. State treatment of LGBTI persons

- 2.4.3 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 then president Yahya Jammeh 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](#)).
- 2.4.4 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](#)).
- 2.4.5 While former President Yammeh promulgated anti-LGBTI rhetoric, the current government has largely been silent. President Barrow reportedly stated that

the situation of LGBTI persons was a 'non-issue' and that the government would not prosecute LGBTI persons (see [Government attitude](#)).

- 2.4.6 The continued criminalisation of same-sex relations means that the arrest, detention and prosecution of LGBTI persons remains a possibility. However, since president Jammeh was ousted from power in December 2016, there have been no reported prosecutions or arrests of LGBTI persons in the sources consulted (see [State attitudes and treatment](#), [Political context](#) and [Bibliography](#)).

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#### c. State treatment of transgender and intersex persons

- 2.4.7 There is no specific information amongst the sources consulted on arrests or other discriminatory treatment of trans and intersex persons (see [Bibliography](#)).

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#### d. Societal treatment of LGBTI persons

- 2.4.8 The Gambia is a culturally and religiously conservative country, and sources indicate that there is strong societal intolerance of and discrimination against LGBTI persons. Anti-LGBTI rhetoric by the previous former president Jammeh, prior to his ousting from power in December 2016, in particular, played on and may have magnified existing societal homophobia (see [Societal attitudes and treatment](#) and [LGBTI groups, civil society and human rights NGOs](#)).
- 2.4.9 Sources report that there are no known LGBT organisations operating in the Gambia (see [Societal attitudes and treatment](#) and [LGBTI groups, civil society and human rights NGOs](#)).
- 2.4.10 For further guidance on assessing risk, see the instruction on [Assessing Credibility and Refugee Status](#).

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#### e. Conclusion

- 2.4.11 There have been improvements in the general human rights environment since the former President Yammeh was ousted in December 2016. However, consensual same-sex sexual activity for both men and women remains illegal. The new government has stated that LGBTI persons would not be prosecuted - and there are no recent reports of arrests and prosecutions. However, LGBTI persons who openly express their sexual orientation and/or gender identity/expression may face discrimination from state actors. Additionally, LGBTI persons who openly express their orientation / identities are likely to face strong societal disapproval and discrimination. If a person who is LGBTI does not live openly due to the fear of persecution that would follow if they did, then they are also a refugee.
- 2.4.12 In general, LGBTI persons are likely to face discrimination from state and societal actors which, by its nature and repetition, is likely to amount to persecution. Each case, however, needs to be considered on its facts, with the onus on the person to demonstrate that they face such a risk.

- 2.4.13 For further guidance on assessing risk, see the instructions on [Assessing Credibility and Refugee Status](#), [Sexual orientation in asylum claims](#) and [Gender identity issues in the asylum claim](#).

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## 2.5 Protection

- 2.5.1 Where the person has a well-founded fear of persecution from the state, they will not be able to avail themselves of the protection of the authorities.
- 2.5.2 Where the person has a well-founded fear of persecution from non-state actors, the state is generally able but unwilling to provide effective protection. As same-sex sexual acts are prohibited in The Gambia, it would be unreasonable to expect a person identifying as LGBTI, who fears persecution or serious harm by non-state actors, to seek protection from the authorities without themselves facing a risk of prosecution.
- 2.5.3 However, decision makers must consider each case on its facts. A person's reluctance to seek protection does not necessarily mean that effective protection is not available. The onus is on the person to demonstrate why they would not be able to seek and obtain state protection.
- 2.5.4 For further guidance on assessing the availability of state protection, see the instruction on [Assessing Credibility and Refugee Status](#). Decision makers must also refer to the [Guidance on sexual identity issues in asylum claims including intersex issues in asylum claims](#) and [Gender identity issues in the asylum claim](#).

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## 2.6 Internal relocation

- 2.6.1 In general, given the widespread societal and state hostility towards and discrimination against LGBTI persons, it will not be reasonable for a person to relocate. However, each case must be considered on its facts, taking into account the person's specific circumstances. In [SC \(Jamaica\) v Home Secretary \[2017\] EWCA Civ 2112, \[2018\] 1 WLR 4004](#), Ryder LJ noted that: "the evaluative exercise is intended to be holistic and ... no burden or standard of proof arises in relation to the overall issue of whether it is reasonable to internally relocate" (para 36).
- 2.6.2 Internal relocation is not viable if it depends on the person concealing their sexual orientation and / or gender identity/expression in the area of relocation for fear of persecution.
- 2.6.3 For further general guidance on internal relocation, see the instruction on [Assessing Credibility and Refugee Status](#).

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## 2.7 Certification

- 2.7.1 Where a claim by a male applicant is 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.



- 2.7.2 Where a claim is refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.
- 2.7.3 For further guidance on certification, see [Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#).

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# Country information

Section 3 updated: 1 August 2019

## 3. Legal context

### 3.1 The Gambian Criminal Code

- 3.1.1 The Gambian Criminal Code under articles 144, 145 and 147 state that same-sex relations for men and women are illegal and are punishable by between 5 and 14 years in prison<sup>1</sup>. The Criminal Code 1965 (as amended in 2005 and 2014) states:

‘Article 144: Unnatural offences.

‘(1) Any person who:

‘(a) has carnal knowledge of any person against the order of nature; or

‘(b) [...];

‘(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...’

‘Article 145: Attempts to commit unnatural offences. Any person who attempts to commit any of the offences specified in the last preceding section is guilty of a felony and is liable to imprisonment for seven years [...]

‘Article 147(2) (as amended by the Criminal Code (Amendment) Act, 2005). 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 an act of indecency includes any homosexual act.’<sup>2</sup>

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<sup>1</sup> ILGA State Sponsored Homophobia, p 325, March 2019, [url](#)

<sup>2</sup> ILGA State Sponsored Homophobia, p 325, March 2019, [url](#).

- 3.1.2 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.’<sup>3</sup> Human Rights Watch in their September 2015 report *State of Fear* Arbitrary Arrests, Torture, and Killings referring to a 2013 Amnesty International report 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 vulnerable group to further harassment and abuse, where state security forces can easily target them on the basis of their clothing or gender presentation.’<sup>4</sup>

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### 3.2 October 2014 amendments to section 144 of criminal code

- 3.2.1 In 2014 an amendment (144A) was approved by Parliament, this inserted the crime of “aggravated homosexuality” which is punishable to life imprisonment<sup>5</sup>. The complete wording of the section states:

‘144A. Aggravated homosexuality.

‘(1) A person commits the offence of aggravated homosexuality where the:

‘(b) offender is a person living with HIV; [...]

‘(f) offender is a serial offender; [...]

‘(2) A person who commits the offence of aggravated homosexuality is liable on conviction to imprisonment for life.’<sup>6</sup>

- 3.2.2 The US State Department Country Report on Human Rights Practices 2018 – Gambia (USSD Human Rights report for 2018) stated: ‘By law, “aggravated homosexuality” is a crime for which conviction is punishable by life imprisonment. It includes serial offenders or persons with a previous conviction for homosexual activity, persons having same-sex relations with someone younger than age 18 or with members of other vulnerable groups, or a person with HIV having same-sex relations.’<sup>7</sup>

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Section 4 updated: 1 August 2019

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<sup>3</sup> FCO, ‘Foreign Travel Advice – Local Laws and Customs - The Gambia’, 25 July 2019 [url](#).

<sup>4</sup> HRW: *State of Fear: Arbitrary arrests, torture and killings*, 16 September 2015, p56, [url](#).

<sup>5</sup> Government of the Gambia Criminal Code (Amendment) Act, 2014, 16 October 2014 [url](#).

<sup>6</sup> ILGA State Sponsored Homophobia, p 325, March 2019, [url](#).

<sup>7</sup> USSD, Country Report on Human Rights Practices 2018 – Gambia, 13 March 2019, [url](#).

## 4. Political context

### 4.1.1 The Congressional Research Service (CRS) report – Gambia reported in June 2019 that:

‘The Gambia [...] underwent a historic transition of power after longtime authoritarian leader Yahya Jammeh unexpectedly lost an election in December 2016. A brief political crisis over Jammeh’s refusal to step down was resolved when a regional military intervention forced Jammeh into exile, enabling President-elect Adama Barrow to take office. [...] President Barrow has overseen a broad increase in political freedom and improved relations with the international community. Analysts warn that Gambia’s progress remains fragile, however efforts to advance governance reforms and prosecute abuses committed under the former regime have been slow to advance and could stoke tensions, particularly within the security forces’.<sup>8</sup>

### 4.1.2 The USSD Human Rights report for 2018 stated that:

‘The Gambia’s constitution enumerates a full range of provisions and assurances for a multiparty democratic republic. [...] President Barrow was officially sworn into office in January 2017 in Dakar, Senegal, amid security concerns due to his predecessor’s refusal to accept the election results. In February [2017] he was sworn into office again in Gambia after the political impasse with the former president was resolved. In the April 2017 parliamentary elections, the United Democratic Party (UDP) won 31 of the 53 seats contested. International and domestic observers considered the parliamentary elections to be free and fair.’<sup>9</sup>

### 4.1.3 The Congressional Research Service (CRS) report 2019 reported that:

‘During Jammeh’s tenure, annual State Department human rights reports documented widespread abuses against citizens, including torture, arbitrary arrest, enforced disappearances, and indefinite detention. The regime targeted journalists, dissidents, and other critics. The international community expressed particular concern over discrimination against lesbian, gay, bisexual, and transgender (LGBT) persons, including laws criminalizing homosexuality and abuses against individuals arrested on suspicion of being gay. [...] President Barrow has overseen a substantial opening of political and social space. Journalists have returned from exile, and private media have burgeoned. Human rights challenges persist, however, including episodic abuses by security forces, harsh prison conditions, and trafficking in persons. Repressive Jammeh-era laws remain in effect, including the anti-LGBT law. Underscoring the fragility of gains since 2017, in May 2019 the government pursued “public order” charges against reportedly peaceful protesters calling on Barrow to serve only a three-year term.’<sup>10</sup>

### 4.1.4 Human Rights Watch (HRW): World Report 2018 - Gambia, 18 January 2018 and referring to events in 2017 noted that:

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<sup>8</sup> The Congressional Research Service report – Gambia, 10 June 2019, [url](#).

<sup>9</sup> USSD, Country Report on Human Rights Practices 2018 – Gambia, 13 March 2019, [url](#).

<sup>10</sup> The Congressional Research Service report – Gambia, 10 June 2019, [url](#).

‘After winning the December 2016 election and taking office in January, [Adama] Barrow moved quickly to distinguish his government from Jammeh's, whose security forces used arbitrary arrests, torture, and extrajudicial killings to suppress dissent and independent media during his 22 years in power. The new government promised to make Gambia the "human rights capital of Africa," released scores of political prisoners, and began to strengthen the judiciary and reform the security services. It also reversed Jammeh's planned withdrawal from the International Criminal Court (ICC).’<sup>11</sup>

#### 4.1.5 Freedom House in report covering 2018 noted:

‘The Gambia was ruled for over two decades by former president Yahya Jammeh, who mounted a bloodless coup in 1994 and consistently violated political rights and civil liberties. The 2016 election resulted in a surprise victory for opposition candidate Adama Barrow. Fundamental freedoms including the rights of assembly, association, and speech improved thereafter, but the rule of law is unconsolidated, LGBT (lesbian, gay, bisexual, and transgender) people face severe discrimination, and violence against women remains a serious problem.’<sup>12</sup>

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Section 5 updated: 1 August 2019

## 5. State attitudes and treatment

### 5.1 Government attitude

#### 5.1.1 Human Rights Watch (HRW): World Report 2018 - Gambia, 18 January 2018 and referring to events in 2017 noted that:

‘The human rights climate in Gambia improved dramatically as the new president, Adama Barrow, and his government took steps to reverse former President Yahya Jammeh's legacy of authoritarian and abusive rule. [...] President Barrow's government has promised not to prosecute same-sex couples for consensual sexual acts, which sharply contrasted with Jammeh's hate-filled rhetoric toward lesbian, gay, bisexual, and transgender (LGBT) persons. However, the government has not repealed laws that criminalize same-sex conduct, including an October 2014 law that imposes sentences of up to life in prison for "aggravated homosexuality" offenses.’<sup>13</sup>

#### 5.1.2 However, HRW noted its Country Profiles: Sexual Orientation and Gender Identity (SOGI) webpage, in entry dated 23 June 2017 on Gambia that: ‘[...] The criminalization of same-sex conduct leaves lesbian, gay, bisexual, and transgender (LGBT) Gambians at risk of arbitrary arrest and detention, although fewer arrests and physical abuse of LGBT Gambians were reported in 2016 [and prior to President Jammeh's ousting].’<sup>14</sup>

#### 5.1.3 The USSD Human Rights report for 2018 stated: ‘Citing more pressing priorities, President Barrow dismissed homosexuality as a nonissue in the

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<sup>11</sup> HRW World Report 2018 - Gambia, 18 January 2018, [url](#).

<sup>12</sup> FH, Freedom in the World 2019 (Gambia), undated circa early 2019, [url](#)

<sup>13</sup> HRW World Report 2018 - Gambia, 18 January 2018, [url](#).

<sup>14</sup> HRW Country Profiles: ‘Sexual Orientation and Gender Identity’, 23 June 2017, [url](#).

country. On July 5 [2018], the country's delegation to the UN Human Rights Council stated that the government had no immediate plans to reverse or change the law. The law, however, was not enforced.'<sup>15</sup> Echoing the USSD report, Freedom House in its report covering events in 2018 noted '... same-sex relations remain criminalized. In 2017, Vice President Ousainou Darboe called for decriminalization [of same-sex sexual relations], but in April 2018 Barrow dismissed homosexuality as a "nonissue" in The Gambia.'<sup>16</sup>

- 5.1.4 The Human Rights Committee (UN Human Rights – OHCHR) conducted a public review in July 2018 of the implementation of the International Covenant on Civil and Political Rights in the Gambia, in the absence of a report and with a delegation present. The Gambian delegation was made up of representatives from a variety of government ministries, including the Ministry of Justice and the Office of the President<sup>17</sup>. In an opening statement Cherno Marenah, Solicitor General and Legal Secretary, Ministry of Justice of the Gambia, explained that:

'[...] the country was in transition following a prolonged period of autocratic rule. Human rights [...] were at the heart of the new Government and the Gambia had long been the heart of human rights in Africa. [...] Since taking office 18 months ago, the new Government had adopted a series of reforms to protect and promote human rights and had set up the Constitutional Reform Commission [...].'<sup>18</sup>

- 5.1.5 The same report noted the following comments made by the Gambian delegation following examination by the committee:

'There had not been any prosecutions or convictions of lesbian, gay, bisexual, transgender and intersex persons, the delegation confirmed, and explained that this community was not at risk in the Gambia. The law against homosexuality was still in place, but the Government had committed to not using it to prosecute. People had to have a say in the repeal of this law, the delegate said; it was a delicate process that had to be carefully managed as the State wished to avoid any harm to the lesbian, gay, bisexual, transgender and intersex community. There were religious and cultural aspects in the Gambia that made decriminalization of homosexuality a difficult issue.'<sup>19</sup>

- 5.1.6 The Human Rights Committee observed in their 'Concluding observations on the Gambia in the absence of its second periodic report' dated 30 August 2018 the following principle matters of concern and recommendations in regard non-discrimination:

'The Committee is concerned at the absence of comprehensive anti-discrimination legislation in the State party. It is also concerned that consensual same-sex relationships are criminalized in the State party and that lesbian, gay, bisexual, transgender and intersex persons reportedly continue to be subject to arbitrary arrest and violence.

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<sup>15</sup> USSD, Country Report on Human Rights Practices 2018 – Gambia, 13 March 2019, [url](#).

<sup>16</sup> FH, Freedom in the World 2019 (Gambia), undated circa early 2019, [url](#).

<sup>17</sup> OHCHR, Human Rights Committee meeting summary, 6 July 2018, [url](#).

<sup>18</sup> OHCHR, Human Rights Committee meeting summary, 6 July 2018, [url](#).

<sup>19</sup> OHCHR, Human Rights Committee meeting summary, 6 July 2018, [url](#).

'The State party should adopt anti-discrimination legislation which (a) provides full and effective protection against discrimination in all spheres, including the private sphere, and prohibits direct, indirect and multiple discrimination; (b) contains a comprehensive list of grounds for discrimination in line with the Covenant, including sexual orientation and gender identity; and (c) provides for access to effective and appropriate remedies for victims of discrimination. It should also decriminalize same sex relationships between consenting adults and take measures to change societal perception of lesbian, gay, bisexual, transgender and intersex persons and protect them from arbitrary arrests and violence.'<sup>20</sup>

- 5.1.7 Jollofnews, an African news website covering events in The Gambia and Senegal, reported on 3 December 2017 in an article 'One Year After Jammeh: Is Barrow's Gov't Keeping Its Promises?', that:

'So far, there seems to be no gender-specific discrimination on the government's agenda. There are no reported incidents of state-perpetrated online abuse or attacks on the basis of gender or sexuality. This government may have a softer stance on sexual diversity. President Barrow was recently asked about his position on homosexuality and he indicated that it was "not an issue in The Gambia".

'While many believe his response meant that it was not a common practice in the country, and as such, was brushing off the question, others welcomed it as a more measured response. This stands in stark contrast to the Jammeh administration's comments that suggested that members of the LGBT community should be punished by death.'<sup>21</sup>

- 5.1.8 The Foreign and Commonwealth Office in its travel advice for British Citizens, updated 25 July 2019, the summary stated that: 'In the years before the new government took office, some foreign nationals were detained by the police in relation to homosexuality. Although homosexuality remains illegal, the new government has taken a softer stance on many issues, including homosexuality.'<sup>22</sup>

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## 5.2 Arrests, prosecutions and detention

- 5.2.1 USSD Human Rights report for 2018<sup>23</sup> and 2017<sup>24</sup> made no reference to any arrests of LGBTI persons.

- 5.2.2 However, the USSD human rights report covering events in 2016, during the regime of former President Yammeh, stated that:

'In 2014 the National Intelligence Agency (NIA) arrested three persons on suspicion of homosexual activities, following a security operation targeting persons suspected of being involved in illegal activity. [...] The group was the first authorities tried under the "aggravated homosexuality" amendment. [...] In

<sup>20</sup> OHCHR - Human Rights Committee - Concluding observations – Gambia, 30 August 2018, [url](#).

<sup>21</sup> Jollofnews, 'One Year After Jammeh', 3 December 2017, [url](#).

<sup>22</sup> FCO, 'Foreign Travel Advice – Summary -The Gambia', updated 25 July 2019 [url](#).

<sup>23</sup> USSD, Country Report on Human Rights Practices 2018 – Gambia, 13 March 2019, [url](#).

<sup>24</sup> USSD, Country Report on Human Rights Practices 2017 – Gambia, 20 April 2018, [url](#).



July 2015 the court acquitted Sarr and Sowe. They thereafter left the country. The trial of the third accused, M. L. Bittaye, was in progress at year's end.

'There were reports of LGBTI citizens fleeing to neighboring countries due to fear of arrest.'<sup>25</sup>

- 5.2.3 CPIT was not able to find information on any specific arrests and detention of LGBTI persons or prosecutions since the official change of government in 2017 ([see Constitution](#)) in the sources consulted ([see Bibliography](#)).

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### 5.3 Police violence

- 5.3.1 At the time of compiling the response, and within time and resourcing constraints, CPIT was not able to find information on any specific arrests and detention of LGBTI persons or prosecutions since the official change of government in 2017 ([see Constitution](#)) in the sources consulted ([see Bibliography](#)). However, this does not mean to say there have been no further instances of arrests and detentions of LGBTI persons.

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Section 6 updated: 1 August 2019

## 6. Societal attitudes and treatment

### 6.1 Societal norms and public opinion

- 6.1.1 The US State Department (USSD) Country Report on Human Rights Practices 2018 - Gambia, stated: 'There was strong societal discrimination against lesbian, gay, bisexual, transgender, and intersex individuals.'<sup>26</sup> While the FH report also covering events in 2018 observed that LGBTI persons 'face severe societal discrimination'<sup>27</sup>
- 6.1.2 Amnesty International – Gambia 2017/2018 stated that: 'Same-sex relations remained criminalized. [...] LGBTI people continued to suffer discrimination and threats from non-state actors.'<sup>28</sup>
- 6.1.3 An online Mail&Guardian Africa article, 15 March 2019, noted that there was no protest to President Jammeh's opposition to LGBT rights in 2014 and that still few are willing to speak out. Madi Jobarteh the Gambia country representative for the Westminster Foundation for Democracy said: "That [speaking out] would be a very significant decision given the cultural setting and people's perception and understanding of LGBT issues"<sup>29</sup>.
- 6.1.4 The article goes on to observe that:
- 'Unlike other countries such as Uganda and Nigeria, where LGBT communities exist and advocate for themselves despite widespread persecution, there is no such civil society in Gambia. It is too dangerous.

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<sup>25</sup> USSD, Country Report on Human Rights Practices 2016 – Gambia, 3 March 2017, [url](#).

<sup>26</sup> USSD, Country Report on Human Rights Practices 2018 – Gambia, 13 March 2019, [url](#).

<sup>27</sup> FH, Freedom in the World 2019 (Gambia), undated circa early 2019, [url](#).

<sup>28</sup> Amnesty International – Gambia 2017/2018, 22 February 2018, [url](#).

<sup>29</sup> Mail&Guardian Africa online, 'No truth for Gambia's queer people' 15 March 2019, [url](#).



'This means someone very brave will have to come forward if the commission is to hear evidence of Jammeh's LGBT abuses and record them into public memory.

'If word got out that an activist or LGBT Gambian planned to raise such issues before the commission, Jobarteh said he would be concerned for their safety.

'Musu Bakoto Sawo, the commission's deputy executive secretary, acknowledges "there is a high probability of victims not coming out."

'The result is that LGBT Gambians may be the one group whose experience with persecution goes unrecorded. Put another way, they may be the one group whose rights do not improve in the post-Jammeh era.

"For a long time the situation will remain as it is. Gambians generally are not going to take LGBT issues easily," Jobarteh said.<sup>30</sup>

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## 6.2 Anti-LGBTI protests

- 6.2.1 CPIT was not able to find information or reports on anti-LGBTI protests since the protests held in 2014 (as detailed below) in the sources consulted ([see Bibliography](#)).

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## 6.3 Pro-LGBTI marches/gay pride

- 6.3.1 CPIT was not able to find specific evidence of any planned or historic pro-LGBTI or gay pride marches within The Gambia in the sources consulted ([see Bibliography](#)).

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## 6.4 Gay 'scene' or 'community'

CPIT was not able to find specific information on LGBTI communities or known 'scene' in the sources consulted ([see Bibliography](#)).

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Section 7 updated: 1 August 2019

## 7. LGBTI groups, civil society and human rights NGOs

- 7.1.1 The USSD Country Reports on Human Rights Practices for 2016 and 2017 both observed that there were no LGBTI organizations<sup>31 32</sup>. The 2018 USSD report does not comment on whether there are LGBTI organisations or not<sup>33</sup>.
- 7.1.2 The blog 'Erasing 76 Crimes' states on its 'about' page that: 'The "Erasing 76 Crimes"' blog focuses on the human toll of 76+ countries' anti-LGBTI laws and the struggle to repeal them.'<sup>34</sup> On 11 September 2017 their website reported that the new 'Interfaith Diversity Network of West Africa (IDNOWA) held the

<sup>30</sup> Mail&Guardian Africa online, 'No truth for Gambia's queer people' 15 March 2019, [url](#).

<sup>31</sup> USSD, Country Report on Human Rights Practices 2016 – Gambia, 3 March 2017, [url](#).

<sup>32</sup> USSD, Country Report on Human Rights Practices 2017 – Gambia, 20 April 2018, [url](#).

<sup>33</sup> USSD, Country Report on Human Rights Practices 2018 – Gambia, 13 March 2019, [url](#).

<sup>34</sup> Erasing 76 Crimes, 'A gathering of LGBT friendly faithful' 11 September 2017, [url](#)

region's first LGBT-friendly religious gathering in Ghana. More than 30 delegates from 10 West African countries attended the event called "Building Bridges, Sharing Stories, Creating Hope." A representative from the Gambia attended the meeting<sup>35</sup>.

7.1.3 Freedom House on the net 2018 published 1 November 2018 noted that:

'Internet freedom in The Gambia improved remarkably in the past year as internet users experienced less restrictions under President Adama Barrow, who came to power following the presidential elections in December 2016.

'Since then, conditions for internet and press freedom have improved. All previously blocked websites and communications platforms have become accessible, while independent journalists and netizens working to push the boundaries of free expression from within the country have re-emerged after decades of severe self-censorship or exile. [...]

'However, social media has seen a proliferation of hate speech, and some topics are still considered taboo, such as issues affecting LGBTI (lesbian, gay, bisexual, transgender, and intersex) people—though they are sometimes discussed online by pseudonymous users.'<sup>36</sup>

CPIT was unable to find reports of any active registered NGOs based in The Gambia advocating on behalf of LGBTI people in the sources consulted (see Bibliography).

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Section 8 updated: 1 August 2019

## **8. Access to services**

8.1.1 CPIT was not able to find specific information on LGBTI persons access to services in the sources consulted ([see Bibliography](#)).

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<sup>35</sup> Erasing 76 Crimes, 'A gathering of LGBT friendly faithful' 11 September 2017, [url](#)

<sup>36</sup> Freedom House, 'Freedom on the net 2018 – The Gambia', 1 November 2018, [url](#).

# Terms of Reference

A 'Terms of Reference' (ToR) is a broad outline of what the CPIN seeks to cover. They form the basis for the [country information section](#). The Home Office's Country Policy and Information Team uses some standardised ToRs, depending on the subject, and these are then adapted depending on the country concerned.

For this particular CPIN, the following topics were identified prior to drafting as relevant and on which research was undertaken:

- Legal context
  - Constitution
  - Legislation
  - Criminal/Penal code
- State attitudes and treatment, incl. the law in practice
  - Arrests and detention of LGBTI persons and prosecutions for same sex acts and other offences
  - Police violence
  - Police responses to reports of anti- LGBTI violence
- Societal attitudes and treatment
  - Societal norms
  - Violence and discrimination
  - Anti-LGBTI protests
  - Pro-LGBTI marches/gay pride
  - Gay 'scene' or 'community'
  - LGBTI websites
- Access to services
  - Healthcare
  - Accommodation
  - Employment and Education
- LGBTI groups, civil society and human rights NGO's

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# Version control

## Clearance

Below is information on when this note was cleared:

- version **2.0**
- valid from **13 August 2019**

## Changes from last version of this note

Updated country information

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