

**Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report -
Universal Periodic Review:**

United Kingdom

I. Background and Current Conditions

The United Kingdom (UK) is a party to the *1951 Convention relating to the Status of Refugees* and to its *1967 Protocol*. The UK is also a party to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*.

In 2010, there were a total of 253,235 people of concern to the UNHCR in the UK, including 238,150 refugees, 14,880 asylum-seekers and 205 stateless persons.¹ However in 2010, the UK registered a decrease of asylum applications of 48%, a figure of 22,080 down from 46,023 the previous year.²

It is important to note that in May 2009, the Committee on Economic, Social and Cultural Rights reviewed the UK and expressed concern “at the low level of support and difficult access to health care for rejected asylum-seekers.” It recommended that the UK “ensure that asylum-seekers are not restricted in their access to the labour market while their claims for asylum are being processed” and review the regulation of “essential services to rejected asylum-seekers, and undocumented migrants, including the availability of HIV/AIDS treatment.” In 2010, the UN Special Rapporteur on the human rights of migrants endorsed these recommendations and urged the UK Government to ensure “that refused asylum-seekers are not left destitute while they remain in the United Kingdom.”

II. Challenges and Constraints

A. Detention of Asylum-Seekers

UNHCR has consistently reiterated to UK authorities the long held position that the detention of asylum-seekers is inherently undesirable,³ that detention should be considered only as a last

¹ UN High Commissioner for Refugees (UNHCR), *UNHCR Global Trends 2010*, June 2011, available at: <http://www.unhcr.org/refworld/docid/4e01b00e2.html>, p. 41.

² See Table 24 of *Asylum Levels and Trends in Industrialised Countries 2010; Statistical Overview of Asylum Applications lodged in Europe and selected Non-European countries*, available at: <http://www.unhcr.org/4d8c5b109.html>; and Table 9, *Asylum Applications by country, 2009*, available at: <http://www.unhcr.org/4ce5327f9.html>.

³ See UNHCR, ExCom Conclusion No. 44 (XXXVII), 13 October 1986, available at: <http://www.unhcr.org/refworld/docid/3ae68c43c0.html>; and UNHCR, *UNHCR's Revised Guidelines on Applicable*

resort and that accelerated procedures should only be considered acceptable where adequate safeguards are in place to guarantee fairness of procedure and quality of decision-making.⁴ UNHCR recognizes that the process of examining the claims of those who are seeking asylum may involve necessary and incidental interference with liberty, so that it is legitimate to impose *restrictions* on liberty for the purposes of examination of a claim.⁵ However, the use of detention fails the necessity test required under international refugee and human rights law when it is applied indiscriminately and for administrative convenience.⁶

In this regard, UNHCR is concerned that the UK Border Agency's (UKBA) 'Detained Fast Track' (DFT) procedure for processing asylum claims does not have adequate safeguards against arbitrariness, either in relation to identification of cases suitable for accelerated procedures or the detention that applies automatically thereafter. It also leaves open the possibility for an unlimited duration of detention. The DFT procedure provides for selected asylum-seekers to be detained at immigration detention facilities whilst their claim is processed and any appeal determined. However, despite the curtailment of liberty this entails, the criteria and details of an asylum-seeker's eligibility for the DFT procedure are not contained in law, but in the 'Asylum Process Guidance'.⁷ Moreover, the reasons for applying the DFT procedure are vague and not sufficiently prescriptive apart from the sole criterion that a 'quick decision' can be made. In addition, the Government's current policy leaves open the possibility of detention to exceed 10 to 14 days and to be of unlimited duration.

UNHCR wishes to note the situation of stateless persons in detention in the UK. Stateless persons in the UK are most likely to be detained for removal or deportation purposes and there are no protections in UK law designed to protect stateless persons against the risk of arbitrary detention. A recent joint UNHCR/Asylum Aid study has highlighted the situation as particularly concerning.⁸ One-third of the 37 persons interviewed for the research had been held in immigration detention and the amount of time spent there ranged from three days to five years. Furthermore, the research found that authorities did not identify detainees' statelessness as a relevant consideration in the assessment of the lawfulness of a decision to detain.

Criteria and Standards relating to the Detention of Asylum-Seekers, 26 February 1999, available at: <http://www.unhcr.org/refworld/docid/3c2b3f844.html>

⁴ See for example: UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Detailed Research on Key Asylum Procedures Directive Provisions*, March 2010, available at: <http://www.unhcr.org/refworld/docid/4c63e52d2.html>; UNHCR, 'Comments to the Initial Consultation on Simplifying Immigration Law', August 2007; UNHCR, 'Submission to The Conservative Party National and International Security Policy Group', March 2007; UNHCR, 'Comments on "Secure Borders, Safe Haven" UK White Paper on Asylum and Immigration', 18 March 2002; and UNHCR, 'Briefing On Nationality, Immigration and Asylum Bill', 18 September 2002, all available at: <http://www.unhcr.org.uk/what-we-do-in-the-uk/responding-to-policy>.

⁵ See UNHCR, 'Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers', February 1999.

⁶ UNHCR, *Saadi v. United Kingdom. Written Submissions on Behalf of the United Nations High Commissioner for Refugees*, 30 March 2007, Appl. No. 13229/03, available at: <http://www.unhcr.org/refworld/docid/47c520722.html>, para. 31.

⁷ UKBA, 'Detained Fast Track and Detained Non-suspensive Appeals- Intake Selection', available at: <http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/dftanddntakeselection?view=Binary>.

⁸ See UNHCR/ Asylum Aid, *Mapping Statelessness in the UK*, November 2011.

B. Lack of Protection for Victims of Indiscriminate Violence

Recent research carried out by UNHCR in Belgium, France, Germany, the Netherlands, Sweden and the UK has shown startling variations in refugee recognition rates at first instance with regard to applicants from Afghanistan, Iraq and Somalia.¹⁵ Amongst these countries, UNHCR's research found that the UK holds the lowest international protection rate for Afghans and Iraqis.¹⁶ Some of the issues of concern include:

1) A restrictive interpretation of the 1951 Convention grounds

The UK case law holds that persons fleeing armed conflict or large-scale violence do not qualify as refugees under the *1951 Convention relating to the Status of Refugees*, unless they can demonstrate that they are differentially impacted. In order to demonstrate this, an individual must show a fear of persecution for 1951 Convention reasons over and above the ordinary risks of conflict.¹⁷ Such an approach may fail to recognize that war and violence are frequently the means chosen by persecutors to repress or eliminate whole groups targeted on account of their ethnicity, religious beliefs or other affiliations.¹⁸

2) A restrictive interpretation of the Internal Flight Alternative

Under Articles 8(1) and (2) of the European Union Qualification Directive, Member States are permitted to refuse subsidiary protection to applicants, if it is deemed that internal protection may be available in another region of the country of origin. In the UK, this has been interpreted restrictively in a number of cases. For instance, with the possible exception of Ninewa/ Mosul, the rest of Iraq is considered as a potential internal protection alternative.¹⁹ As for Somalia, the UK has determined that for persons fleeing indiscriminate violence in Mogadishu, there may be

¹⁵ See UNHCR, *Safe at Last? Law and Practice in Selected EU Member States with Respect to Asylum seekers Fleeing Indiscriminate Violence*, 27 July 2011, available at: <http://www.unhcr.org/refworld/docid/4e2ee0022.html>.

¹⁶ *Ibid*, p. 26

¹⁷ *R v. Secretary of State for the Home Department, Ex parte Adan*, CO/872/98, United Kingdom: House of Lords (Judicial Committee), 2 April 1998, available at: <http://www.unhcr.org/refworld/docid/3ae6b6c914.html>.

¹⁸ UNHCR, 'The International Protection of Refugees: *Interpreting Art. 1 of the 1951 Convention Relating to the Status of Refugees*', April 2001, available at: <http://www.unhcr.org/refworld/docid/3b20a3914.html>, p. 6.

¹⁹ *HM and Others (Art. 15(c)) Iraq v. Secretary of State for the Home Department*, CG [2010] UKUT 331 (IAC), United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), 20 September 2010, paras. 278 (iii) and 295.

an internal protection alternative in the other southern and central regions.²⁰ This position has been criticized by advocacy groups, because the assumption that if a person is from a majority clan, s/he can relocate to an area where his or her clan is present, is not a sufficient basis to determine that there is an internal protection alternative. Moreover, advocacy groups have stated that the extent of internal displacement is significantly understated in UKBA guidance and that evidence shows that the human rights and humanitarian situation has deteriorated significantly and materially so that “*such a positive assessment could not be properly made now.*”²¹

3) Limited application of complementary forms of protection within the asylum procedure

If the UKBA establishes that an applicant does not qualify for international protection, it must consider whether the applicant qualifies for Discretionary Leave. There are limited criteria for qualification for Discretionary Leave, although there is scope for discretion.²² UNHCR research found that decisions to grant Discretionary Leave, in particular for both Iraq and Somalia, were fewer than decisions to grant international protection (1.7 per cent and 3.1 per cent respectively).²³ The only exception is Afghanistan (26.8% of first instance decisions regarding applicants from Afghanistan, primarily asylum-seeking minor children). For persons not deemed to be in need of international protection, the UK has enforced the return of people to Afghanistan and Iraq, contrary to UNHCR’s advice.²⁴

C. Lack of Protection for Stateless People

Despite the UK’s obligations under the *1954 Convention on the Status of Stateless Persons*, the *1961 Convention on the Reduction of Statelessness* and international human rights law, UNHCR and Asylum Aid’s recent joint research on statelessness in the UK (referred to above under Section II A)²⁵ has shown that stateless persons without leave to remain in the UK often go unidentified and are at risk of human rights infringements. The UK currently lacks law, policy and procedures to address many of the challenges confronting stateless persons.

The research identifies around 150 to 200 people each year who claim asylum and who are recorded as being stateless by the UKBA. The fact that stateless persons are granted asylum or complementary protection at a higher rate than average reflects how this group often faces discrimination and denial of human rights in their respective countries of origin. However, disaggregated statistics reveal that removal only occurs in around 10 percent of cases of stateless

²⁰ UNHCR. *Safe at Last?*, p. 81.

²¹ Still Human Still Here, *Comments on the Operational Guidance Note on Somalia*, August 2010, available at: <http://www.unhcr.org/refworld/docid/4cb6bed12.html>, p. 11.

²² See Asylum Policy Instruction (API) on Discretionary Leave, available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/apis/discretionaryleave.pdf?view=Binary>.

²³ UNHCR. *Safe at Last?*, p. 95.

²⁴ According to UKBA, approximately 440 (figure is rounded and provisional) Afghans were returned to Afghanistan during the first six months of 2010 alone: information provided 9 December 2010. UNHCR was informed that although the UK determining authority, UKBA, considers that it is appropriate to return all unsuccessful asylum seekers to Afghanistan, during 2010 only the return of adult single males were enforced. Ibid, p. 97 at note 503.

²⁵ UNHCR and Asylum Aid, *Mapping Statelessness in the United Kingdom*, November 2011.

persons with unsuccessful asylum claims. This group may be small, but these individuals are left in limbo, with no right to stay in the UK and no State to which they can be returned.

An in-depth analysis of the circumstances of the participants in this study revealed that stateless and “unreturnable” persons in this position face the risk of a number of human rights challenges that are directly linked to their lack of immigration status. These range from destitution and street homelessness to immigration detention. Although there are protections in domestic law for this group, they appear to be inadequate, because they are not specifically tailored to address the unique situation of stateless persons and the international obligations that they are owed, particularly in international human rights law.

One third of the participants in UNHCR and Asylum Aid’s joint research had been detained under immigration powers. The amount of time that each individual spent in immigration detention ranged from three days to over five years. Although the reasons for immigration detention varied greatly from case to case and often depended on personal circumstances, these figures indicate that an emerging trend identified by UNHCR in a 1997 study of stateless persons being held in detention also exists in the UK.²⁶

Although case law and guidance does engage with issues relating to the prospects of removal of non-nationals who have not been granted leave to enter or remain, the engagement with statelessness is limited. Statelessness should be understood as a relevant consideration for which specific provision should be made to ensure that the UK respects its obligations under the *1954 Convention relating to the Status of Statelessness* and in international human rights law. Law and policy in these areas needs to expressly take into account the specific needs of stateless persons and be applied in a way that ensures that international law obligations are respected.

There is currently no dedicated and accessible procedure in the UK to which individuals can apply for recognition of their statelessness. A number of other European States have such a procedure. This gap is a major obstacle that prevents the UKBA from being able to identify those who are stateless and cannot leave the UK, and to distinguish such persons from individuals who do have a nationality or the right of residence elsewhere and who can depart.

III. Recommendations

- Issue 1:** Ensure that detention is used only as a last resort in accordance with the requirements of international law and not for administrative convenience. Where unavoidable, detention of asylum-seekers should be for a prescribed period only.
- Issue 2:** Amend the Home Office’s and the UK Border Agency’s guidance on immigration detention to expressly identify an individual’s statelessness as a factor that should weigh against detention on the basis that it is likely to indicate that there are no reasonable prospects of removal. Legislation should also be considered that would place a maximum time limit on immigration detention, to act as protection against the risk of indefinite detention of stateless persons.

²⁶ UN High Commissioner for Refugees, *UNHCR Brief on Statelessness and Detention Issues*, 27 November 1997, available at: <http://www.unhcr.org/refworld/docid/4410638fc.html>.

- Issue 3:** Interpret the provisions of the *1951 Convention relating to the Status of Refugees* inclusively, taking into account the changing nature of armed conflict, evolving international human rights norms, and in particular, evolving approaches to the concept of “particular social group” contained in Art. 1A(2) of the 1951 Convention to ensure that persons fleeing conflict situations are adequately protected.
- Issue 4:** Apply the internal protection alternative only when the fear of persecution or serious harm is clearly limited to a certain part of the country, outside of which the fear cannot materialize and that the proposed internal relocation is practically, legally and safely accessible to the individual.
- Issue 5:** Use the Discretionary Leave and/or consider other legal or policy measures, which would afford protection in the UK to persons fleeing indiscriminate violence in relevant circumstances.
- Issue 6:** Introduce a procedure for determining statelessness claims, in order to ensure that stateless persons are not left without the protection afforded under international law, particularly the *1954 Convention relating to the Status of Stateless Persons*.
- Issue 8:** Review policy that denies indefinite leave to stateless persons and in cases where the UK is the most appropriate country of residence, allow, in certain circumstances, those persons to remain.
- Issue 9:** Ensure that the human rights of undocumented stateless persons are respected in accordance with international human rights law and the *1954 Convention relating to the Status of Stateless Persons*.

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