



Ending Detention of Stateless Persons in the UK

Summary

This briefing makes five recommendations aimed at ending unlawful detention of stateless persons in the UK. The Home Office should:

- 1) Ensure adequate training of officials making decisions about detention;
- 2) Ensure proper screening and decision-making;
- 3) Ensure appropriate provision of information to stateless persons;
- 4) Provide appropriate assistance to detained persons to prove statelessness;
- 5) Improve data collection and publication relating to detention of stateless persons.

Introduction

*'Ousman', a stateless man of Guinean and Gambian parentage, spent **three and a half years** in immigration detention in the UK. Even though he cooperated with removal efforts, neither Guinea nor Gambia recognised him as a national of their country, and he could not be removed. Eventually, he was released from detention and awarded damages for unlawful detention.¹*

The right to liberty is a basic human right. No one should be detained under immigration powers unlawfully or for lengthy periods. Stateless persons are vulnerable in various ways, including in relation to detention under immigration powers. First, stateless persons lack access to consular assistance and often lack family and other connections and financial resources which might enable them to access their right to liberty and other rights. They may also suffer from depression or other mental health conditions related to lack of nationality and long years of being 'in limbo'. They also are likely to have difficulties in obtaining adequate legal advice in detention, in particular because statelessness presents many legal complexities, and applications to remain in the UK based on statelessness are out of scope of legal aid. Stateless persons are also more likely than others to experience prolonged periods of immigration detention; in many cases it is not possible to remove stateless persons from the UK, even if they have been refused any form of leave to remain, because no country considers them as a national.

Our [joint submission on statelessness to the Universal Periodic Review](#) of September 2016, prepared in collaboration with the University of Liverpool Law Clinic, the European Network on Statelessness, and the Institute on Statelessness and Inclusion, sets out various concerns and recommendations regarding the UK Government's approach to statelessness, including on detention of stateless persons. Unfortunately, the [Government's September 2017](#)

¹ European Network on Statelessness. 2016. [Protecting Stateless Persons from Arbitrary Detention in the United Kingdom](#).

responses to recommendations made at the May 2017 Universal Periodic Review session do not adequately address serious concerns about statelessness and detention. The November 2016 report of the European Network on Statelessness (ENS), Protecting Stateless Persons from Arbitrary Detention in the United Kingdom, provides numerous examples illustrating problematic Government practices and failure to adequately protect stateless persons from unlawful detention, including the case of ‘Ousman’, summarised above.

In *ML (Morocco) v Secretary of State for the Home Department* [2016] EWHC 2177 (Admin), concerning a man of Western Saharan origin born in a refugee camp in Algeria, the Home Office made efforts to remove the applicant to Western Sahara, notwithstanding the evident futility of attempted removal to that territory, which is not recognised as a State by the UK. Although the Administrative Court found the 10 months of detention at issue to be lawful, we consider that this case illustrates an improper approach to detention of stateless persons and, in our opinion, the Administrative Court’s 2016 decision is legally flawed. Permission to the Court of Appeal has been granted, with a hearing scheduled for June 2018 (see also a summary of this case by Lewis Kett of Duncan Lewis Solicitors, the applicant’s legal representatives).

Applicable International Legal Standards

In the 2014 case *Kim v Russia*, the European Court of Human Rights expressed concern about the stateless applicant’s ‘particularly vulnerable situation’, in particular the unavailability of consular assistance; lack of family connections or financial resources; and difficulties in obtaining legal advice. The Court emphasised that under the European Convention on Human Rights Article 5(1)(f) ‘the domestic authorities have an obligation to consider whether removal is a realistic prospect and whether detention with a view to removal is from the outset, or continues to be, justified’ and confirms that ‘detention cannot be said to have been effected with a view to the applicant’s deportation if this was no longer feasible’. The Court concludes that ‘the applicant was simply left to languish for months and years, locked up in his cell, without any authority taking an active interest in his fate and well-being’ – a description which may also apply to ‘Ousman’ and others in the UK (see also an analysis of Kim v Russia by Adrian Berry of Garden Court Chambers).

Problems with Recording Statelessness in Detention

It is unclear how many stateless persons are detained in the UK or for how long. As ENS’s report indicates, the published data are flawed and incomplete, as individuals are not usually recorded as stateless when they enter detention unless they have previously been recognised as stateless,² nor does published data show the *length* of detention by nationality (or lack thereof). Government officials sometimes wrongly attribute stateless persons a nationality; categorise them as ‘persons with unknown nationality’; or make unwarranted guesses regarding alternative places to which a person might be removed when circumstances are such that it is unreasonable to conclude that the person has a nationality and/or that their removal is ‘imminent’. Therefore, the numbers of stateless persons in detention are likely higher than published figures.

² The Home Office defines ‘stateless’ under ‘country of nationalities’ within its immigration detention statistics as referring to individuals who are: (1) Kuwaiti Bidoons; or (2) ‘recognised as stateless by UNHCR ... under Article 1 of the 1954 Convention’; or (3) ‘stateless on the relevant record held by the Home Office’. Home Office, ‘User Guide to Home Office Immigration Statistics’ (updated August 2017), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/547190/user-guide-immigration-statistics.pdf, 19.

Overcoming Barriers to Protection from Unlawful Detention

Stateless persons in some cases face significant barriers to accessing mechanisms which protect against unlawful detention, such as bail. To be successful, a bail application may require a strong statelessness application, which is difficult to make from detention, especially without legal assistance – compounded by statelessness applications being out of scope for legal aid. Detained persons face many significant barriers in gathering evidence required to prove statelessness, such as letters from embassies of countries of possible nationality. When interviews with embassies occur, they are not recorded; and no independent person accompanies the applicant. Additionally, even if a detained person manages to make a statelessness application, some detained stateless persons may not be recognised as stateless or granted leave to remain because of flaws in decision-making or due to exclusions from eligibility for leave to remain. Only about 5-6 percent of statelessness applications under Part 14 of the Immigration Rules have succeeded.

The Home Office's introduction of detention 'gatekeepers' in 2016 and the introduction of 'case progression panels' to assess the ongoing appropriateness of detention at three-month intervals may help to prevent the unlawful detention of stateless persons. However, there is an urgent need to monitor outcomes and ensure that these mechanisms function properly.

Recommendations:

General recommendations for the Home Office to improve its approach to immigration detention include:

- **Significantly decrease the use of immigration detention**, particularly for persons with special vulnerabilities;
- **Significantly increase the implementation of community-based case management alternatives to detention;**
- **Introduce a time limit of 28 days on detention under immigration powers**, beyond which persons must be released from detention unless unusual and compelling circumstances exist and continued detention is approved at the Ministerial level.

In addition, to protect against the unlawful detention of stateless persons, the Home Office should:

1. **Ensure adequate training:** Ensure that officials who make decisions to detain or to maintain detention under immigration powers have comprehensive knowledge of statelessness and the unlawfulness of detaining persons for the purpose of removal where imminent removal is not possible.
2. **Ensure proper screening and decision-making:** Ensure that officials properly consider statelessness (and the risk of statelessness) and related vulnerabilities when making an initial decision to detain and in any decisions to maintain detention; and not detain for the purposes of removal any stateless person who is not lawfully removable or who cannot be removed. Persons with a pending statelessness application under Part 14 of the Immigration Rules should be released from detention.
3. **Ensure appropriate provision of information to stateless persons:** Require officials to advise any persons detained under immigration powers who are stateless, at risk of statelessness, or whose country of origin has failed to recognise them as a national within 28 days of an enquiry being made, of the existence and main criteria of Part 14 of the Immigration Rules and the procedure for making applications under this Part.

4. **Provide appropriate assistance to detained persons to prove statelessness:** Require officials to assist in ascertaining the nationality of any persons detained under immigration powers who are at risk of statelessness; and where the detained person indicates they do not fear persecution in their country of origin and has provided informed written consent, contact the appropriate authorities of the person's country of origin to enquire whether they are considered as a national, and to advise the detained person of any response received.
5. **Improve data collection and publication relating to detention of stateless persons:** Ensure that statistics relating to detention of stateless persons are accurate, for example, by not attributing nationality where it is unclear, contested, or non-existent.

Conclusion

We commend the Government's introduction of a procedure allowing stateless persons to be granted leave to remain in the UK and the Government's commitments to reducing the use of immigration detention. However, more must be done to ensure that stateless persons are offered the protection they need and not detained unlawfully, namely: Home Office detention officials need to have adequate knowledge of statelessness; make appropriate decisions about detention; provide necessary information and assistance to stateless persons; and improve data collection and publication.

Notes

For background, see: Asylum Aid's Policy Briefing of September 2016: [The UK's Approach to Statelessness: Need for Fair and Timely Decisions.](#)

Asylum Aid/Migrants Resource Centre is part of the European Network on Statelessness (ENS). ENS's [2016 report on detention of stateless persons in the UK](#) is part of a campaign (#LockedInLimbo) against arbitrary detention of stateless persons in Europe. Further information is available [here](#).

Contact Information

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About Migrants Resource Centre and Asylum Aid

Migrants Resource Centre (MRC) has a vision of a British society that is inclusive and free of prejudice; that celebrates the diversity of its population; and that supports the rights of all people to enjoy freedom from persecution, danger and oppression. For over thirty years we have worked to remove the barriers that prevent migrants, refugees and asylum seekers from participating fully in society. We have helped tens of thousands of people secure protection in the UK, regularise their immigration status, learn English, and find work. Asylum Aid, our programme supporting refugees and asylum seekers, provides free legal advice to the most vul-



nerable and excluded asylum seekers, and lobbies and campaigns for a fair asylum system that upholds respect for their dignity and human rights. www.asylumaid.org.uk

