

A FACE TO THE STORY

# POINT OF NO RETURN

The futile detention of  
unreturnable migrants

## The “A Face to the Story” project

“A Face to the Story: The issue of unreturnable migrants in detention” is an awareness-raising project running from September 2012 to February 2014, which has been made possible by the support of EPIM, the European Programme on Integration and Migration. The project involves qualitative research based on the stories of 39 unreturnable migrants who have experienced detention in Belgium, France, Hungary or the United Kingdom.

The project is a collaboration between Flemish Refugee Action (Belgium), Detention Action (UK), France terre d’asile (France), Menedék – Hungarian Association for Migrants, and The European Council on Refugees and Exiles (ECRE). It aims to increase public debate on the detention of unreturnable migrants and to press governments to use detention only as a last resort.

With this campaign, we hope to increase momentum amongst policy-makers at national and EU levels in order to limit detention and find solutions for unreturnable migrants. Besides informing decision-makers, the project is also intended to stimulate civil societies to give special attention to this group of migrants, who are often living under the radar.

[www.pointofnoretturn.eu](http://www.pointofnoretturn.eu)

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Disclaimer: the sole responsibility for the content lies with the authors and the content may not necessarily reflect the positions of NEF, EPIM or the Partner Foundations. The names of the people interviewed for this project have often been replaced by pseudonyms.

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# Executive summary

## The project “A Face to the Story”

This paper is an outcome of the awareness-raising project “A Face to the Story: The issue of unreturnable migrants in detention”, which has been made possible by the support of EPIM, the European Programme on Integration and Migration. The project runs from September 2012 to February 2014, and involves qualitative research based on the stories of 39 unreturnable migrants with experiences of detention in Belgium, France, Hungary or the United Kingdom.

The report is the result of a collaboration of Flemish Refugee Action (Belgium), Detention Action (UK), France terre d’asile (France), Menedék – Hungarian Association for Migrants, and The European Council on Refugees and Exiles (ECRE), which aims to increase public debate on the detention of unreturnable migrants and to put pressure on governments to use detention only as a last resort.

With this report and the related campaign, we hope to increase momentum amongst policy-makers at national and EU levels to reduce detention and find solutions for unreturnable migrants. Besides informing decision-makers, this report is also intended to stimulate civil societies to give special attention to this group of migrants, who are often living under the radar.

## What is unreturnability?

Unreturnable migrants cannot go back to their country of origin for reasons beyond their control. At the same time, they cannot obtain a residence permit in the country where they live. Without documents or status, they can be detained for a forced return that never becomes possible.

Migrants can be unreturnable for various reasons. Sometimes the reasons are administrative: for example, the inability or refusal of the national authority of the country of return to issue documentation, without which return is impossible. Some are unreturnable because they are stateless. Others cannot be returned to countries where their human rights could be breached, such as Somalia and Mali, or because return would breach their right to a family life. Finally, some migrants are unreturnable for medical reasons, since essential treatment is unavailable in their country of origin or they are too unwell to fly.

***Unreturnable migrants cannot go back to their country of origin for reasons beyond their control***

## Unreturnable migrants in limbo and detention

Unreturnable migrants live in long-term limbo, facing the constant threat of immigration detention. In the UK, they can be detained indefinitely. In each country, they can be repeatedly

redetained and released. States refuse to acknowledge the fact of unreturnability, so use detention to attempt to enforce return.

Unreturnable migrants frequently remain for years in an irregular situation, without prospects of a regular residency status. As a consequence they are excluded from rights to health care, housing, education and work. They experience destitution, poor physical and mental health, and even criminalisation. They are simply stuck, with nothing that they can do to take responsibility for their lives.

Some European countries have mechanisms in place to grant unreturnable persons a residence permit or tolerated stay with minimal access to fundamental rights. These processes are valuable in acknowledging the existence of unreturnability, yet do not provide a sufficient route to regularisation.

## Solutions are needed urgently

Unreturnable migrants should not be detained as there is no prospect of return. As a result, detention can never be necessary as a last resort, as permitted by the Return Directive. Detention should not be used to incentivise voluntary return or to punish refusal to return.

***States refuse to acknowledge the fact of unreturnability, so use detention to attempt to enforce return***

At the moment of release unreturnable migrants should at least receive documents proving their former stay in detention, including the reason for release.

Unreturnable migrants should be granted a temporary permit, giving access to fundamental rights such as work, healthcare and benefits. There should be a route to permanent status if the situation of unreturnability continues.

At the European level, EU institutions must promote the implementation of policies that prevent detention by a strict application of the safeguards laid down in EU law and international human rights law. Further research should be undertaken into the situations of unreturnability in the EU member states.



# Introduction

## *“Unreturnability, it doesn’t exist”*

– Freddy Roosemont, Head of the Belgian Migration Service <sup>1</sup>

**T**he stories in this report show that this statement is not a reality, but rather a wish. States’ immigration policies are premised on a clear distinction between migrants who are permitted to stay and those who must leave.

For domestic political reasons, states prefer to tell themselves that the unreturnable person does not exist. Anxious electorates want to rely on the authority of their governments’ decisions: a refused migrant is a deported migrant. As a result, states pretend that the problem can be resolved by the standard enforcement techniques, as though a person can make themselves returnable if detention and exclusion make their lives unpleasant enough.

The organisations involved in this research know that unreturnable people do exist. We know because we meet them every day. We meet them in temporary shelters, shivering in inadequate accommodation, working illegally to feed their children because they can neither work legally nor claim benefits. We see them making immigration application after asylum application after statelessness application, without ever finding a way out of limbo. They are stuck between a country where they live, but are not allowed to stay, and a country to which they must return, but cannot.

But above all, we meet them in immigration detention. The one place where they should not be detained for a removal that never becomes possible. We have focused this research on unreturnable people in detention, as this is where unreturnability is most clear, and its effects are most damaging.

Detention is always potentially traumatic, and for this reason states are required to use it only as a last resort. Yet unreturnable people are routinely detained in all four countries in which we work. Their detention cannot be necessary for deportation, as they cannot be deported and ultimately must be released. They lose their liberty, sometimes repeatedly or for prolonged periods, often in conditions equivalent to prisons, for no reason.

There has been little discussion of unreturnable people. No international charters set out their rights and entitlements. No national or international NGO is dedicated to advocating for their needs. They slip through the cracks between debates on asylum, immigration, statelessness and returns policies. Recognising that people can be unreturnable means acknowledging the complexity of migration in a globalised world. For states, it means accepting that

*Recognising that people can be unreturnable means acknowledging the complexity of migration in a globalised world*

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<sup>1</sup> Oral statement in the hearing in the Belgian parliament, 22 October 2013.



Harmondsworth Immigration Removal Centre, UK.

perfect immigration control is a chimera; the messy reality of migration is the messiness of human lives.

This research aims to start the debate about unreturnability. It is limited in scale, based on interviews with 39 unreturnable migrants in four countries. We have not undertaken extensive legal analysis of their case files. Nor do we attempt to provide a legal framework for unreturnability or detailed policy solutions.

Instead, this research provides evidence of the range of circumstances in which migrants around Europe find themselves unreturnable. In the first part of the report, we set out

four categories of unreturnability identified in our research. In the second part, we analyse the harmful consequences of this limbo, both in detention and after release back into irregular status.

Throughout, we highlight the voices, experiences and perspectives of the unreturnable migrants themselves. We believe that the debate on unreturnability needs to start from these voices. The recognition that unreturnable people exist is the first step towards developing solutions to the problem of unreturnability.



A detention centre at Lyon, France.

# 1 Unreturnability addressed at European level?

Unreturnable migrants are not defined or recognised in EU law. However, the Return Directive, agreed in 2008, includes a number of provisions relevant to unreturnable migrants. The Directive entered into force at the end of 2010 throughout the EU, with the exception of the UK and Ireland.

The Return Directive lays down common standards relating to the return, including the use of coercion and detention, of people who do not, or no longer, have a right to stay on the territory of one of the EU Member States.<sup>2</sup>

The situation of migrants who have no right to stay on the territory of one of the EU Member States but at the same time cannot be removed is only marginally addressed in the Return Directive. Although article 12 of the Directive explicitly states that the “situation of third-country nationals who are staying illegally but who cannot yet be removed should be addressed,” the Directive does not further address unreturnability specifically.

Nevertheless, some of the standards laid down in the Directive are directly or indirectly relevant to the situation of migrants who cannot be returned: Article 6 on return decisions, Article 9 on postponement of removal, Article 14 on safeguards pending return and Article 15 on detention.

Article 6(1) establishes an obligation for Member States to issue a return decision to any third-country national in irregular stay on their territory, without prejudice to a number of exceptions. The inclusion of this principle has in theory far reaching consequences as it, in principle, prohibits Member States from tacitly tolerating the presence of irregular migrants.

Article 6(4) maintains the possibility for Member States to issue residence permits to irregularly staying third country nationals at their discretion, in which case a return decision cannot be issued. It also adds the option of suspending the return decision for the duration of validity of the residence permit or other authorisation offering a right to stay. This provides further flexibility for Member States as the return decision may in such case simply be re-activated upon expiry of the residence permit, without any need for a new return decision to be issued.

However, the Return Directive does not oblige Member States to issue a residence permit where return of an irregularly staying third country national has proved to be impossible.

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Vottem detention centre, Belgium.

<sup>2</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ 2008 L 348/98.

This is the case even where the Directive requires Member States to postpone removal, as it does, for example, when it would violate the principle of non-refoulement. Article 14(2) requires Member States to provide the persons concerned with written confirmation that the return decision will temporarily not be enforced. However, such confirmation only provides the person concerned with written proof vis-à-vis law enforcement and other authorities, not necessarily with a formal status.

Article 9 establishes rules on the postponement of removal and distinguishes between the situations where removal *must* be postponed and where it *may* be postponed for an appropriate period of time, taking into account the specific circumstances of the individual case. An obligation for Member States to postpone removal only exists according to Article 9(1) where it would violate the principle of non-refoulement and for as long as a remedy against a return or removal decision has suspensive effect.

The detention of unremovable people is restricted by two other important principles laid down in Article 15. Firstly, detention can only be maintained for as long as removal arrangements are in progress and executed with due diligence. Secondly, Article 15(4) states that “when it appears that a reasonable prospect of removal no longer exists for legal or other considerations ... detention ceases to be justified and the person concerned shall be released immediately”. A reasonable prospect of removal has been interpreted by the Court

of Justice of the European Union (CJEU) as being when a “real prospect exists that the removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6) of Directive 2008/115” and the Court goes on to say that “a reasonable prospect of removal does not exist where it appears unlikely that the person concerned will be admitted to a third country, having regard to those periods”.<sup>3</sup>

Notwithstanding the lack of clear legal framework at EU-

level to address the situation of third country nationals who cannot be removed from the territory of the Member States, there is growing acknowledgment at EU level that this is an increasingly important issue in all EU Member States. This is also reflected in recent research carried out at EU level on the situation of irregular migrants in the EU. A recent study on the situation of third country nationals pending return in the EU Member States and Schengen Associated States documents the enormous divergences that exist at the national level with regard to the rights granted to the persons concerned, the issuance of a residence permit and their accommodation pending removal.<sup>4</sup> While the researchers ac-



A migrant in a detention centre in Hungary

3 CJEU, Case C-357/09, *Said Shamilovich Kadzoev (Huchbarov)*, Judgment of 30 November 2009, par. 65–66.

4 European Commission, *Study on the situation of third-country nationals pending return/removal in the EU Member States and the Schengen Associated Countries*, March 2013.

knowledge that the legal status of the third country nationals concerned as well as the legal frameworks of the States concerned are so divergent that it basically concerns 31 different approaches, they distinguish three main categories. The first category concerns the third country nationals who have received an official postponement of the return or removal order which gives them the permission to stay pending their return or removal and grants them additional rights compared to other third country nationals pending return.<sup>5</sup> The rights attached to such “tolerated stay” again vary considerably between the various countries. The second category concerns the third country nationals who have received either an official or de facto postponement of the return decision and are not granted additional rights. This includes the group of third country nationals who are allowed to maintain the rights they had when the return order was issued to them, whether or not limited in time. This category exists (again with enormous differences between the countries) in all the 31 European states covered by the research. An example is the situation of rejected asylum seekers who in some countries are allowed to continue staying in the accommodation they were provided with during the asylum procedure after their asylum application was finally rejected. The last category comprises the third country nationals who have not been granted any postponement of the return order, nor additional rights. According to the study, this category is reported in 23 countries covered by the research.<sup>6</sup>

### Searching for background information?

The factsheet: *Unreturnable migrants in detention in EU law and policy* is available at [www.pointofnoretturn.eu](http://www.pointofnoretturn.eu)

Another important finding of the report is that in many countries the lack of cooperation of third country nationals with the return process is an important aspect that determines whether or not the persons concerned will be granted access to certain rights pending return, and in some cases whether or not the person will be detained. Yet nowhere is the lack of cooperation with return sufficiently defined in law or administrative practice, which increases the risk of arbitrary detention in cases of third country nationals who cannot be returned for reasons that are beyond their control. The key problem remains that lack of cooperation of a third country national will to a large extent have to be determined on a case-by-case basis by the competent authorities, taking into account the specific circumstances of the individual.

The upcoming elections for the European Parliament in 2014, the establishment of the new Commission and the discussions on the strategic guidelines for legislative and operational planning within the area of freedom, security and justice to be adopted by the European Council in June 2014 all provide opportunities for EU institutions to reflect on concrete actions to address the situation of unreturnable migrants. There is need for a clear commitment from EU institutions and Member States to develop a rights-based approach to situations of unreturnability in EU Member States which aims to prevent legal limbo situations, and excludes the use of detention with regard to unreturnable migrants.

<sup>5</sup> According to the study, this is possible in the following countries: Austria, Switzerland, Czech Republic, Germany, Greece, Lithuania, Luxembourg, the Netherlands, Poland, Romania, Slovenia and Slovakia). See Study, p 27.

<sup>6</sup> Austria, Belgium, Bulgaria, Switzerland, Czech Republic, Denmark, Estonia, Greece, Spain, France, Ireland, Italy, Lithuania, Luxembourg, Latvia, the Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Slovakia, United Kingdom.

# 2 Unreturnable migrants do exist

## What is unreturnability?

**M**igrants are unreturnable when they face refusal of legal residence in the host country, yet return to their home country is impossible for reasons beyond their control. The authorities of the home country are not able to return migrants by force and often migrants cannot return voluntarily. In many respects unreturnable migrants face the

**Voluntary return:** we speak of voluntary return when undocumented migrants decide themselves to return to their country of origin. In some cases, they can receive administrative, financial, logistical and reintegration support.

**Forced return:** if an undocumented migrant does not want to leave voluntarily, then the state can decide to remove the person by force. People are often held in a detention centre as a measure to execute the removal.

Background information about the different detention systems in the four countries involved in the research can be consulted on [www.pointofnoreturn.eu](http://www.pointofnoreturn.eu).

same issues as other undocumented migrants, yet their unreturnability alters their situation in important ways. They are in limbo, as they cannot stay and they cannot go back. There is no future but illegality, which exposes them to arbitrary detention.

Our qualitative fieldwork revealed that unreturnability can arise from multiple causes: administrative reasons, statelessness, and possible human rights violations such as return to an insecure country, the right to a family life and medical conditions. Some migrants are unreturnable for a combination of reasons.

## Unreturnable for administrative reasons

The commonest causes of unreturnability for the migrants in our study were administrative. 26 of the 39 interviewees could not be returned for administrative reasons. In most cases, these reasons concerned difficulties in obtaining travel documentation from the embassy of the person's country of origin. Some embassies refuse or indefinitely delay issuing a travel document to returnees who do not have a valid passport. Some states do not permit the forced return of individuals against their will. Some embassies do not recognise the identity of their nationals, demanding unrealistic or unattainable proofs of nationality.

### *Inability or refusal of national authorities of the country of return to issue documentation*

Asylum seekers and migrants frequently arrive without genuine identity papers that prove their identity and where they come from. Sometimes they need to use a false document in order to flee from their country. Others are told by smugglers to destroy their passport and or identity documents.<sup>7</sup> This means that new identity documents (such as a birth

<sup>7</sup> *Asylum Camp Limbo. A report about obstacles for deportation*, Refugees Welcome, 2011, p 19.



## The story of **MICHEL** 31, from Burundi, living in France

*Michel left his country at the age of 15, after his parents were murdered in front of his eyes. Michel's journey to France lasted three years, during which he crossed several countries, including Gabon, Ivory Coast and Spain. Since 2002, Michel has been detained four times, spending a total of three months in detention. The last time he was released by the authorities after being diagnosed with hepatitis, which cannot be treated in Burundi. As Michel does not have any identity documents, however, France would not be able to send him back anyway.*

### The brutal realities of Burundi

"I left my country in 1997, after my parents were killed right in front of me. I was fifteen. I went to the Ivory Coast where I stayed for a year, and then I went to Gabon where I stayed for a year and a half. In Gabon, I worked and met people who really helped me. They provided me with a fake passport, which I used to go to Europe.

"I did not try to legalise my situation in France for years. I was arrested and sent to an immigration detention centre [IDC] in 2002, but only for a few days. I felt pretty safe because the local policemen knew my situation and they did not bother me. The times I was arrested were when I was in other areas.

"I tried to work whenever I could, mostly in market places."

### A catch-22 situation

"I went to the Burundi consulate in Paris to get a civil status certificate. I needed this document to apply for a residence permit. However, they told me that I had to get this document in Burundi. I cannot go back to Burundi because my consulate refuses to acknowledge me as one of their citizens. Therefore, the French authorities cannot get a travel document to send me back to my country even though I have been in IDCs several times. Therefore I cannot get a legal status certificate and apply for a residence permit in France either."

***"Because of the impossible situation  
I'm in, my life has been put on hold"***

### Life in detention

"I have been detained four times in France. The IDC in Toulouse is very big and looks a lot like a jail. It is located at the end of the airport runway, so we could hear planes taking-off all day long: in your room, when you eat, when you sleep. It is extremely stressful because you never know if you will be on the next flight.

"In detention, I felt like I was completely stuck. I feel that just not having legal

MICHEL	
<b>1997</b>	Leaves Burundi.
<b>2000</b>	Arrival in France.
<b>2002</b>	First time in an immigration centre (Vincennes).
<b>2011</b>	Short period in jail Once released, requests regularisation but Burundi embassy tells him he must go to Burundi to collect the civil status certificate needed for his regularisation in France.
<b>June 2012</b>	5 days in the IDC of Palaiseau: released because of a breach of procedure.
<b>September 2012</b>	45 days in the IDC of Toulouse: released at the end of the maximum legal period.
<b>March 2013</b>	34 days in the IDC of Plaisir: released by the prefecture due to medical certificate stating incompatibility with removal.

documents does not justify being deprived of liberty for so long. I feel like my life is stuck because I cannot sort out my situation: I cannot get a residence permit in France but I cannot be sent back to Burundi. It seems like it will never end."

### The right to a normal life

"The last time in detention I was released by the prefecture because I was diagnosed with hepatitis and it cannot be cured in Burundi. The prefecture has to examine my right to stay in France for health reasons and I'm waiting for an answer.

"I want to stay in France because my life is here now. I have been in this country for 13 years. I have no one left in Burundi: I left when I was 15, after my parents were murdered. The idea of being sent back reminds me of how violent and dangerous the situation was back there and of my parents' death.

I risked my life to leave Burundi and I do not want to go back.

"I have been detained for a long time, even though the prefecture knows they cannot send me back to my country. It seems unfair and excessive.

"I feel very frustrated because I cannot have a normal life: find a wife, have a job, kids, etc. I want my share of the cake!"

## Thirteen years in France

*He has no passport to go back to Burundi. And he has no identity documents to be regularised in France.*

*Still undocumented and unreturnable for administrative reasons*

# The story of **KAMBALE**

44, from Angola,  
living in Hungary



*Kambale, 44, fled to the neighbouring Democratic Republic of Congo during the civil war in Angola. After the war he could not return because the authorities did not recognise him as an Angolan citizen. Now he is unreturnable, because the Angolan embassy does not permit his return. He was detained for six months.*

## Years in uncertainty

“When the police caught me, I was not alone; there were many other people. It was a long time ago, in April 2001. I had nothing in my hands. I asked for asylum, this status. But unsuccessfully.

“Life in the detention centre was horrible. It was the same as in prison, you know? And in prison it’s never good. Not just in Hungary, every country’s prison. Prison is prison. Conflicts. The problem is the language, you know? In 2001 I didn’t speak Hungarian. The police officers provoked us in the evenings.

“When I was released, I got back to the asylum camp. And there were immigration officers doing interview with me. After the interview they told me that I’ll get a ‘befogadott’ [tolerated stay] for two years. So then I searched for a job and could do some work. I’ve worked a lot in these twelve years since I’m in Hungary. I’ve worked for about eight years. I moved to Budapest alone, searched for job and a flat to rent. And something new started then. I started working, paying for my flat.

*“Now, it has been for twelve years,  
and I still couldn’t find my place”*

“Then I got back to the town where the camp was, it was a long, long time ago. When I was there, I lived at my girlfriend’s place. She was Hungarian. After she broke up with me, I couldn’t go back, to any camp, the only place I could go was here [an open shelter for unreturnable foreigners]. And they transported me here. That’s all.”

## Being unreturnable

“Look, I’m not saying that I want to go back. The immigration office wants me to return. And here in Hungary, we have an embassy. I tried to contact them, but it didn’t work. What else can I do then? I can go back to the consul every day and ask them to do something. But if they say I can’t return, then I can’t. I’m not Congolese. I’m Angolan.”

## For twelve years in Hungary, still without any prospects

“I didn’t aim to stay here in Hungary, I thought I would go to Germany or somewhere else in Europe. But I didn’t succeed. Now, it has been for 12 years, and I still can’t find my place. Do you see? And I don’t have anything here. I don’t have any children, or a home.

<b>KAMBALE</b>	
<b>27 April 2001</b>	Reached the Hungarian border from Ukraine. Claimed asylum, lived in an open reception centre during his asylum procedure.
<b>2002</b>	His asylum claim was refused, detention for 6 months.
<b>2003</b>	Conflict with a policeman – imprisoned for 300 days as he couldn't pay the penalty of 30,000 HUF. Following second claim for asylum, he received a residence permit and humanitarian leave to remain for 2 years. This was renewed later several times.
<b>2003–09</b>	Lived in Székesfehérvár, Budapest. He found permanent jobs, took an exam on truck driving.
<b>2009</b>	His status expired so he moved back to the open reception centre.
<b>2010</b>	Moved to his girlfriend's place, lived there for one year.
<b>2011</b>	Lived in the open community shelter.
<b>2012</b>	Fled to Austria and claimed asylum there. He was detained for 10 days.
<b>2012</b>	Returned to Hungary, under Dublin II.

I don't have money, and it's bad. Twelve years. Others have houses, jobs, and also family.

"And here in Hungary you can find a lot of jobs, a lot. The only problem is, that you need to have identity card, registered address, social insurance card, another card for taxation, and you need all of these to be able to work.

"You just sleep and eat here [in the shelter], you know. OK, food is very important. But it's also good if you can work. I'm just sitting inside all the time. Take a walk, go to sleep, internet and that's all. And it's not good.

"Twelve years! Do you know what that is? Twelve years. Not twelve months. Not twelve days. Twelve years! It's not a joke, it's twelve years. If a child was born, one day, one year would be much time, wouldn't it? Ah, twelve years. And it's not my son, not my daughter, not children, do you understand? Do you understand? That's it."

### Twelve years in Hungary

*Still undocumented and unreturnable for administrative reasons*

certificate or an identity card) are often needed to make a return possible. These documents are needed to obtain a passport or a temporary travel document.

Migrants can be unreturnable because of the refusal of the embassies of their countries of origin to provide these new identity documents. Unwillingness of the country of origin to readmit its citizens can prevent returns. Embassies can also just not react within the maximum lawful period of detention.

For example in France, Betty, a Ghanaian woman, and Abdallah, a Tunisian national, were detained for the full 45 days, the maximum duration of detention in France. Both embassies failed to answer within the legal detention period. Michel, from Burundi, has no passport or other identity documents. The Burundian authorities refused several times to provide a travel document. Instead, he was told he needs to go to Burundi to collect this document, which is impossible without a travel document.

***“I cannot go back to Burundi because my consulate refuses to acknowledge me as one of their citizens. Therefore French authorities cannot get a laissez-passer to send me back to my country even though I have been in IDCs [immigration detention centres] several times.”***

– Michel, Burundi (FR)

As is the case with most rejected asylum-seekers and other irregular migrants, none of the people interviewed had valid passports on which to travel. Five of the UK interviewees could not return because of this. Abdal and Uncle, for example, are trapped by the refusal of their embassies to document them. Their countries of origin do not accept returns on the basis of European laissez-passers. As a result, in order to return them, the Home Office must apply to their embassy for a single-

**Travel document.** Undocumented migrants do not have a valid passport on which to return to their countries of origin. As a result, they need to be issued some form of travel document. These documents are only valid for single use and are issued by the state of return. In the UK they are called “emergency travel documents”, while in France they are known as “*laissez-passer consulaires*” or simply “*laissez-passer*”. Belgium also uses the term “*laissez-passer*”. In this report we use “travel document”.

**European laissez-passer** – a travel document issued by European states seeking to return migrants to their countries of origin. The objective is to use uniform documents to ease the process. The use of the European laissez-passer requires that the departing authority identifies the person’s country of origin, which then authorises return. It is commonly used where a readmission agreement has been negotiated. However, some countries, including Belgium, appear to use European laissez-passers to circumvent lack of cooperation by authorities of countries of return that do not accept returns.<sup>8</sup>

**Readmission agreements** set out clear obligations and procedures for the authorities of the non-EU country and of EU States as to when and how to take back people who are irregularly residing in the EU. They are in principle technical instruments to improve cooperation between administrations and should only be used after a return decision has been made, in an individual case, in accordance with certain procedural guarantees set by the Return Directive and the relevant EU asylum *acquis*.<sup>9</sup>

8 On the use of EU-laissez-passers by EU Member States in practice see European Migration Network (EMN), *Ad-Hoc Query on EU-Laissez-Passer*. Compilation produced on 14 October, 2010. No data is available on the extent of use of European laissez-passers in Belgium. See also EMN, *Identification des demandeurs d’asile. Pratiques et défis en Belgique, Étude ciblée du Point de Contact National belge du Réseau européen des migrations (REM)*, septembre 2012.

9 [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/immigration/return-readmission/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/immigration/return-readmission/index_en.htm) (consulted 10 November 2013).

use identity document on which they can be returned. Previous research has indicated that a high proportion of cases of long-term detention in the UK are related to refusals of such travel documents.<sup>10</sup>

Despite providing a birth certificate and other valid identity documents, Abdal was not believed by the Sudanese embassy to be a Sudanese national. This reflects a documented practice amongst various embassies to require unrealistic and unachievable evidential burdens before they will grant travel documents.<sup>11</sup> Abdal attended the embassy twice, the second time at his own request, in order to demonstrate his willingness to comply with the redocumentation process, yet was twice refused documents.

Ali was detained in the UK for deportation to Iran, yet he has no travel document, nor any embassy in the UK that could issue him one. The Iranian embassy in London was closed by the UK government in 2011, and no alternative embassy has been designated by the Iranian authorities to issue travel documentation to its nationals. Moreover, even prior to its closure, the Iranian embassy had for many years refused the vast majority of applications for travel documents, even where supported by other identity documents. Ali's detention was initially justified on the mistaken grounds that he could be deported to Iraq, despite being a Farsi-speaking Iranian. He has now been found by the courts to be Iranian, not Iraqi, yet his detention continues.

In Hungary, Michael from Nigeria, Mazim from Iraq and David from Sierra Leone cannot be returned because they do not have any documents to identify themselves, and their embassy will not accept their identity. David came without a passport to Hungary 13 years ago. His embassy cannot find his data in its registration system, and therefore will not issue a travel document.

### *Refusals of national authorities to issue documents to permit forced returns*

The reasons for which embassies refuse to provide travel documents are often unclear and lack transparency. In some cases, embassies appear to take positions of ethical opposition to the forced return of migrants who have been long-term resident in Europe. For example, Uncle has lived in the UK and Norway for forty years, and has few ties to the Gambia. Uncle reports that the embassy official who interviewed him expressed disapproval that he should be deported after having lived in the UK for twenty years. However, an additional factor is that his parents were not Gambian.

The Iraqi authorities in Baghdad refuse to accept the forced return of nationals unless they have a passport or laissez-passer issued by the Iraqi embassy. As a result, undocumented Iraqis can generally not be returned to Baghdad, unless they cooperate by applying for a laissez-passer document.<sup>12</sup> Nevertheless, Tareq was detained twice in Belgium for removal to Iraq, despite the awareness of the Immigration Office that forced returns were not possible.

Iran also refuses to cooperate with issuing travel documents for the removal of citizens against their will. Muhammad, an Iranian immigrant, was put in an immigration detention

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<sup>10</sup> *Detained Lives: The Real Cost of Indefinite Immigration Detention*, London Detainee Support Group, 2009. *No Return No Release No Reason: Challenging Indefinite Detention*, London Detainee Support Group, 2010.

<sup>11</sup> *Detained Lives*, 2009.

<sup>12</sup> *HF (Iraq) & Ors v Secretary of State for the Home Department (Rev 1)* [2013] EWCA Civ 1276 (23 October 2013).

# The story of **TAREQ** 27, from Iraq, living in Belgium



*Tareq left Iraq due to the danger in his region. His asylum claim was dismissed, because the situation in that region of Iraq was not considered sufficiently dangerous. Tareq was detained twice, but, as he does not have a valid passport, repatriation to Iraq is impossible. The second time Tareq was detained was because the Immigration Office thought he might be Turkish, although there had never been any doubt about his identity during the asylum procedure. When it was confirmed that he was definitely from Iraq, he was released. Six years after his arrival in Belgium he is still undocumented, dependent on the income of his girlfriend and without any hopes of a future.*

## From Iraq to a Belgian detention centre

“I came to Belgium six years ago, in 2007. I used to live near Kirkuk; we had many problems over there. Shiites and Sunnis, the Kurdish population ... many people died. I applied for asylum two days after my arrival, but my claim was rejected because they didn't believe my story. They said that when I left Iraq, the situation in the north wasn't dangerous yet. My lawyer lodged an appeal, which was dismissed. When I applied for asylum the second time, I was sent to a detention centre. They tried to send me back to Iraq at that point, but as I didn't have a valid passport I couldn't be sent anywhere.”

## Life in detention

“The detention centre was really dirty. It was small and security never came in to talk to us. People disrespected each other there; there were a lot of arguments, a lot of fights. That's what happens when you put a lot of people together. It was difficult for me there because I could not talk to anyone; nobody spoke Dutch, not even the social workers. I never knew what was going on. I stayed in the centre for almost three months, and one day they suddenly said 'you're free to go'. I asked the social workers where I was supposed to go, where I was supposed to sleep, but they told me they could not help me.

“I ended up staying with friends for several years. Luckily they took care of me. I couldn't work because I didn't have any papers – I couldn't do anything. Three years ago, I met my Belgian girlfriend. I live with her now. At the end of 2012, I was arrested after the police stopped me on the street and asked to see my ID. I didn't understand why; I hadn't done anything wrong. They sent me to another detention centre, which was better than the first one. The social workers also spoke Dutch; I could ask them for news about my case – which I did every day!

*“Locked up or on the streets –  
there's no difference.”*

“Five weeks later I was released. Apparently, they’d contacted the Turkish embassy because they didn’t even believe I was Iraqi. The Turkish embassy told them I wasn’t

TAREQ	
2007	Arrives in Belgium.
2008	Asylum claim rejected. Second asylum claim rejected, detained for three months.
2009	Second request for regularisation rejected.
2010	Meets his girlfriend.
2012	Third request for regularisation rejected. Arrested in a shop and detained. Released one month later because forced return to Iraq is not possible.
2012	Third request for regularisation rejected. Arrested in a shop and detained. Released one month later because forced return to Iraq is not possible.

Turkish, and then the Iraqi embassy confirmed I was from Iraq, but they refused to repatriate me.”

### Securing the future...

**Girlfriend:** “His lawyer will now apply for regularisation again. That’ll be the fourth time; the other claims were all dismissed because he doesn’t have a valid passport. We also plan on legally cohabiting together, but I have to turn 21 first. As he’s already living with me they can’t just take him away. If we were to live together on paper he might have a chance of getting a residence permit.”

### ...and living in fear

**Tareq:** “But to do all that, I need a valid passport. I’ve contacted the Iraqi embassy in Brussels but they don’t want to give me one.

I’m scared; scared that the police will arrest me again. I can’t go back to Iraq, I have problems there. I wish I could go back but I can’t. It’s hard living here without papers... Locked up or on the streets, there isn’t any difference. It’s been six years and still I can’t do anything. I’ve lost everything – but what for?”

## Six years in Belgium

*Still undocumented and unreturnable for administrative reasons*

# The story of **REHAN**

22, from Afghanistan,  
living in Hungary



A detention centre in Hungary

*Rehan fled from Afghanistan, leaving his wife and child behind. His first asylum application was refused; he was detained for eleven months. As the Afghan embassy accepts and assists only voluntary returns, he cannot be expelled from Hungary.*

## No place to call home

“My father was in politics from the ethnic groups in Afghanistan. At that time I was eight years old, when my brother and father were killed by these people. The government put me to an orphanage. Now I don’t have any family there. My wife and children live in Iran. In Iran also we are not in safe place. It’s a very difficult place. I lived in Iran like a thief.”

## Detention

“On 16 October 2011, at 1 o’clock and 2 minutes at night, I came to Hungary. There were three taxis, and one taxi was stopped. And I was inside that one. After this, they brought us to a detention centre where I claimed for asylum. I was there for ten months, and then they transferred me to another detention centre.

“It was jail, you know. It was dark inside the room, most of the time the door was closed, and I was inside. It was my life. Nothing. Just eat and sleep.

“The problem was that before I’ve never seen the cuffin’ [handcuffs]. The first time I arrived in Hungary the police put the cuffing to my hand in front of other people, and in this case I feel too much sadness. Because I was not a killer, a crimer or something else. It was very difficult. If somebody beats you, with the boot or kick, that have a pain for ten days, and after your pain goes. But this pain remains in my heart forever. Because in front of the people, they’re treating you as dogs.

‘Maybe this man is a thief’, people think, they don’t know that you are an asylum seeker. They don’t understand, but think.

“I am very concerned about my family, so I’m thinking, thinking, thinking, and my hair become white, you know. Every time I think about the family, it’s too much thinking, and here [pointing at his heart] I feel badness. Because two years I’m here in the Hungary, but there isn’t any good future for myself.”

*“This pain remains in  
my heart forever.”*

## Hopes for the future

“After I spent twenty days in the second detention centre, they transferred me here to this camp [open community shelter]. When I was inside the jail, it was jail. But now I’m in an open space, that’s also a jail, because without documents everywhere is a jail.

“Why I am here without any reason? Because, if I had status I would work for some

<b>REHAN</b>	
<b>October 2011</b>	Reaches the Hungarian border from Serbia.
<b>2011</b>	11 months in detention. First asylum claim rejected.
<b>2012</b>	Transferred to an open community shelter (a special shelter for unreturnable and undetainable foreigners who have served the maximum possible time set by the law in detention).
<b>2012</b>	5 months 20 days in Austria at his brother's, forced back to Hungary under Dublin II.
<b>2012</b>	Second claim for asylum, which has no suspensive effect on the expulsion order against him.

factories. Now I work, I'll buy and eat and spend for my family, money by myself not by others. Because I want to work, and I want to spend.

"I don't go outside too much, because when I go outside I see families and they have children, they spend their life happy, they share their moments with each other, and I become sad. Because why, what's my mistake that I don't have a good life? I want also be together with my family, I want to go with my wife and my children outside. We would spend our life happy, share our life, and talk about places and things."

## Two years in Hungary

*Still undocumented and unreturnable for administrative reasons*

centre in France four times. One of these removal decisions was to Iran. However, the Iranian embassy responded that they would not deliver a document for a forced removal. The other three times, France issued removal decisions to Belgium. These three decisions are not a consequence of the Dublin II regulation<sup>13</sup> but because of special readmission agreements between France and Belgium. There is the impression that it is used for Iranians to get around the fact that forced return is impossible. France terre d'asile noticed that about 300 Iranians they met in detention in 2012 and 2013 had decision orders to other EU countries. Muhammad was the only one with a removal order to Iran. From Belgium and the UK, the forced return of Iranians without a passport is also not possible.

Practices can differ across Europe, as with the forced return of Afghans.

Afghans who do not wish to return voluntarily are unreturnable in Hungary. The Afghan embassy in Hungary refuses to collaborate with forced returns, accepting only voluntary returns. As a result Rehan, a rejected Afghan asylum seeker, cannot be expelled. In France, Afghans are generally not expelled by force. Since 2009 France terre d'asile knows of only one person expelled. The French government expelled a group of Afghans in 2009 on a joint flight with the UK, using a European laissez-passer, but the Afghan authorities condemned the practice and it has not been used since.<sup>14</sup> Unlike France, Belgium is sending back single male Afghans.<sup>15</sup> Single women and families are in practice not sent back; nevertheless they get an order to leave the country and are supposed to leave voluntarily. They do not find themselves in immigration detention because in Belgium the detention of minors is forbidden. These unreturnable families are not included in this project because they never end up in detention. Yet they have no residency and are also in limbo.

### *Allegations of non-cooperation*

Migrants in detention are frequently accused of non-cooperation with the process of verifying their identity for return. It is alleged that they provide false identities, misrepresent their nationality, or fail to provide identity documentation in their possession. States argue that they have deliberately made themselves “non-removable”<sup>16</sup>, and have caused their own detention.

While some migrants do obstruct the identification process, the research suggests that others are wrongly accused when they are actively seeking to cooperate. It appears



A migrant in a Hungarian detention centre

© UNHCR/B. Szandelszky

<sup>13</sup> Dublin II Regulation aims to determine rapidly the Member State responsible for an asylum claim and provides for the transfer of an asylum seeker to that Member State.

<sup>14</sup> <http://www.aedh.eu/The-European-laissez-passer-23.html> (consulted on 23 October 2013).

<sup>15</sup> 44 single men were expelled between 2010 and 2013 (Commission de l'intérieur, 1 October 2013).

<sup>16</sup> *Practical Measures to Reduce Irregular Migration*, EMN, October 2012, p 53.

that many migrants do cooperate but are refused documentation for reasons outside their control. Yet they experience great difficulty in proving their cooperation and refuting accusations of obstruction.

***“Every time I got to court to seek bail, the UKBA say I’m not cooperating. I asked the judge what I have to do to prove cooperation, the judge said provide documentation. I said I provided the original birth certificate and other documents. I wrote a letter that I’m happy to attend the embassy to resolve the issue of my identity. When I arrive at the embassy, I was shaking, shivering. I saw the ambassador. I said I’ve not had my medication. He turned around to the Home Office, said how can you bring someone like that. My case owner even handed me a tissue, she promised me they now have not any way to say you’re not complying, you’re very ill and you’ve still come.”*** – Abdal, Sudan (UK)

Boban and Hagop in Belgium proved more than once their willingness to cooperate. They want their situation solved and return would be a solution. But their application for voluntary return was denied because they are not recognised by their former countries of residence.

***“I asked already in 2009 to return. That’s four years ago. What am I still doing here? If they can help me, help me, and if not let me leave for my country. Also in Turkey I will encounter problems, but I want to leave ... I do not want to stay in Belgium in this way.”*** – Hagop, Turkey (BE)

## **Practical obstacles**

Sometimes return is impossible because of other practical obstacles. Where there is no functioning airport or route of return, returns are sometimes suspended. Tidiane could not be removed from France to Mali, not only due to the unsafe situation in Mali, but also due to the lack of flights to Mali.

## **Unreturnable because of statelessness**

A stateless person is someone “who is not considered as a national by any State under the operation of its law”.<sup>17</sup> In other words, a stateless person has no citizenship or nationality. Statelessness is a global problem affecting an estimated ten million people worldwide.

According to the Refugee Agency of the United Nations (UNHCR), the main causes of statelessness can be grouped into three categories: causes linked to the dissolution and separation of states and the transfer of territory between states; causes linked to the complex technical operation of citizenship laws or administrative practices; and causes linked to discrimination, for instance on account of gender, age, ethnicity and/or race, or the arbitrary deprivation of nationality.<sup>18</sup>

<sup>17</sup> Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons. See also UN High Commissioner for Refugees (UNHCR), *Guidelines on Statelessness No. 1: The definition of “Stateless Person” in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*, 20 February 2012, HCR/GS/12/01, available at: <http://www.refworld.org/docid/4f4371b82.html>

<sup>18</sup> *Mapping Statelessness in Belgium*, UNHCR, 2013, p 9.

# The story of **BOBAN**

33, from Macedonia,  
living in Belgium



*As a stateless citizen in Macedonia, Boban was not entitled to his fundamental rights. In search of these rights, he left his native country behind and has now been recognised by the Belgian courts as stateless. Nevertheless, this does not automatically give Boban the right to a residence permit. He claimed asylum in several other EU countries but was always sent back to Belgium, where he lives on the streets and does not receive any social support. Boban was in a detention centre twice, but as the Macedonian authorities do not acknowledge him as one of their citizens they will not let him return. Eight years later, he is still undocumented, still unreturnable, and still without a future.*

## Nothing to lose

“I came to Belgium at the end of 2005. I hoped that, as a member of the EU, Belgium would offer me the possibility of a real life. I was born in Macedonia without citizenship, because my family and I are Roma. I have been discriminated against my entire life. I wasn’t allowed to attend secondary school, wasn’t allowed to work, didn’t have the right to social security, would never be allowed to marry ... I had no rights, no life and no future – and that’s why I left.

*“I wouldn’t wish this kind of life on my worst enemy.”*

“I applied for asylum as soon as I arrived here, but two months later my application was refused because the authorities didn’t believe my story. I applied a second time but without result, after which I decided to apply for stateless status. The procedure is difficult and very slow; you need a good lawyer. It was only after three separate hearings, when the Macedonian Office of Internal Affairs finally confirmed that I didn’t have Macedonian citizenship and could never return, that I was recognised as a stateless person. That was back in 2009.”

## Status: stateless

“Contrary to what I had hoped, the verdict didn’t change a thing. Statelessness does not give you the right to stay in Belgium – so I still didn’t have any rights. I still didn’t have a place to sleep, I still wasn’t allowed to work. In 2010, I applied for regularisation but I never even received a reply. My only other hope was to continue applying for asylum, which I did six times in total. Time after time my application was rejected.

“I started to become desperate. What did they expect me to do? Where was I expected to go? I had run out of ideas. I tried turning to other countries for help, making my way to Luxemburg, Austria and Germany, but all they did was send me back to Belgium.

“They’re just messing with me! It’s so frustrating, sometimes I cry from anger ... This isn’t a game! I wouldn’t wish this kind of life on my worst enemy.”

## Detention

“I was detained twice throughout the years because I didn’t have any documents. I was shocked to discover that even as a recognised stateless person, I could still be sent to a detention centre. The last time I applied for asylum, the authorities suddenly decided to arrest me and lock me up – even though they knew I couldn’t be sent back! For

BOBAN	
2000	Macedonia refuses to grant nationality.
2005	Travels to Belgium. Asylum claim rejected.
2006	Travels to Luxemburg and claims asylum. Sent back to Belgium and detained for 2 months. Wants to return to his country but Macedonia refuses.
2007	Requests regularisation.
2008	Applies for stateless status.
2009	Recognised as stateless.
2011	Briefly imprisoned twice for shoplifting. Stays in psychiatric hospital for a couple of months. Travels to Austria and claims asylum.
2012	Sent back to Belgium. Travels to Germany.
2013	Sent back to Belgium. 6th rejection of asylum claim, detained for one month. Released because stateless.

three weeks we waited for the negative reply from Macedonia, after which they released me again. The asylum authorities have no mercy. It’s a game of cat and mouse!

“You know what’s sad: most people can’t wait to be released from detention, but me, I didn’t want to leave. Better here than on the streets, I thought to myself. I had food, shelter, people were nice to me ...What more could you ask for?”

### Imagining the future

“For 33 years, this struggle has been my life ...it’s almost impossible to imagine the future being any different. I just want to have a normal life. I want to be able to work and get married, have a family of my own. But when will this ever happen? I don’t know. Nobody does.”

### Eight years in Belgium

*Still undocumented and unreturnable because he is stateless*

The human cost of being stateless is high. Stateless persons are amongst the most vulnerable people in the world. Statelessness often results in the denial of fundamental rights, which in turn results in disempowerment and marginalisation, causes social and economic hardship and acute vulnerability. Stateless persons often are at increased risk of discrimination, abuse, child labour, trafficking, and detention.<sup>19</sup> This situation may oblige them to flee in search for international protection. Arriving in a new country, they are at risk of arbitrary detention, as in many cases they cannot return to their country of previous residence where they lack citizenship.<sup>20</sup> And even if their status of statelessness is recognised, they often do not have a permit for legal stay.

During the research we encountered two situations of unreturnability in combination with statelessness. Both migrants left their countries of origin to escape statelessness, and their statelessness makes it impossible for them to return. Both belong to minority ethnic groups affected by statelessness, Roma and Rohingya.

Boban never obtained Macedonian nationality while he lived there. As a Roma he did not have Macedonian nationality by birth.

***“It makes no sense to stay in a country where you have no rights. I was born without citizenship. And when you do not have citizenship then you do not get access to the labour market, you can’t get married, you can’t get a work permit, you don’t get any hope. You can go to primary school, but after that you are barred from school; you can’t do anything in that country. I thought I will get rights here because I did not have any rights over there. I thought Belgium would solve all my problems. But those problems are until today unresolved, they’re still the same since the Stone Age!”*** – Boban, Macedonia, (BE)

After a procedure of three years, Belgium has officially recognised Boban as stateless. The procedure in Belgium can take a long time, and the burden of proof is on the applicant, who in the meantime has no permit to stay or right to work.<sup>21</sup>

***“Three times I had to go to court and three times they asked me to bring a paper that proves I could not return. IOM<sup>22</sup> gave me such a document, but they [the judge] wanted another one. They thought I’ve lost my citizenship because I once refused it. Who would be that stupid? I’ve always wanted to have Macedonian citizenship. They wanted a document from the Office of Internal Affairs from Macedonia stating I did not have Macedonian citizenship and stating I could not return. Thank God, that was the document which convinced them to recognise me.”***

– Boban, Macedonia, (BE)

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<sup>19</sup> *Ibid*, p 13.

<sup>20</sup> Equal Rights Trust, *Guidelines to Protect Stateless Persons from Arbitrary Detention*, 2012, <http://www.equalrightstrust.org/view-subdocument/index.htm?id=886>

<sup>21</sup> UNHCR recommend that the burden of proof should be shared. See *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, 5 April 2012, HCR/GS/12/02, available at: <http://www.refworld.org/docid/4f7dafb52.html>

<sup>22</sup> International Organisation on Migration. It supports certain groups of migrants who are returning voluntarily.

Although Belgium is one of the few countries with such a stateless procedure in place, recognition does not necessarily end the limbo. There are possibilities to apply for a residence permit based on statelessness, but success is not guaranteed and many recognised stateless persons remain in an irregular situation.<sup>23</sup> Because of their undocumented status they are at risk of detention. In the annual report of the Centre for Equal Opportunities and Opposition to Racism, the national observer on human rights, states that the Immigration Office does not know of any cases stateless people in detention.<sup>24</sup> Boban's story shows this to be incorrect, because after he was recognised as being stateless he was detained again, as the Belgian immigration authorities still consider him to be returnable.<sup>25</sup>

Hungary took a leading role in Europe by introducing a stateless determination procedure in 2007. The procedure has been praised as a sophisticated and well-regulated procedure that recognises statelessness as in itself a ground for protection.<sup>26</sup> The authorities are obliged to promote access to the procedure by informing migrants. Applicants have the right to appeal. While the burden of proof lies with the applicant, in practice the immigration authorities play an active role in establishing potential national ties. However, only lawfully staying migrants can apply for stateless status, which excludes from protection many of those who need it. Irregular migrants can in practice apply and are occasionally granted status, but are frequently rejected on the grounds of their unlawful stay. Successful applicants have been granted legal status as stateless, with access to a travel document and free primary and secondary education. However, stateless people have limited and difficult access to the labour market and no specific provision for accommodation or financial support.<sup>27</sup>

The UK has recently introduced a statelessness procedure, under which migrants recognised as stateless are granted leave to remain. However, it is too early to assess its implementation in practice and some doubts have been expressed regarding aspects of the new procedure that might frustrate stateless persons receiving protection in practice.<sup>28</sup> Typically, asylum-seekers go through the asylum process before issues of statelessness are raised. As a result, Abdul was detained in an Immigration Removal Centre for his asylum to be considered on the Detained Fast Track process.<sup>29</sup> As a Rohingya from Burma, he is part of the largest stateless population on the planet, as well as one of the most thoroughly documented.<sup>30</sup>

In France, it is the French Office for Protection of Refugees and Stateless People (OFPRA – Office Français de Protection des Réfugiés et Apatrides) that is in charge of examining statelessness applications. But, contrary to the asylum application, there is no precise procedure: no time limit and no temporary document during the examination, which means

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23 The Belgian government declared in 2011 in the new coalition agreement that the recognition of statelessness will be followed with a provisional residence permit. However, at the time of writing no steps have been taken. *Accord de gouvernement, 1 décembre 2011*, p 135.

24 *Rapport annuel de Migration 2012*, Centre pour l'égalité des chances et la lutte contre le racisme, p 74..

25 This was confirmed orally by an immigration officer at the commune where he resides in June 2013

26 Hungarian Helsinki Committee, *Statelessness in Hungary*, 2010

27 *Ibid.*

28 See Asylum Aid Briefing Note on the Introduction of a UK Statelessness Determination Procedure.

29 See text box on p 29.

30 See for example Equal Rights Trust, *Unravelling Anomaly*, *op cit.*

# The story of **ABDUL** 30, from Burma, living in the UK



*Hoping  
Against Hope*  
by Imran  
Qadeer,  
detained  
in the UK

*Abdul is a Rohingya from Burma. He is stateless, so cannot return to Burma or Bangladesh. Despite this, when he claimed asylum he was placed on the Detained Fast Track*

## Fast Track asylum process in detention

“There are a lot of people in detention: almost 700 people. Some have been here for few months and some for over a year.

“It has been five months now. I was first arrested on September 26, 2012, then I was transferred to a detention centre. This is the first time.

“After my asylum interview with the Home Office on December 6, I was told by the immigration officer that I am on Fast Track. Then my solicitor got in touch with me and assured me that I will be taken off it. Before the interview I had no clue about it, it was only after I was told about it by the immigration officer that I got to know about Fast Track. It was very sudden. In

the afternoon they came and asked me to get ready as I have an interview at 2 pm. I was caught off guard. And from the beginning nothing was clear to me.”

*“From the beginning,  
nothing was clear to me.”*

### Detained Fast Track Procedure in the UK:

Asylum seekers on the Detained Fast Track are held in detention throughout the consideration of their asylum claim. Cases are placed on the Detained Fast Track if they are considered by the Home Office to be likely to be straightforward. Asylum-seekers on the Detained Fast Track face tight deadlines, such as two days to lodge an appeal. 99% are refused asylum by the Home Office.

## Waiting in detention

“I remember, a few days ago someone in my neighbouring room felt dizzy and fell down. He was lying on the floor and when the guard came in, instead of helping him, the guard started laughing. The guard casually said, ‘I have seen people faking it

like this.’ And then, thankfully, he was taken to the doctor.

“I just can’t sleep. I have this constant tension bogging me down.

“I end up having only dinner sometimes. If I am very hungry I go to the shop located inside the centre and buy noodles, add hot water and have it. In the evening I visit the office once again, just to see if I got something. I also try calling up the solicitor to find out about my case.

<sup>31</sup> Equal Rights Trust, *Unravelling Anomaly*, op cit, p28.

I am an orphan and have no family. But I do have a lot of friends, or actually did have a lot of friends. But after being detained, their attitudes have changed. When I call them they don't pick up, and when they do, they seem to be in a hurry. Probably they think I

ABDUL	
<b>2001</b>	Arrived in UK on a lorry.
<b>2001–2012</b>	Working in a restaurant.
<b>September 2012</b>	Detained, served with papers as illegal entrant. Claimed asylum, placed on Detained Fast Track.
<b>January 2013</b>	Asylum refused, appeal lodged.
<b>February 2013</b>	Released from detention.

will ask them for some favours. But I just want to talk, I don't really need any help. After being ignored a couple of times, I have stopped calling them."

**No place to go**

"If I am asked which place I consider home, I would have to say Burma. In spite of the fact that Burma won't have me back, I would still call it my home. It's strange, but I really have no place to go, I don't have anything

in Bangladesh either, I don't have anything in India. I know I don't really have anything in Burma too, but that's where spent my childhood. But I can't go back there now. In Burma I have no future.

"I am waiting for such a long time and wasting my days in the centre not doing anything productive. I would really request the authorities to not keep anyone like this, for so long in detention."

**Thirteen years in the UK**

*Still undocumented and unreturnable because of statelessness*

no access to the social services available to asylum seekers. In contrast to the practice in Belgium, if statelessness is recognised, migrants are granted a one-year residency permit on the grounds of “family and private life”. However, the French procedure is long, and most applicants are refused.

Amongst the group of persons unreturnable because of administrative reasons, *de facto* stateless persons can be encountered. There is no internationally accepted or codified definition of “*de facto* statelessness” but following the conclusions of an expert meeting convened by UNHCR, the following definition was suggested:

De facto stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Protection in this sense refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality.<sup>32</sup>

Subsequent guidelines<sup>33</sup> published by UNHCR elaborate further on the proper interpretation of the statelessness definition contained in Article 1(1) of the 1954 Convention. It is important not to conflate *de facto* statelessness with *de jure* statelessness.<sup>34</sup> For example, where a state refuses to treat an individual as a national, even though they meet the criteria for automatic acquisition of nationality under the laws of the state, the position of the state is determinative and the person may be stateless.<sup>35</sup> Moreover, a failure by a state to respond to enquiries seeking to establish the nationality of an individual may allow it to be inferred that the person is not a national, although this must be assessed on a case by case basis.<sup>36</sup> It is therefore important not to label individuals with *de facto* statelessness when they in fact meet the Article 1 (1) definition. Equally, recognizing that often *de facto* stateless persons are in an irregular situation or in prolonged detention because they are unable to return to their country of origin, UNHCR encourages states to also provide some form of protection to *de facto* stateless (or “unreturnable”) persons.<sup>37</sup>

It is also apparent that the lack of dedicated statelessness determination procedures in many countries is not only denying individuals the protection due to them under international law, but also resulting in the statelessness issue remaining hidden and little understood by both governments and civil society alike.<sup>38</sup> Recent mapping studies concluded that many migrants in detention are at particular risk of not having their statelessness identified.<sup>39</sup>

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32 UNHCR, Expert Meeting – *The Concept of Stateless Persons under International Law* (“Prato Conclusions”), May 2010, pp 6-7.

33 UN High Commissioner for Refugees (UNHCR), *Guidelines on Statelessness No. 1: The Definition of “Stateless Person” in Article 1(1) of the 1954 Convention Relating to the Status of Stateless Persons*, HCR/GS/12/01, 20 February 2012

34 *Ibid*, para 30.

35 UNHCR Guidelines, Article 1(1).

36 *Ibid*, para 34.

37 UN High Commissioner for Refugees, *Guidelines on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person*, HCR/GS/12/02, 5 April 2012, para 71.

38 But see for example the recent development of the European Network on Statelessness [www.statelessness.eu](http://www.statelessness.eu) and its efforts to tackle this lack of awareness.

39 See for example the UNHCR/Asylum Aid Study Mapping Statelessness in the United Kingdom.

## Unreturnable for reasons related to the human rights situation.

In a number of cases included in the research, unreturnability is linked to the unsafe situation in the country of origin of the persons concerned, to the presence of family members in the EU countries of residence of those persons or to medical reasons. The practical application of international human rights law and EU and national immigration and asylum law can still

**Non-refoulement** is the principle that forced return cannot be executed to a country where there are substantial reasons to believe that the person will be subjected to serious human rights violations.

**Art 15 Qualification Directive (QD)** imposes an obligation for Member States to grant subsidiary protection status to those meeting the definition of “beneficiary of international protection” according to Articles 2(f) and 15. Subsidiary protection status must be granted to persons who do not meet the refugee definition but with regard to whom there exist substantial grounds for believing that the person, if returned to his or her country of origin, would face a real risk of serious harm as defined in Article 15. According to Article 15, serious harm consists of (a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment; or (c) serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.<sup>40</sup>

**Art 3 European Convention on Human Rights (ECHR)** stipulates that no one shall be subjected to torture or inhuman or degrading treatment or punishment. The provision engages the responsibility of the contracting states if an expulsion would lead to the forbidden treatment in the country of origin. Countries that have ratified the Convention on Human Rights have the absolute obligation to protect each human being against torture or cruel, inhuman or degrading treatment.

**Art 8 ECHR** states that everyone has the right to respect for his private and family life, his home and his correspondence. Secondly there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

**Art 3 (1) International Convention on the Rights of the Child (CRC):** In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. In other words, each decision of an adult, that could have an effect on the child, should be made in the best interest of the child.

<sup>40</sup> Article 15 (c) has been interpreted by the Court of Justice of the European Union (CJEU) in the Case C-465/07, *Meki Elgafaji and Noor Elgafaji v. Staatssecretaris van Justitie*, Judgment of 17 February 2009. Another preliminary question relating to the interpretation of Article 15 (c) is currently pending before the CJEU. Advocate-General Mengozzi’s opinion was published on 18 July 2013. See CJEU, *Affaire C- 285/12, Aboubacar Diakité contre Commissaire general aux réfugiés et aux apatrides, Conclusions de l’Avocat Général M. Paolo Mengozzi, présentées le 18 juillet 2013.*

leave gaps resulting in continuing limbo situations and legal uncertainty for those concerned.

Whether or not return in such cases would constitute a violation of non-refoulement obligations of the Member States<sup>41</sup> or the right to family and private life<sup>42</sup> must be established on a case-by-case basis, and was not the purpose of this research. However, a number of the persons interviewed were detained either against clear policy instructions not to forcibly remove certain categories of persons, or at a moment in time when there was clearly no reasonable prospect of removal because removal would constitute a violation of the person's human rights. Moreover, different approaches continue to exist among the EU Member States included in this project as regards the countries of origin to which return is not possible because of an ongoing conflict or widespread human rights violations.

In the four countries included in the research, specific procedures exist to address those situations. However, the examples described below illustrate that today people still fall through the cracks of complex legal procedures and end up in limbo. They are refused a residence permit because they do not fit into legal definitions according to the authorities, but in reality they are not removed to their country of origin.

### *Situations of conflict*

In some cases the reason why persons are not removed is the same as the reason why other migrants from those countries are granted a protection or humanitarian status: sending them back would be too dangerous and would result in a violation of the prohibition on torture or inhuman or degrading treatment or punishment. In other cases, unreturnability may be caused by a mixture of concerns regarding the person's safety in the country of origin and administrative obstacles as described above. Often it is not possible on the basis of the interviewees' case files to establish with certainty the exact reason for their unreturnability. The question is further complicated by the fact that states rarely officially announce suspensions of forced removals in case of situations of conflict.

However, practice confirmed in unofficial statements shows that forced removals are not being carried out to certain states. In France, only informal decisions are taken to stop forced removal to a country for a limited period. At the time of writing this was the case for Syria and Mali. Similarly, in Belgium there is currently an informal moratorium on forced removals to Syria, Somalia and Mali, while the UK does not enforce returns to Syria. The lack of clear and transparent policy can result undocumented migrants from these countries being detained anyway.

As we encountered unreturnable migrants from Somalia and Mali in our research, we focus on the practice with regard to forced return to these two countries.

### **Somalia**

In general, migrants from south and central Somalia are unreturnable due to the local unsafe situation.

In the UK, while there is no blanket ban on forced returns to Somalia, the courts have stated that there is a general risk of violating international humanitarian law due to

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41 Under Article 3 ECHR, the EU asylum and immigration *acquis* and Article 4 EU Charter of Fundamental Rights.

42 Under Article 8 ECHR, the EU Family Reunification Directive, Article 7 EU Charter of Fundamental Rights and the International Convention on the Rights of the Child.

# The story of **JACOB** 34, from Somalia, living in the UK



*Can't Hold On Any More, by Mustapha, detained in the UK.*

*After ten months of detention, Jacob agreed to be deported to Somalia, despite the position of the European Court of Human Rights at the time that the UK should not deport Somalis. On arrival he was robbed and kidnapped, before being sent back to the UK.*

## Destitute on the streets

"I did claim asylum in 1999. I used to get an address, every six months they used to stop your income, say your decision has been determined. You are on the street. Sometimes six months with no place, no income, nothing. People from church, you're allowed to stay couple nights."

## Deported to a war zone

"They give me removal directions to Mogadishu, in the middle of the war zone. I don't know no-one, it's a country I left when I was young. I was in Colnbrook<sup>43</sup> for ten months at that time. I didn't want to go back to Colnbrook again. Take your chance.

"The escorts abandoned me in Nairobi.<sup>44</sup> I asked if they will take me safely to Mogadishu. They said yeah. Then when they got to Nairobi they changed their mind. They said we'll get kidnapped or shot. But what about me?"

"We arrived in Nairobi early morning. They showed me a small airplane. They said you're getting in that airplane."

## Robbed and kidnapped

"Before it landed I could see black smoke all over the place. I could see soldiers, I could hear artillery, the sound of weapons. As soon as I've got off, two men approached me and asked me to open my luggage.

When I opened it, they took it. I got robbed in the airport.

The UN African Union soldiers saw me confused, looking around, two men

walking off with my belongings. They said you can't survive here, go back where you're from. Go to Nairobi and explain to the High Commission.<sup>45</sup>

"The airplane was not going back to Nairobi. I took the airplane to Berbera.<sup>46</sup> When I arrived in Berbera, another man approached me. They told me to get in the bus. After

*"I could see black smoke all over the place, I could see soldiers and artillery"*

<sup>43</sup> A detention centre near Heathrow Airport, London.

<sup>44</sup> Return to Somalia goes through Nairobi, Kenya. From there the migrant is supposed to travel further to Mogadishu Somalia.

<sup>45</sup> The equivalent of an embassy.

<sup>46</sup> Capital of the de facto independent state of Somaliland.

JACOB	
1994	Arrives in UK.
1999	Claims asylum.
2000	Criminal conviction.
2007	Detained.
April 2008	Deported to Somalia. Returned to UK.
August 2008	Released on bail.

fifteen minutes, some other car followed them and they started speeding. They tied my head, they covered it with something like a bed-sheet so I couldn't see nothing, then they pushed my head to the floor.

The other car stopped them, got them out of the bus. The people who rescued me weren't wearing uniform, I think they were undercover police without uniform. I arrived in some place, don't know if it was a police

station. They questioned me, "What are you doing in Berbera?" They told me "We're going to put you back in the airplane. Unless you're from [Somaliland] you have to go back to Mogadishu.

"I went back to the airplane, and I arrived in Nairobi. The next day, the UK High Commissioner called me. He told me "I bought you ticket to go back to London." He told me "They shouldn't send you back to Mogadishu because it's a war zone. As soon as you go to London, contact your solicitor." I said thank you.

"When I arrived in Heathrow, after all I've been through, they put me in Colnbrook. After two months, they gave me another flight date again. I couldn't believe it. I sent it to European Court of Human Rights. They faxed me back in two hours, they gave me a Rule 39."<sup>47</sup>

### Back in detention

"I haven't eaten in four weeks. I've got sleeping disorder, I don't sleep well no more.

"Home Office just send me the 28 days progress report; it's always the same. The way I see it, I've been forgotten here in detention. If there's human rights, they wouldn't keep me 18 months for no reason. Someone understands. I need explanation why I've been kept for 18 months."

### Twenty years in the UK

*Still undocumented and unreturnable because of risk of torture and inhuman and degrading treatment*

<sup>47</sup> A letter from the European Court of Human Rights requesting the UK to cancel the removal.

indiscriminate violence<sup>48</sup> and the great majority of the population would be at risk of ill-treatment.<sup>49 50</sup> A real risk of Article 15c harm would exist for the great majority of the population, including the “majority of those in Mogadishu and, as a general matter, [also for] those returning there from the United Kingdom after a significant time abroad.” In 2011, the European Court of Human Rights found the level of violence in Mogadishu to be of sufficient intensity to pose a real risk of inhuman and degrading treatment, except for those who are exceptionally well connected.<sup>51</sup> The UK has agreed to reconsider all cases regarding removal to Mogadishu pending before the European Court.

In Belgium there is no formal statement from the government or the courts, but the Immigration Office has confirmed on several occasions, some at meetings with Flemish

#### NGO visitors group of the detention centres (Belgium)

In Belgium the government provides access to certain NGOs which regularly visit detainees, provide them with legal advice, and report on detention practices. Three NGOs, Flemish Refugee Action, its French speaking sister organisation CIRE and Jesuit Refugee Service Belgium, coordinate this visitors group. This network of visitors facilitates the close monitoring of conditions in the five Belgian detention centres.

Refugee Action, that in practice people are not returned by force to Somalia. Nevertheless the officially accredited NGO visitors group of the detention centres reported on one case of an undocumented Somali in detention in 2012, who was released after two weeks because return was not possible, and subsequently became homeless.<sup>52</sup>

Unreturnable migrants, including three of the interviewees, have been detained in

the UK for long periods waiting for deportation to Somalia, despite the risks involved in returns to Mogadishu, and the legal barriers to such returns taking place. Jacob’s experience of attempted voluntary return, during which he was robbed, abducted and returned to the UK, demonstrates the dangers of return. Nevertheless, the Court of Appeal has found that a detention of a Somali national for 41 months was lawful,<sup>53</sup> while Jacob and Muktar had been detained for 30 months and fourteen months respectively at the time of the interviews.

***“I don’t remember anyone in Somalia. I left Somalia when I was like eight years old. Where my family’s from, Mogadishu, there was war all the time. I remember one of my uncles. He got shot and my auntie brought him to the house and there was a lot of blood. Sometimes I have trouble sleeping, especially when I watch the 10 o’clock news. When I see Somalia on the news I get stressed. And I think about it, and imagine if I really get deported there. It scares me.”*** – Muktar, Somalia (UK)

Muktar’s case appears to be an example of a disturbing tactic to get around the unfavourable case law on deportations to Somalia. He had been detained for 14 months with indefinite leave to remain in the UK. The Home Office was detaining him while it considered whether to initiate deportation proceedings, but had as yet made no deportation decision. If the Home Office makes a decision to deport him, it will revoke his indefinite leave to remain.

48 Article 15c QD .

49 Article 3 ECHR.

50 AMM (Somalia) CG [2011] UKUT 00445 (IAC).

51 *Sufi and Elmi v The United Kingdom* (2011) App 8319/07 and 11449/0.

52 Visitors report to the “closed centre for illegal migrants at Vottem” on the 20/12/2012 by the Jesuit Refugee Service. JRS is weekly visiting the centre in order to report on the situation inside.

53 R (Muqtaar) v SSHD [2012] EWCA Civ 1270.

He will have the right to appeal, but can be deported if he loses his appeal. However, until the Home Office makes a decision, Muktar cannot appeal, and is stuck in limbo in detention.

It is possible that the Home Office intends to wait until there is an improvement in the situation in Somalia, and the related case law, in order to reduce his chances on appeal. In the meantime, Muktar is held in detention for no apparent purpose. With indefinite leave to remain and no deportation decision, there is no prospect of deportation.

The process of re-documentation can create a risk of persecution and mistreatment on return. Abdal claimed that the UK Home Office had provided a dossier on his activities in Sudan and the UK to the Ambassador, including information on his membership of the Justice and Equality Movement in Darfur, and that he left Sudan on a false passport (a criminal offence).

***“They have given the ambassador forty pages of everything I’ve done in this country, informing him that I’ve come from Sudan and claimed asylum, that I’m a member of the Justice and Equality Movement, that I’ve come to the country on a false passport. I’ve come from Sudan in fear of my life, in fear of those people. Imagine what those people are going to do to me when I get back. The person who got a false passport for me has been arrested. My solicitor said this is serious breach of law and policies.”*** – Abdal, Sudan (UK)

#### **“Bouncing”: failed removals of unreturnable people**

Jacob’s experience highlights the problem of “bouncing”, where a migrant is returned without a passport or travel document, refused entry, and sent back to their country of migration. Due to the chaotic and dangerous situation in Somalia, Jacob’s experiences were particularly traumatic. Such speculative deportations are inhumane to the person bounced, as well as being wasteful for the taxpayer.

***“They give me removal directions to Mogadishu, in the middle of the warzone. I don’t know no-one, it’s a country I left when I was young. The escorts abandoned me in Nairobi. I could see black smoke all over the place [in Mogadishu], two men approached me and asked me to open my luggage. When I opened it, they took it. The African Union soldiers said you can’t survive here, go back to Nairobi. I took the airplane to Berbera in north Somalia. I’ve been kidnapped in Berbera, they told me to get in the bus. They tied my head, they covered it with something like a bed sheet. The people who rescued me, I think they were undercover police without uniform. [When] I arrived in Nairobi, UK High Commissioner came to see me. The next day he told me I bought you a ticket to go back to London. He told me they shouldn’t send you back to Mogadishu because it’s a war zone.”*** – Jacob, Somalia (UK)

#### **Mali**

Following the outbreak of armed conflict in Mali in early 2013, some states, including France and Belgium, suspended forced returns to Mali. In practice, the absence of flights to Mali made most Malians unreturnable in any case. Nevertheless, Tidiane was arrested in France and put in detention on the same day that the French army entered his home



## The story of **TIDIANE** 16, from MALI, living in FRANCE

*Tidiane had left his country one year previously, in October 2012, after he escaped an attack on his house by rebels. When he arrived in France, he tried to obtain protection from the authorities as a minor. However, France considered his birth certificate to be fake and submitted him to a bone examination that found he was over eighteen. Arrested by the police on the same day that the French launched an intervention in North Mali, he spent five days in detention before being released by the administrative judge because of the war in his country.*

### Alone at sixteen

"I arrived in France on 28 October 2012. I used to live in Gao with my family but our house was attacked by rebels in March 2012. As I was the youngest of my family, the rebels let me go to the bathroom, from where I escaped.

"I walked to Bamako and I met a man in the street who offered to help me leave Mali. However, he did not ask for money in return. We then went to the airport together but he never told me where we were going. It was only when we landed that I realised we were in France. The man left me and took the fake passport with him but left me my birth certificate."

### The search for help

"I did not know what to do. I finally caught a train to Nantes where I was told that I could be supported by social services as a minor. I went to a police station to get more information but they called the prefecture. I submitted to a bone examination

that determined that I was legally adult.

The policemen gave me an order to leave France immediately. However, I did not understand what to do with it and I did not lodge an appeal.

***"I was having breakfast when about fifteen policemen came in with dogs"***

"I caught another train and ended up in Poitiers where I was placed in a youth care institution, administered by child welfare services in mid-November. In December, I submitted to another bone examination. I was not told the results of the test but I was arrested at the youth home in the morning with five other people on 10 January 2013."

### Detention

"I have been deeply shocked by the way I was arrested. The youth care institution was supposed to be a safe place. I had no idea I could be arrested that way. I was having breakfast when about fifteen policemen came in with dogs. It was very scary. I thought they were coming for other guys who had committed minor offences. I had never done

TIDIANE	
<b>March 2012</b>	Escapes the rebel attack on his house in Gao, Mali.
<b>October 2012</b>	Arrives in Paris, France, then leaves for Nantes. Bone examination determines he is over eighteen. State representative order to leave France immediately.
<b>November 2012</b>	Leaves for Poitiers where he is placed in a youth care institution. Submitted to another bone examination that also finds he is over 18.
<b>10 January 2012</b>	Arrested by the police in the youth home with five other young people.
<b>15 January 2012</b>	Released by the administrative court because of the war raging in Mali.

anything wrong so I could not imagine I would be arrested.

“I was also offended when they said I used a fake birth certificate.

During my detention, there was not much to do: I kept wandering between my bedroom and the dining room where the television is. I thought time passed very slowly and I was bored. I had a very hard time sleeping because I was very scared of what would happen to me: how long would I stay there? Would I be returned to Mali? What would happen to me there? I really wanted to know what was going to happen.

“I was released by a court on 15 January. I guess I was set free because of the war raging in Mali. I was given no information after my release and I therefore do not know what will happen to me in the future. I am still very scared of being sent back to Mali. I have

no one left there: my brother who was in the army was killed and I do not know what happened to my mother. My father died when my mother was pregnant with me.”

### Hoping for the best

“After I was released, I went back to Poitiers where I am now being helped by an NGO with my asylum application. I do not have a stable home. I am very scared that I will be arrested again by the police. I feel like it can happen at any time and that I am not safe.

“All I want is to go to school, to be trained so that I can work later. I also consider becoming a professional soccer player but I know that it is very difficult. I do not know what will happen to me. I am waiting for the results of my asylum application with a lot of anxiety.”

### One year in France

*France detained him and tried to expel him before he could even apply for international protection.*

*Undocumented and unreturnable because of risk of inhuman and degrading treatment*

region in northern Mali, as the Interior Minister had given no instructions to suspend the detention of Malians.

***“I am also scared of what could happen to my life should I be deported to Mali. I have been threatened and that is the reason why I left in the first place. Mali is too dangerous for me to go back.”*** – Tidiane, Mali, (FR)

Likewise Belgium has not enforced returns to Mali since 2012.<sup>54</sup> Nevertheless, the NGO group visiting detention centres reported on two Malians in detention who were finally released in March 2013 with an oral statement from the Immigration Office that the reason for their release was the unsafe situation in Mali at that time.<sup>55</sup>

A specific problem exists in Belgium and France, where the risk of refoulement at the point of actual return to the country of origin or return is not always fully examined. In Belgium, this is due to the fact that the authority responsible for effecting returns (the Immigration Office) is not the same as the authority dealing with the examination of the need for international protection (the Commissioner-General for Refugees and Stateless Persons). The Commissioner-General examines a risk of refoulement *vis-à-vis* the country of origin only, and not any other country to which the person may be returned,<sup>56</sup> even though the Immigration Office considers this also to be a responsibility of the Commissioner-General.<sup>57</sup> Moreover, decisions rejecting the asylum application are separate from the return decision. In particular, where the return decision is enforced a long time after the final rejection of the asylum application, this can result in a protection gap, as the Immigration Office in practice does not carry out a substantial examination of the risk of refoulement that may exist at the moment of actual return.

A further protection gap exists where the asylum authorities doubt the origin of the asylum seeker, the asylum claim is dismissed and no further examination of the claim for protection is made. When the same person is subject to removal at a later stage, there is a risk of violating the non-refoulement principle. In Belgium, Afghans are frequently refused asylum because they are not believed to be Afghans but they are still removed to Afghanistan with the use of European laissez-passers.<sup>58</sup>

## **Family ties**

In some cases family links or other important ties with the host country may constitute legal barriers to return, or in practice put return out of the question for the individual as it would result in an unduly harsh interruption of family life. Respect for the right to family and private life is governed by international human rights law.<sup>59</sup> These provisions may prevent the deportation of a person if it results in an unlawful interference with a person's

54 The suspension of forced returns was confirmed by the Immigration Office to Flemish Refugee Action in November 2012: FRA Helpdesk Return, 26/11/2012.

55 Visitors' report to the "closed centre for illegal migrants in Bruges" by Flemish Refugee Action on 20 February 2013.

56 When a person claims asylum at the border but his or her claim is rejected, or when he or she comes through another country than the country of origin, then the person will be returned to that "transit" country. There is no assessment of possible violation of the non-refoulement principle.

57 See Asylum Information Database, *Country Report Belgium – Border Procedure*. (Accessed on 14 October 2013).

58 *Landenrapport Afghanistan*, Vluchtelingenwerk Vlaanderen, November 2012.

59 Art 8 ECHR, Art 7 EU Charter of Fundamental Rights, Art 3 (1) CRC.

## The story of **MARIE**

39, from Democratic Republic of Congo, living in Belgium



*Marie was living with her two-year-old son and his father when she was arrested and detained. Two weeks later Marie was released, due to the fact that the mother of a child with a residence permit cannot be expelled (both her partner and son have a permanent residence permit; Marie is the only one who is still undocumented). Marie's son was traumatised by the separation from his mother. Regularisation procedures failed. To request family reunion, she has to go back to Congo. But can the mother of such a young child (who does not have the Congolese nationality) be expected to travel back to Congo? There is no guarantee of success and it is unclear how long it would take before Marie would be reunited with her son and partner. As long as procedures remain as they are, Marie will stay undocumented and, as a result, she and her family will continue to live in destitution.*

### Young and full of hope

“My studies brought me to Belgium in 2001. As soon as I graduated, I was offered an employment contract in a nursing home, where I worked until 2008. I loved working there, but my permit expired and the commune refused to extend it.

“In the meantime I'd also met my partner; he is Angolan but has a permanent residence permit. We moved to Antwerp, as he had a job close to the Dutch border, and we applied for regularisation. In 2010 we had a son. Unfortunately, the living conditions in our apartment weren't suitable for a child and we were forced to move back to a smaller village, as we couldn't afford proper housing in the city. Owing to the long distance, my partner had to give up his job. For a long time we heard nothing about my request for regularisation. Through an organisation for undocumented migrants we finally found out that my request had been rejected because, as we had moved in the meantime, the Immigration Office was told that we didn't live on the address we had provided.”

***“I'd rather suffer in the cold than be sent back to a detention centre without my son”***

### Detention

“The financial pressure increased. My partner couldn't find a permanent job and had to take on occasional temporary contracts. His income was no longer sufficient to support the three of us, so I took on a job as a fruit picker by using someone else's papers. In September 2012, I was arrested at work. It was very humiliating; I felt like a criminal. They took me to a detention centre by the airport. All I was told was that unreported employment is illegal in Belgium, but other than that – nothing.

“It was awful. The centre itself was fine, people were friendly, but I just felt terrible. I lived there for two weeks, but if they had kept me there for one month I would have

MARIE	
2001	Arrives in Belgium as a student. Is employed as a geriatric nurse. Meets her partner.
2008	Loses her job due to expired work permit. Applies for regularisation.
2010	Gives birth to a son. Regularisation claim rejected.
2012	Spends 2 weeks in detention.
2012	New regularisation request pending.

died. All I did was worry, I couldn't eat, couldn't sleep ... I missed my son and was afraid they might send me to Congo without him, as he has a Belgian residence permit. The mere thought made me sick. You have no idea what's going to happen, the planes you hear taking off remind you that you could be sent back any minute. Anything seemed possible and that was so, so stressful.

"After two weeks my lawyer called and said the Immigration Office had decided to release me. I don't remember anyone telling

me why. I was so happy to have my son with me again. As I was the one who always took care of him, he had been traumatised by my absence. He had hardly slept while I was gone and he'd cried all the time. In addition, my partner had lost his temporary job because he had had to take care of our son."

### A waiting game

"Now all we can do is wait. My lawyer has applied for regularisation on humanitarian grounds again; we have to wait and see what the Immigration Office decides. Even if we have to live in these miserable conditions [the heating is broken and they sometimes cannot afford to pay for electricity], I'm never working illegally again. I'd rather suffer at home in the cold than be sent back to a detention centre without my child."

### Twelve years in Belgium

*Still undocumented and unreturnable due to family ties*

right to family or private life.<sup>60</sup> However, the protection of the right to family and private life under Article 8 ECHR is not absolute. Article 8 (2) ECHR stipulates that “there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”. Guided by the relevant jurisprudence of the European Court of Human Rights, the assessment of whether forced return would constitute a disproportionate interference with the individual’s right to family and private life is made on a case-by-case basis by national authorities. Moreover, the European Court on Human Rights has frequently affirmed that the ECHR does not guarantee a right of entry or of stay in a particular country to foreign nationals.<sup>61</sup>

In some cases, the authorities do not enforce return in such situations but at the same time refuse to provide a residence permit on the basis that it is not legally required. Marie, a Congolese (DRC) undocumented mother of a two-year-old child, received an expulsion order from the Belgian authorities and was detained for two weeks. Returning Marie to Congo would result in a separation from her child, since she cannot be returned with her child because her child does not have Congolese nationality and the father will not give permission for the child to accompany his mother. Moreover, the child and the father have a permanent residence permit in Belgium. By subjecting the mother to an expulsion order, the father and the child are put under pressure to give up their residence permit and their future in Belgium in order to continue living as a family.

The Immigration Office declared to Flemish Refugee Action that, in principle, “a mother of a child with a permanent residence permit will not be removed by force” when there is a normal family life and unless there are serious problems of public order.<sup>62</sup>

***“I don’t know if they can repatriate me in the future. The state will decide, isn’t it? But did they already repatriate a father and a child who have a permit to stay? I’ve never heard that before. I don’t have a permit, but they do. But I don’t know, I don’t think so.”*** – Marie, Congo DR (BE)

Muktar has lived lawfully in the UK since 1993, when he was eight years old. He has extensive family in the UK, and would apparently have a strong case to keep his indefinite leave to remain based on his rights under Article 8. However, the failure of the Home Office to make a decision on his deportation, discussed above, means that he has no opportunity to argue for his rights to a private and family life.

Two of the ten interviewees in the UK faced separation from children born in the UK, but the courts had found that their deportation would not breach their Article 8 rights.

***“It affects my child Sometimes my child tells me, ‘Daddy, I want you to come back home. When you come back home?’”*** – Joseph, Liberia (UK)

<sup>60</sup> *Non-removable person in Europe from the perspective of human rights*, Centre for Equal Opportunities and Opposition to Racism (CEOR), 2009.

<sup>61</sup> *Ibid.* p 11. It should be noted that EU Member States bound by the Family Reunification Directive are under an obligation to grant entry and residence to family members who fulfill the requirements for the exercise of the right to family reunification but only in relation to third country nationals residing lawfully on the territory of one of the EU Member States.

<sup>62</sup> Stated by mail to Flemish Refugee Action on 2 February 2013

The detention, for the purpose of removal, of persons who have family members still present in the country of residence raises a number of complex legal questions as to whether such persons can be returned in compliance with Member States' obligations under international human rights law. Although these decisions must be determined on a case-by-case basis, the examples above show that, even where return to the country of origin may legally not be impossible, people may in practice be left in limbo where states do not enforce return.

### Medical reasons

Some undocumented migrants cannot be returned because of their medical conditions. In some countries, medical issues are recognised as a basis for granting residence status. However, the access to the procedure, or the resulting residence status, can pose problems.<sup>63</sup> As a result, people with medical issues can find themselves in limbo.

#### Lack of treatment in country of return

For some migrants, return to their home country would be a violation of Article 3 ECHR. Individuals suffering severe illness can risk cruel, inhumane or degrading treatment, because of the lack of access to treatment on return. The question of the compatibility of the removal

of a seriously ill person with Article 3 requires case-by-case evaluation, according to the case law of the European Court of Human Rights.<sup>64</sup>

Marian, a Moldovan, was released for medical reasons after four days in a French detention centre. Because of his health, the doctor in the detention centre submitted his case to the regional health agency. The doctor of this agency considered that his health condition required medical treatment unavailable in Moldova, without which the consequences would be of exceptional seriousness. However, Marian should have never been in detention in the first place. He had a temporary residence permit based on his medical status, but when he moved the new prefecture refused to renew his stay document, after making him wait 17 months and despite a deterioration in his health condition. Finally the administrative court quashed the decision of the prefecture.



A detention centre at Nice, France.

permit based on his medical status, but when he moved the new prefecture refused to renew his stay document, after making him wait 17 months and despite a deterioration in his health condition. Finally the administrative court quashed the decision of the prefecture.

***“I know that I am entitled to stay in France because I am really ill. I have diabetes type A. According to French law, I am entitled to have a residence permit in order to get treated. I have been going to the same medical service in hospital in Paris ever since I arrived in France. I have appointments there every three months and I always have new examinations to undergo and treatment to take. In 2012, my health got worse. These days I feel exhausted. I am now also being treated for my heart and my feet. I will have surgery in 2013.”*** – Marian, Moldova (FR)

63 *Non-removable person in Europe from the perspective of human rights*, CEOR, 2009, pp 9–10

64 *Ibid.* p 10.

# The story of **MARIAN**

44, from Moldova,  
living in France



*Marian arrived in France in 2002. He has type A diabetes, which cannot be treated in Moldova. Despite his serious health condition, the French authorities never issued him with a one-year residence permit, which the law requires in such situations (he only received a six-month permit once). Previously, the administrative court had twice ordered the prefecture to grant him a residence permit. Marian was released after four days in the Immigration Detention Centre, following the recommendation of a doctor from the regional health agency. At the time of the interview, in January 2013, Marian was waiting for an appointment at the prefecture in April, and was about to undergo major surgery.*

## Smuggled to Europe

"I left my country, Moldova, in 2001. First, I went to Portugal. I stayed there for a year. Then, I went to France in September 2002. I chose France because I learned French at school and it was easier for me to communicate in this country.

"I applied at the prefecture of Paris for a residence permit for health reasons. The prefecture rejected my application but I won the appeal before the administrative court of Versailles. In 2008, I obtained a six-month temporary permit.

"Then I moved, and as a result my file was transferred to the prefecture of Essonne. I was badly treated at the prefecture. The women at the counter told me that France doesn't have to welcome all Moldovan diabetics. That was really unfair. I am not here to take advantage of the French system. I want to stay in France to get the appropriate treatment, but I want to work and make my own living.

"I waited 17 months to get an answer from the prefecture of Essonne. In March 2010, they refused to extend my residence permit. I hired a lawyer but he sent an incomplete appeal, so the court didn't answer the petition. I talked about it to my social worker but it was too late to make a new appeal in due form.

"I don't know why the prefecture refused to offer me a residence permit the first time and then why they refused to renew it. The prefecture's decisions don't specify any reasons. I don't understand. I am really sick and I can't get the appropriate treatment in my country."

***"Staying in France can guarantee me a longer life. In Moldova I would have died years ago"***

## Detention

"I was arrested while I was fishing on private property. It was the first time I had done something like that and I won't do it again. I was released by the prefecture, two hours before the hearing at the administrative court. Because of my health, the doctor of the detention centre submitted my case to the regional health agency and recommended my release.

What shocked me about the system is that I know a lot of people that did bad things in France and yet they easily manage to obtain a residence permit. Personally, I

<b>MARIAN</b>	
<b>2001</b>	Leaves Moldova. Stays in Portugal for one year.
<b>September 2002</b>	Arrives in France.
<b>2004</b>	Applies for asylum.
<b>2007</b>	Rejection of his asylum application.
<b>2008</b>	The administrative court of appeal annuls this decision and receives a 6-month temporary residence permit.
<b>October 2008</b>	Moves and transfers his file to another prefecture. Applies for the renewal of his temporary permit.
<b>March 2010</b>	Is rejected after 17 months of waiting.
<b>16 August 2012</b>	Arrested and put in an immigration detention centre.
<b>20 August 2012</b>	Released by the prefecture on the recommendation of the doctor of the regional health agency.
<b>October 2012</b>	The administrative court quashes the removal decision and orders a re-examination of his case.
<b>2013</b>	Appointment to the prefecture for the re-examination of his case.

am calm, I don't bother anyone and I don't manage to get stay documents. Prefectures are really not here to help foreigners but to worsen things for you. They ask for documents you are not even allowed to have as an illegal immigrant. For example, they ask me for a rent receipt, whereas I am not authorised to work and I can't have a bank account."

### Fighting for the right to health

"In detention, I filed an appeal against the decision of the prefecture with France terre d'asile's help. A few weeks after my release, the administrative court quashed the removal decision and asked the prefecture to re-examine my case. They gave me an appointment in April 2013 for the issue of my residence permit.

"I am going to have surgery soon and I hope that I will get my residence permit and keep my treatment in France. I want to stay in France. I left Moldova 12 years ago. My disease is better known in France than anywhere else: I have been followed for 12 years by the same medical department in the same hospital. They know me well as a patient. In Moldova, I would have been at the cemetery years ago. Here, I can live a longer and healthier life."

### Eleven years in France

*He is still struggling to obtain a residence document in France despite his health conditions that cannot be cured in Moldova. He is seriously ill and the instability caused by the state is particularly bad for his health.*

*Still undocumented and unreturnable for medical reasons*

Michel from Burundi, living in France, was released from detention on the same grounds as Marian.<sup>65</sup> The doctor from the regional health agency certified to the administration that he needed medical treatment for his Hepatitis B, unavailable in Burundi.

### Travelling not possible due to medical reasons

Other migrants cannot return because their illness makes travelling impossible. On-site doctors in detention centres can certify them as “not fit to fly”. However, in Belgium this practice is rare. Lawyers often need to put pressure on the Immigration Office by demanding second

and third medical opinions from external medical doctors. This was the case for Lala, a woman in her fifties, who had been suffering from severe cardiac problems for some years. Her request for regularisation on medical grounds was dismissed for the second time, after a wait of several years, and she was arrested at her home in order to be returned to Armenia. Despite her medical condition, the detention centre doctor considered her fit to fly. Her lawyer had to go to the High



At a detention centre in Belgium.

Court<sup>66</sup> to prove that her condition was indeed life threatening and seek her release. The judge demanded a third specialised opinion, which also declared her medical condition too precarious for return. After two months of detention she was released.

***“[My daughter] went on the plane to Armenia. I could not take a plane because I was too sick, heart problems. I could die of a heart attack. I stayed two months in the centre. They called a third medical doctor. It was my lawyer who arranged everything. That doctor said that I had to be released immediately because I urgently needed an operation.”*** – Lala, Armenia (BE)

Lala made a third application for regularisation, which was dismissed again. Apparently Lala is too ill to be returned but not ill enough to be granted a residence permit.

<sup>65</sup> Michel is an example who is unreturnable for various reasons. Treatment for his illness is not available in Burundi, but at the same time Burundi does not want to provide him with a passport or travel document, so return is impossible for administrative reasons.

<sup>66</sup> In Belgium called *Cour de Cassation*.

## The story of **LALA**

50, from Armenia,  
living in Belgium



*Lala has serious heart problems. After her claim for medical regularisation was rejected, she was detained. Lala's private cardiologist believed she would not survive if deported, but the detention centre's medical services declared her fit to travel. The highest court requested a third opinion. An independent cardiologist confirmed the diagnosis of Lala's doctor. After a legal battle of more than two months, Lala was finally released. Detention traumatised and separated the whole family.*

**Garik (Lala's son):** "My parents left Armenia in 1994. They took my brother, my sister and me to Russia when we were still very small. We had a shop for a while, but were blackmailed by the mafia and lost everything. We eventually came to Belgium in 2005 and claimed asylum, but this claim was rejected."

**Lala:** "Shortly after arriving in Belgium, I became seriously ill. The doctors told me that only 25 percent of my heart functioned properly and I would need urgent medical assistance. I applied for regularisation on medical grounds, but last May my claim was rejected. Our case was closed."

*"I was told that I would never make it to Armenia, that I would die on the way"*

**Garik:** "Not long after, the police arrested both my mother and sister and took them to a detention centre. That same week, my father and I were sent to prison for having committed small offences. My father, for example, had been caught behind the wheel without a licence twice. My older brother was already in prison; he was serving a three-year sentence."

**Lala:** "Two weeks after being detained, my daughter was deported to Armenia. I too was supposed to be deported, but I refused to fly because I knew I could die of a heart attack. My lawyer found me a cardiologist; he said that I should be released immediately as I urgently needed an operation. He told me I'd never make it to Armenia, that I would die on the way. Two months later I was finally released and taken to the hospital for surgery. By that time my husband had also been deported ... They've ruined my entire family."

**Garik:** "The fact that my mother and sister had been detained really worried my brother. He knew that my mother needed an operation and that the doctors had said her chances of survival were slim. The stress became too much for him ... He committed suicide in prison."

As for me, I was told that I would be deported as soon as my ten month prison sentence came to an end. I said that was fine; I'd told them I was Armenian. When they contacted the embassy, however, they couldn't find any record of me – which meant I couldn't be sent anywhere. I was released in February."

LALA	
1994	The family leaves Armenia and starts a new life in Russia.
2005	Arrival in Belgium. Asylum claim made and rejected. Claim for regularisation on medical grounds.
2006	Medical regularisation claim dismissed.
2008	Second claim for medical regularisation.
2012	Medical regularisation claim rejected. Lala detained for two months. Third claim for medical regularisation dismissed.
2013	Appeal still pending.

**Lala:** “We’re living with my son’s girlfriend now. My daughter is OK; she came back to Belgium and married a Belgian. She now has a residence permit, but I’m worried about my son. He needs to work – it’s not good for him to stay inside all day. Without a passport, he can neither get married to his girlfriend nor return to Armenia ... He can’t do anything.”

**Garik:** “I need to take care of my mother; she can’t work because of her heart. But without papers I cannot find a job. I can’t even rent a house with my girlfriend ... it’s very difficult. My mother doesn’t have a house or any family left in Armenia; even my father has left for Russia in search of work.”

**Lala:** “I cannot leave my son behind ... [Points to the urn above

the fireplace.] I’ve applied for a residence permit on medical grounds again, but so far we haven’t had any news. My daughter keeps asking the lawyer but he tells us wait, wait, wait. I don’t understand why they don’t give us any papers. I’ve been here for eight years now.”

### Nine years in Belgium

*Still undocumented and unreturnable for medical reasons*

# 3 Consequences of being unreturnable: Living in limbo

For many people, not being able to return means life in long-term limbo. Our research echoed the findings of previous reports on the issues.<sup>67</sup> Unreturnable migrants frequently remain for years in an irregular situation, without prospects of a regular residency status. As a consequence they are excluded from rights to health care, housing, education and work. They face the constant threat of immigration detention, destitution, poor physical and mental health, and even criminalisation. They are simply stuck, with nothing that they can do to take responsibility for their lives or leave this limbo behind.

## Immigration detention

In common with other undocumented migrants, unreturnable people can be held in immigration detention. However, as they cannot be returned, they are at particular risk of long-term or repeated detention. The experiences of the interviewees demonstrate that detention poses particular issues for unreturnable people.

## Trauma of detention

Being locked up for as a result of immigration status comes as a shock.

***“I knew about detention centres but I did not know what it was exactly. I never knew people who have been in a detention centre.”*** – Marie, Congo DR (BE)

The interviewees described a range of damaging effects of detention, echoing the results of previous research.<sup>68</sup> Many who had been released were traumatised by their experiences, and had developed a fear of going out, depression, or serious mental disorders.

Interviewees in all four countries described suicide attempts, hunger strikes, nightmares and flashbacks. Jacob in the UK felt that “I’ve been mentally tortured”. Marie was only in Belgian detention for two weeks but felt that she would carry this with her for the rest of her life.

***“You have a headache all day because you think too much in there. You can’t sleep, you are stressed and traumatised. It was very difficult. I lived there for two weeks, but if they had left me there for one month I would have died. I’ve lost a lot of weight because I could not eat. I lost so much weight I started to feel dizzy, but I did not want the doctor to know. I was hiding it.”*** – Marie, Congo DR (BE)

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<sup>67</sup> *Non-removable person in Europe from the perspective of human rights*, CEOR, 2009, pp 1–2. *Asylum Camp Limbo*, 2011, p 10.

<sup>68</sup> *Becoming Vulnerable in Detention. Civil society report on the detention of vulnerable asylum seekers and irregular migrants in the European Union* (The Devas project), Jesuit Refugee Service Europe, 2010

# The story of **ABDAL** 30, from Sudan, living in the UK



*Abdal, 30, is a survivor of torture from Darfur. He has been detained three times since 2004, for a total of almost three years.*

## Torture and escape

“I suffered serious physical torture by the Sudanese government. That’s the reason I fled my country. I have been helped by a family member who got a passport and helped me to escape. I had over 263 scars on my body. I claimed asylum at the airport, I told them what happened. But unfortunately they dismissed my claim and said “We don’t believe you.”

“I was then homeless for quite some time. Along with that suffering from severe depression. I can’t put it to you in words. Sleeping rough in the street, begging for food, it was complete humiliation.”

## In and out of detention

“I was arrested by the UKBA<sup>69</sup> and I was taken to an immigration centre. My mental health deteriorated, really bad. When I was locked in my room, all I was thinking about was how I was tortured. I attempted suicide again. I had something to keep me alive, my son, my wife was coming to visit me with my little boy.

“The Sudanese embassy said I am not a Sudanese, I am a Somalian. I was furious. I didn’t know at the time why he said that. I provided my original birth certificate, along with hospital report and other documentation, confirming that I am from Sudan.

“Healthcare informed the Home Office that I am a victim of severe torture and that I’m not fit for detention. A specialist reported to Home Office that I am a victim of extensive torture, that I’m not fit for detention.

Seven reports from seven different doctors, all of them come to one conclusion. Home Office response is the same.

“I was not given my medication for nine days, locked up in isolation by myself. I just could not believe, it was, oh my God! I tried to kill myself, I couldn’t do it, nothing in the room, it was just agonizing. I could not make sense or process what happening. For forty days I had water only when I took my medication. Sometimes I drink salt or sugar to keep my organs in place but I have not eaten a single food in that time. Whilst in court, I passed out. I woke up in hospital. I was advised by the doctor to eat, otherwise I’m gonna die.

“Every time I got to court to seek bail the Home Office say I’m not cooperating. I

***“Seven reports from seven different doctors, all of them come to one conclusion”***

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69 UK Border Agency.

ABDAL	
<b>February 2002</b>	Arrives in UK, claims asylum.
<b>2003</b>	Asylum refused, becomes homeless.
<b>November 2004</b>	Detained.
<b>May 2005</b>	Interview with Sudanese embassy, which refuses documents.
<b>October 2005</b>	Released.
<b>2006</b>	Child born.
<b>2007</b>	Convicted of use of false identity document.
<b>August 2008</b>	Detained on finishing sentence.
<b>October 2008</b>	Released.
<b>June 2011</b>	Sentenced to 2 years and 3 months for fraud.
<b>August 2011</b>	Detained on finishing sentence.
<b>Late 2011</b>	Fresh asylum claim made.
<b>April 2013</b>	Taken to Sudanese embassy for second time, again refused travel document.

asked the judge what I have to do to prove cooperation, the judge said provide documentation. I said I provided the original birth certificate and other documents. I wrote a letter that I'm happy to attend the embassy to resolve the issue of my identity. When I arrive at the embassy, I was shaking, shivering. I saw the ambassador. My caseworker even handed me a tissue, she promised me "We now have not any way to say you're not complying, you're very ill and you've still come."

### The sufferings continue

"Now I've been detained for 22 months straight. The sufferings continue. They call me the most detained person, because they release me, they detain me, they release me, they detain me."

### Twelve years in the UK

*Still undocumented and unreturnable for administrative reasons*

Insomnia was a feature of detention for many interviewees.

***“I just can’t sleep. First of all, I don’t do much work the whole day so I am never tired enough to sleep. And then I have this constant tension bogging me down.”***

– Abdul, Burma (UK)

***“I had a very hard time sleeping because I was very scared of what would happen to me: how long would I stay there? Would I be returned to Mali? What would happen to me there? I really wanted to know what was going to happen.”*** – Tidiane, Mali (FR)

It is difficult to cope with the uncertainty. Questions arise and remain unresolved all the time. Many reported constantly thinking about detention and what was happening to them.

***“It’s difficult. Because I think, think and think. Why they put me in jail? I’m not a criminal. It’s difficult for me”*** – Mazim, Iraq (HU)

Several interviewees felt humiliated at being handcuffed in public and feeling like a criminal. Rehan’s worst experience in Hungary was wearing handcuffs in front of other people in hospital.

***“If somebody beat you, with the boot or kick, that have a pain for ten days, and after your pain go. But this pain forever remains in my heart. Because in front of the people. They’re treating you as dogs.”*** – Rehan, Afghanistan (HU)

This stress and trauma can exacerbate both mental and physical conditions. Rehan tends to lose his temper and forget things easily. Sometimes he has severe pain in his stomach, chest, legs and arms, and his hair has even gone grey.

The effect of detention was most devastating for people with previous experience of trauma, often related to their asylum claims. Before claiming asylum in the UK, Abdal had been tortured in prison in Sudan; he has been diagnosed with severe post-traumatic stress disorder and depression. He made multiple suicide attempts in detention.

***“I just could not believe, it was oh, my God. I tried to kill myself, I couldn’t do it, nothing in the room ... I then stopped eating and drinking. For forty days I had water only when I took my medication and sometimes I drink salt or sugar to keep my organs in place but I have not eaten a single food in that time.”*** – Abdal, Sudan (UK)

Many of the interviewees described detention as “prison”: they were deprived of their liberty and controlled by guards in uniform. Several interviewees reported abusive treatment, in particular, in one detention centre in Hungary.

***“It was the worst experience I’ve ever had, as like, I don’t know how to describe the situation there. It was like hell, you know. Even in African countries you can’t see such treatment. The policemen, the security guards, mostly they beat the inmates. It was a terrible situation there.”*** – Michael, Nigeria (HU)

Lack of confidence in the medical services was a regular theme of the interviews. People alleged that painkillers were prescribed for all symptoms. They complained of difficulties in accessing doctors because the triage nurses acted as filters, refusing appointments. It took the seriously ill Lala a long time before she could finally see a doctor, despite the fact that she had heart disease. Her own cardiologist considered that an expulsion to Armenia would kill her.

***“She had to go more than ten times to ask for a consultation and finally she only saw him once. They thought my mother was faking, that she was all the time asking for a medical visit to prevent her expulsion.”*** – Garik, Armenia (BE)

Language barriers prevented people from accessing necessary information in detention. Most of the interviewees in Hungary mentioned the lack of common language between the guards and the detainees as a significant source of conflict. In Belgium, Boban and Tareq could not speak French so could not communicate with the French-speaking social assistants who were responsible for providing information and helping them to access a lawyer.<sup>70</sup> Tareq also experienced a certain feeling of isolation in the centre because he could not find a common language in which to communicate with the other detainees.

***“The detention centre was really dirty. Nobody respected anybody. Nobody spoke Dutch. Nobody spoke English. All the Moroccans spoke French. Sometimes I tried to speak Arabic with them but they also do not understand Arabic. Which language could I use? That was really difficult for me. I was alone, only sleeping and eating.”***

– Tareq, Iraq (BE)

There is also not much to do in the detention centres. This is reported in all the countries. People mostly just hang around, watching television, playing table tennis, reading. Where limited activities are provided, people told us that they were too stressed to use them.

***“They proposed that I should knit, but I refused. I did not have the energy to knit. I didn’t want to. They had to leave me alone. Even the English course, it just didn’t stay in my head. So I just stayed in my room. I went from my room to the dining room and back. That’s not life. I even did not had the courage to wash myself.”***

– Marie, Congo DR (BE)

***“In the detention centre, time is defined by boredom. I spend my time sleeping, thinking, stressing, taking pills and discussing with the other migrants.”***

– Muhammad, Iran (FR)

People in detention did provide some friendship and support to each other.

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<sup>70</sup> Belgium has three official languages (French, Dutch and German). The four detention centres in Flanders are Dutch-speaking and the one in Wallonia is French-speaking.

# The story of **UNCLE**

59, from the Gambia,  
living in the UK



*I See No Way Out,*  
by Ricardo,  
detained  
in the UK.

*Uncle turns sixty this year. He has lived in Britain since 1993, never returning to his country of origin. He has been refused travel documents, yet has spent around two years in detention, despite having only a single criminal conviction for sleeping rough.*

## Two decades of limbo

“In twenty years, I never go back to my country. I never go nowhere, I’m still here. They just gave me six month visa. I went to Denmark and came back, they gave me another six months visa. I applied for leave to work, they gave me it. I didn’t realise the paper they gave me to work was finished. I was still working and paying tax. I applied for asylum 1996. They messing about with me still.

“I was working in security, I normally sit on the banks, when you come with your car I’m seeing you on the screen. I say ‘Hello can I help you.’ I just press, I give you a parking place.

“The crime I just commit is breach of ASBO<sup>71</sup> only. It was 2004, they said sleeping rough. I was homeless for a little time. They calling police, I not go back there. I keep on going. They ban me not to go back to area, but I’m living in the area. I never go to court, I forgot the date, I was drinking too much as well.”

***“Brothers, nephews,  
nieces, all British”***

## Repeated detention

“They keep on detaining me. When they gonna leave me alone? Maybe about six times or so. Last year they come to my house, my caseworker said I should come back to detention for interview, I came back to detention and did interview to give me travel documents. Just telephone interview. But I stayed in detention for two months.

“I put bail application and the immigration judge said if they cannot send me back why they detaining me, I have to be outside. I said thank you very much, it’s a good idea. Why they detaining me when they can’t send me back? It’s a stupid idea.

“With my embassy, it’s difficult to give travel documents. They took me to the embassy this last time I been detained, I said since I entered this country I haven’t gone to the Gambia. The embassy said, ‘This man lived here long time, he deserves to have British passport.’”

## No papers, no freedom

“All my family lives here, I don’t have no one in my country. Brothers, nephews, nieces, all British.

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<sup>71</sup> An Anti-Social Behaviour Order is a civil penalty imposed on someone found to have engaged in antisocial behaviour that would not normally warrant criminal prosecution.

UNCLE	
1972	First arrival in UK.
1975	Moves to Norway, Marries Norwegian woman, granted indefinite leave to remain.
1993	Arrives in UK.
1996	Arrested, claims asylum, detained for 6 months.
1996	Refused asylum.
2006	Serves 3 months in prison for breach of Anti-Social Behaviour Order for sleeping rough.
2006	Detained.
2008	Released on bail.
2012	Redetained for further interview with his High Commission.
2012	Released on bail.

They don't want to give me my papers, they don't want to leave me alone, they don't want to give me freedom.

"My life is shit here. They don't want to give me papers to work, and I'm getting too old.

### Twenty years in the UK

*Still undocumented and unreturnable for administrative reasons*

***“We were always talking, to find some comfort. Talking as a way of letting some steam off. If you keep everything to yourself there will be no solution. It is a hard life.”*** – Marie, Congo DR (BE)

***“I have many friends, or at least acquaintances. We do try to help one another. We try not to be rude with one another, after all we are all in the same boat.”***

– Abdul, Burma (UK)

### ***Long-term detention***

Unreturnable people are disproportionately exposed to long-term detention, as national authorities refuse to accept that return will not become possible. Practices vary across the four countries, with maximum time limits for detention ranging from 45 days in France and eight months in Belgium to eighteen months in Hungary. Only the UK practises indefinite detention. Eight of the UK interviewees had been detained for over a year and refused release because of their criminal convictions. Five people had been detained for more than the eighteen months limit specified in the EU Return Directive, which the UK does not implement.

Abdal, Jacob and Uncle had been repeatedly detained, spending between two and three years in detention. The Home Office has been seeking travel documents for them for periods of between five and sixteen years, since the process of redocumentation should not stop when a migrant is released from detention. Since it has not proved possible to obtain documentation over these very long periods, it is clearly unlikely that further detention will lead to their return.

Migrants who have been detained on finishing prison sentences feel that they are being punished twice.

***“I know the reason I’m in detention, and I’ve done a mistake. You know the mistake. I’ve paid for it. I’ve been in prison and I don’t think it’s fair, you know, paying twice for the same crime. It was four of us that were arrested, and three of them are English. They all got released.”*** – Muktar, Somalia (UK)

Another striking difference between criminal detention and immigration detention is that a serving offender has a determinate sentence and release date to focus on. People are often shocked to find themselves immigration-detained instead of released, often discovering this at the end of their sentence. In Belgium, Hagop was moved into administrative detention after being in prison in pre-trial detention.

***“Why did they keep me six months longer in prison? Why? I did my punishment, but they kept me six more months because they could not deport me. Not six days, not six weeks but six months!”*** – Hagop, Turkey (BE)

### ***Repeated detention***

Repeated detention is a constant risk for unreturnable migrants. They are usually released with no status, so nothing prevents them from being redetained. This practice appears to

contravene the requirement in the EU Return Directive that detention may only be used with respect to third country nationals who are the subject of return procedures, and only maintained as long as removal arrangements are in progress and executed with due diligence, which in the case of unreturnable migrants is by definition not the case.<sup>72</sup> The research revealed cases of repeated detention in all the four countries. Belgium, unlike for example, Hungary or Spain<sup>73</sup>, does not include previous periods of detention in calculating the maximum time limit. This means that people may be detained for cumulative periods far in excess of the legal limit set down by the Return Directive.

Although in France the detention periods are relatively short, repeated detention is common. Muhammad was detained four times in less than two months.<sup>74</sup> First France tried to expel him to Iran, but he was released after five days because the Iranian consulate refused to recognise him. Later France succeeded in expelling him to Belgium (even though he didn't meet the conditions of the existing readmission agreements between the countries) but he came back to France, where he was detained again, twice. The last time the administration had to release him because the doctor considered his mental state incompatible with detention. His situation, and the determination of the French authorities, which to him felt like harassment, drove him crazy.

***“When I used to live in Iran I was fascinated by France. It was a country I really liked. Today, everything changed. I cannot stay in France because I have a judicial ban from the French territory. France took my life. It is in a French jail that I caught my serious disease, which destroys me day after day. Before I came in France I was very healthy, I used to do a lot of sport. Today I am only the shadow of the person I used to be. France took my life and is now telling me, ‘Go away.’”*** – Muhammad, Iran (FR)

Repeated detention is also common in the UK. Uncle has been detained so many times he can no longer keep count.

***“More than three times I’ve been to detention. Maybe about six times or so. They keep on detaining me. When they gonna leave me alone?”*** – Uncle, Gambia (UK)

***“They call me the most detained person, because they release me, they detain me, the release me they detain me.”*** – Abdal, Sudan (UK)

Repeated detention can appear to be arbitrary. Unreturnable migrants appear to be redetained for the same reasons as their previous detention, that is, to advance the identification and redocumentation process, even though their previous detention had yielded no progress. Uncle was redetained simply in order to arrange a further interview with his embassy, despite having complied with all the terms of his release. He remained in detention for several months after the interview, until he was released on bail by the courts.

Tareq was repeatedly detained in Belgium, despite his unreturnability owing to a lack of

<sup>72</sup> See Article 15 (1) EU Return Directive.

<sup>73</sup> *Los centros de internamiento de extranjeros en España : Origen, funcionamiento e implicaciones jurídico-sociales*, in : Documentos CIDOB Migraciones 26, Octubre 2012.

<sup>74</sup> Earlier in 2012, he was already detained six days in an IDC in Paris. He was released by the court.

# The story of **MUHAMMAD**

32, from Iran,  
living in France



© France terre d'asile

*Muhammad fled from Iran in 2009 when he was blacklisted by the Iranian secret services for participating in the post-election protest. France could not expel him because the Iranian authorities stated they would not grant a travel document for a forced return. At the time of his interview, in January 2013, he had been detained three times in an immigration detention centre. He was detained twice more in February 2013, caught again on trucks trying to reach the UK. The last time he was released after the doctor certified that his mental state was incompatible with detention: his repeated periods in detention caused serious psychological deterioration.*

## Running from oppression

"I fled my country because I actively participated to the post-election protest that followed the presidential elections in Iran in 2009. Because of that I am now on the black list established by the Iranian secret services. My life was endangered.

"I arrived through Italy; we crossed the border in a minibus. When I arrived in Chamonix there was a police checkout. They saw that the identity card wasn't mine because I did not look like the person in the picture. I was escorted to the police station and left two hours later with the obligation to leave the French territory.

"I then went to Paris, where I had a meeting with my smuggler. He was supposed to take me to England. My mother had sent him 1500 euro for that and I had already given the smugglers 6000 euro when I arrived in Greece. He never came to the meeting point.

"I was sentenced to three years of detention and a judicial ban from the French territory for three years, due to violence and theft. I wanted to find a shelter for the night and went into a building and slept in a shed. In the morning when I wanted to leave the building, I was surprised by two men from security and an extremely violent fight started. Then the police came, chased me, caught me and violently beat me. I spent 25 days in hospital.

"I spent two years in the prison of La Santé [in Paris]. When I was released, I was transferred to the Vincennes IDC. I was freed by the court after 6 days of detention."

"I tried twelve or thirteen times to reach England, hidden in trucks' trunks or under the axles. I was sent twice to the Coquelles IDC. During my stay in detention the police services contacted the consulate of Iran in France, which said that they would only deliver a travel document if I accepted to go back to Iran. When I was asked about that, I answered that I would never go back to my country.

***"My situation is hopeless. The disease that I caught here in France is slowly killing me, but there's nothing I can do about it"***

MUHAMMAD	
<b>February 2010</b>	Arrives in France. Sentenced to 3 years in jail and to a legal ban from the French territory.
<b>2012</b>	Transferred from jail to the Vincennes IDC. Released by the court after six days in detention.
<b>December 2012</b>	Five days in the Coquelles IDC: released by the administration because the consulate told the French administration that they would not recognise him.
<b>January 2013</b>	Expelled to Belgium after 15 days in the IDC of Coquelles.
<b>February 2013</b>	Detained 5 days in the Coquelles IDC: released by the court due to a breach of the procedure. Detained 3 days in Coquelles: committed into a hospital for his mental health.

The second time, I was found hidden in a truck. The administration could not send me back to Iran, and decided to send me back to Belgium because the truck I was in was coming from this country.”

### Rock bottom

“I wanted to apply for a residence permit for medical reasons in France. When I was in jail I caught a serious disease and I now need treatment. However, I cannot apply for an administrative regularisation in France because I have a judicial ban from French territory.

“Me, I am young, I am not a bad person, I am sick. It is not fair that I was locked up again. I know I went to jail but it was an accident, I did not wish for that to happen again. If I had had no problem in Iran I would have never come to live such a miserable life in Europe, sleeping on the streets, hiding under trucks ...

“When I lived in Iran I was fascinated by France. Today

everything has changed. It is in a French jail that I caught this serious disease, which destroys me day after day. Before I came to France I was very healthy, I used to do a lot of sports. Today I am only a shadow of the person I used to be. France took my life and is now telling me, ‘go away’.”

### Three years in France

*Still undocumented and unreturnable for administrative reasons*

valid identity documents and the impossibility of forced removals to Iraq. The second time he was detained, the Immigration Office questioned his nationality, although it had never been doubted during the asylum procedure, and approached the Turkish embassy. Boban, with fresh evidence supporting his case, was detained at the moment he claimed asylum for the sixth time, despite having previously been released on the grounds of statelessness. Later Boban was told that the immigration authorities believed that he would become returnable one day.

### *Disrupted lives*

Irregular migrants are detained suddenly, and released suddenly. As a result, their fragile survival strategies and living arrangements can be broken up. People lose their jobs, incomes, friends and homes.

Lala's whole family was arrested around the same time. The father and the daughter were deported to Armenia. Lala and one of her sons were unreturnable and thus released. The disruption of the family was too much to bear for the oldest son, who at that time was in prison. He committed suicide in his cell.

***“A lot of things changed after the detention. For our family it is a lot more difficult than before, because we lost our brother because all of this. It is because of this situation he died in prison. And besides that, my mother became seriously ill and she had to be operated. Before that she was also ill, but with the medication she took every day it was stable and not as serious as it was at the end of her detention, when an operation was necessary. Yes, a lot of things changed. It was the stress that made my mother sicker, and because of that my brother died.”*** – Garik, Armenia (BE)

Marie and her partner were both working before she was detained. Their child was distressed by separation from his mother. As a result, the father could not leave the child with friends, so he had to leave his job. Since Marie's release he has been unable to find a new job.

Many people are released onto the street with nothing.

***“I was taken out of the prison with a small bag containing my clothes and paperwork, nothing else. They gave me a ticket to Hull city. There was no flat, no money, no nothing. From prison after so long.”*** – Abdal, Sudan (UK)

In Belgium, people are released with a new order to leave the country within a period ranging from thirty days to zero days, despite their evident unreturnability. They are not given any documents recording their time in immigration detention, or the reason for their release, that could prove their unreturnability or prevent future detention.

In France, it depends on the reason you are released. If you are released by an administrative court, you have an official decision from the court, but that doesn't mean that your administrative situation is resolved, or that the administration will automatically re-examine your case. When someone is released by the administration (at the expiration of 45 days, or for medical reasons, for example), they have no official document with the date and reasons for their release. At best, the administration tells the person orally to go to the prefecture

for a re-examination of their situation. This way, people can experience repeated detention, because the administration draws no conclusion from the reasons for the unreturnability.

## Protracted limbo situation

### *Long-term limbo*

The limbo of unreturnability and irregular status can last indefinitely. On average, the interviewees had spent eight years in the country. Some had had a short period of legal stay before being returned to irregularity.

***“Twelve years. Do you know what that is? Twelve years. Not twelve months. Not twelve days. Twelve years! It’s not a joke, it’s twelve years. If a child was born, one day, one year would be much time, wouldn’t it be?”*** – Kambale, Angola (HU)

Uncle described going through repeated and long-term detention in the UK and finding himself still without papers, at the age of 60.

***“My life is shit here. They don’t want to give me papers to work, and I’m getting too old.”*** – Uncle, the Gambia (UK)

Long-term limbo can feel like being back in prison.

***“When I’m honest, for me there is not a big difference between being inside (detention) or outside. Really. You just think and think. But what can I do? I can’t do anything outside and inside also, there I can’t do anything either.”***

– Tareq, Iraq (BE)

***“When I was inside the jail, it was jail. But now I’m in an open space, that’s also a jail, because without documents everywhere is jail.”*** – Rehan, Afghanistan (HU)

### *No right to work*

Unreturnable migrants without legal residence do not have the right to work. This makes it difficult to sustain themselves. The pressure of supporting a family without the right to work contributed to Abdal’s mental health deterioration and criminal convictions.

***“I wrote about fifteen letters to the Secretary of State literally begging them for the right to work, I have a child on the way.”*** – Abdal, Sudan (UK)

Working without papers also exposes migrants to abusive treatment by employers.

***“I was given a job actually, working within a takeaway business as a chef. I was working sixteen hours a day; they abused me down there because I didn’t have papers. I was reporting it to the police station.”*** – Abdal, Sudan (UK)

# The story of **BETTY**

43, from Ghana,  
living in France



*Betty arrived in France twenty years ago. She is the mother of four children who have only lived in France. She was sentenced by a criminal court to five years in prison and a legal ban from France. This means that, as long as the legal ban is not deleted, she cannot apply for a residence permit. She asked several times to be put under house arrest, which is a preliminary condition in this procedure, but never received an answer from the French authorities. She does not have a passport, and the Ghanaian consulate refused to give her a travel document. Even so, Betty ended up spending 45 days in an Immigration Detention Centre (IDC).*

## A move made 20 years ago

“I entered France with a tourist visa in 1993. I tried to obtain a residence permit after the birth of my first child. I got married in November 2001 to a Ghanaian man. He is the father of my first three children. Two weeks later, we were arrested by the police. In 2003, I was sentenced to five years in prison and my husband to seven years. The appeal court also condemned me to a definitive legal ban from French territory.

“However, I kept living with my children, as the prison sentence was not executed. I separated from my husband. I was alone with my three children and I couldn’t pay the daily bills. It was very difficult for me to meet their needs, so I asked social services to put my two eldest sons in a foster home. I was then only living with my youngest daughter. In 2006, I met my current partner, who has a long-term residence permit. We lived together with my daughter and our son, who was born in 2007. My two eldest sons visited us on each holiday.”

## Making sacrifices

“In 2009, I wanted to straighten out my situation and I asked the children’s judge for advice. He recommended me to ask for the execution of the prison sentence so I could then apply for the deletion of the legal ban from my judicial record. I did three years out of the five-year sentence. I was supposed to be released in January 2012, but was instead placed in a detention centre for my removal to Ghana.

“In the IDC, I asked to be put under house arrest. The judge answered that my children had been in foster families for a long time and that nothing proved that I would take care of them in the future. But the children’s judge had explained in a document that I always took good care of all my children: he was only waiting for my situation to improve before I could take them back home with me. That was really unfair. The court couldn’t care less about my situation.

***“I was transferred to a detention centre in order to be sent back to Ghana, but was told my children would be staying in France. I was so upset”***

BETTY	
<b>1993</b>	Arrival in France.
<b>1996</b>	Birth of her first son. First application for a stay document in France: rejected.
<b>2001</b>	Married to father of her first 3 children. Arrested and imprisoned as part of a judicial investigation.
<b>2003</b>	Sentenced to 5 years in jail.
<b>2004</b>	Confirmation by the court of appeal of the 5-year prison sentence and also condemned to a definitive legal ban from France.
<b>2009</b>	Request to execute her jail sentence. Spends 3 years in jail.
<b>January 2012</b>	Released from prison and directly put in an immigration detention centre for her removal to Ghana.
<b>February 2012</b>	Released after 45 days in detention. The Ghanaian consulate had stated from the beginning that they would not issue a travel document in her situation.

There is no justice. I had faith in justice. I decided to go to prison; it was not the police that came to get me. I left my children. My younger son was only two years old when it happened. After all that, they put me in detention for another 45 days. I was really disappointed and upset. I still had strength. I kept praying all the time.

“Detention was long. I counted the days. I felt that whatever I did wouldn’t make a difference and that I was going to stay until the end of the maximum legal duration.”

#### A blessing in disguise

“Fortunately, the consulate didn’t identify me even though the prefecture put them under pressure to do so. It is the only thing that got me out and allowed me to see my children. Otherwise, I don’t want to imagine what would have happened. I don’t like to talk about that, it makes me feel really sad.

“My four children are French, or will be, and in that case, legally,

the administration must delete the legal ban from my judicial record. There is no way I am going to leave my six-year-old son. My daughter lives with me. I am the only person who takes care of her. She doesn’t want to go to Ghana, she only knows France. She doesn’t speak English, only French.

“I want to find a job and earn enough money to take care of my children. I want to find a house big enough so all my children can live with me.

“I don’t have a life at the moment but I have children.”

### Twenty years in France

*She has one child born in the Netherlands and three children born and raised in France. The one born in the Netherlands will get a residence permit at the age of eighteen; the others will be French. Her partner has a long-term residence permit. She can’t apply for a residence permit as long as her legal ban is not deleted.*

*Still undocumented and unreturnable for administrative reasons*

## Destitution

Homelessness and destitution become an integral part of the lives of unreturnable migrants. Without an income, it is also almost impossible to rent a place to stay. In France for example, to rent a house, besides needing money, you need to provide an employment contract and give salary slips to the landlord. People are desperate to have a house, so easily fall victim of fraudulent practices.

***“When I was an asylum seeker, I could have an address. After the dismissal of my case, I had to pay 250 euros to have a false address. This system allows dishonest people to make money out of foreigners trying to get residence permits.”***

– Marian, Moldova (FR)<sup>75</sup>

Many interviewees end up sleeping rough in the streets.

***“I received a letter that my claim has been refused. I have to leave the house and get myself out of the country. I was then homeless for quite some time. Along with that suffering from severe depression and serious mental health issues. I find it really, really difficult, I can’t put it to you in words. Sleeping rough in the street, begging for food and stuff, it was complete complete humiliation.”***

– Abdal, Sudan (UK)

Muhammad lives on the streets in France, despite a serious medical condition.

***“If I hadn’t had problems in Iran, I wouldn’t have come to Europe to live such a miserable life, to sleep in the streets, to hide under trucks... In France I’m greatly disappointed in the social workers and the doctors. A lot of them told me they would help me, but today I have nothing. Everybody has abandoned me.”***

– Muhammad, Iran (FR)

Marie, her partner and their small child face the constant risk of eviction and homelessness, as they struggle to pay the rent and electricity on a substandard apartment with broken heating.

Many interviewees were dependent on charity from organisations or friends to meet their basic needs. In Belgium, Lala lived temporarily with her daughter-in-law, Hagop lived for some time with an Armenian friend of a friend, and Tareq depended on his girlfriend.

## Criminalisation

Destitution with no right to work leaves migrants at risk of committing criminal offences. Interviewees spoke of their shame at having offended, but also of the unmanageable circumstances that had pushed them into criminality.

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<sup>75</sup> Marian had to pay 250 euros to register illegally to rent a house.

***“I have a punishment of eighteen months with suspension of five years. So if I make small troubles, that is very bad for me. If nobody helps me, how can I get some money? Yes, then I need to go stealing again and I do not want that. If they can help me, help me; and if not, let me leave to my country.”*** – Hagop, Turkey (BE)

Several of the interviewees had committed minor offences such as petty theft or using false documents to work. Uncle was given an anti-social behaviour order for sleeping in the street, and sent to prison when he missed his court date. This single prison sentence has been used to justify multiple periods of detention.

***“I was homeless for a little time. They calling police, they ban me not to go back to area, but I’m living in the area. I never go to court, I forgot the date, I was drinking too much as well. I forgot the day.”*** – Uncle, the Gambia (UK)

### ***The psychological impact of limbo***

The impact of long-term destitution on physical and mental health generally has been well documented,<sup>76</sup> and unreturnable migrants are no exception. Interviewees described feeling depressed and helpless and losing self-confidence. Many withdrew from social contact and lived in isolation. Rehan lost his family by leaving Afghanistan for Hungary, and being in this uncertain situation made him even more depressed.

***“I don’t go outside too much, because when I go outside, I see families and they have children, they spend their life happily, they feel happiness. They share their moments with each other, and I become sad. What is my mistake, that I don’t have a good life? I want to go with my wife and my children outside, to spend our life happy, to share our life, to talk about places and things.”*** – Rehan, Afghanistan (HU)

Many of the interviewees were dogged by the fear of being redetained.

***“I am very scared I will be arrested again by the police. I feel like it can happen at any time and that I am not safe.”*** – Tidiane, Mali (FR)

Tareq from Iraq felt that after being detained twice, moving freely in the city was not possible, especially in the larger Belgian cities where there are frequent identity checks on public transport or on the streets.

***“At the weekend I’m afraid to go out. It’s really a problem. At the moment there are a lot of police controls. And at the weekend they are everywhere.”*** – Tareq, Iraq (BE)

The people who had been unreturnable for longest had suffered the most severe psychological deterioration. Boban and Hagop both had scars on their arms from self-

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<sup>76</sup> *Asylum Camp Limbo*, 2011, p 10; *Mapping Statelessness in Belgium*, UNHCR, 2013, p 44.

# The story of **DAVID**

33, from Sierra Leone,  
living in Hungary



A detention centre in Hungary

*David, 33, fled from Sierra Leone in 2000. As his personal data cannot be found in the registration system of Sierra Leone, he is unreturnable. He has been detained for more than 11 months.*

## The scars of a civil war

“I arrived in Hungary in 2000, when I was twenty years old. I left Sierra Leone because I wanted a better life, a life without problems ... I lost my family to the civil war. I don’t have anyone left there anymore.

“When I arrived, the authorities sent me to an open refugee centre, where I applied for asylum. As a result, I was given a one-year residence permit, which was renewed every year until 2005. During these years I lived in a number of different centres, all of them open. I started learning Hungarian and even had a couple of temporary jobs in Budapest. I really wanted to make an effort and develop my skills.”

## Detained ...but not deported

“In 2005, a procedure was launched in order to determine if I was eligible to stay in Hungary indefinitely. The answer was negative because they believed I wasn’t sufficiently integrated, but I wasn’t sent back. Instead, I was sent to a detention centre, where I eventually spent the next ten months. I think it was a way of offering people like me a second chance. If you want to stay in Hungary, the government expects you to integrate properly. Detention centres are places where you learn more about the country, its customs, the law. If I went to the detention centre, it showed I really wanted to stay here.

“After my release, I was eventually transferred to a community shelter. By this point I was no longer able to apply for asylum, so I decided to apply for Hungarian citizenship. I was then detained again for about a month, after which I was sent to an open refugee camp, and then eventually transferred to the community shelter where I have now been living for the past two years.”

*“I am hopeful. I think it’s just a matter of time before the government decides to let me stay, because I don’t have anywhere else to go”*

## Unreturnable

“As part of the citizenship procedure, the authorities first wanted to verify if I could be sent back to my country. As I came to Hungary without a passport or any other proof of identity, I was taken to the Sierra Leonean embassy in order for them to identify me as

DAVID	
2000	Arrived in Hungary, lived in a reception centre for 1 year, claimed asylum.
2001	Detained for 7 months.
2002-03	Stayed in an open community shelter for 18 months.
2003	Received a residence permit based on humanitarian leave to remain for 1 year, constantly renewed until 2005.
2003-05	Lived in Budapest, had temporary work, took a Hungarian language exam.
2005	After his residence permit expired, claimed for asylum again, stayed in the open shelter for 6–7 months.
2006-07 (July)	Detained for 10 months.
2007	Stayed in the open shelter for 6 months.
2008	Detained for 4 months. Applied for Hungarian citizenship.
2009	Retransferred to the open shelter.
2011	Redirected to an open community shelter, a special shelter for unreturnable and undetainable foreigners who have served the maximum time set by law in detention.

one of their citizens. But, as they couldn't find me in their registration system, I could not be sent back. That was in 2008, and since then I have been waiting to hear if I will be allowed to become a Hungarian citizen."

### Hopeful, even after thirteen years

"I am hopeful. I think it's just a matter of time before the government decides to let me stay, because I don't have anywhere else to go. The government's goal is to offer people a better life; I'm sure they have plans to help us. I just have to work harder, integrate properly, make sure I fully understand the Hungarian law ... then I think they will let me stay."

*Note: Social workers in David's community centre have informed us that following new legislation, David will soon no longer be entitled to a place in the community centre. What will become of him remains unclear.*

### Thirteen years in Hungary

*Still undocumented and unreturnable for administrative reasons*

harming. Boban was in a psychiatric hospital for some time, after he was recognised as a stateless person. He expected much of this recognition, but it did not give him stability or security.

### ***When detention becomes better than a life on the streets***

For some, the hopelessness is so great that they prefer detention. In Belgium, before being detained, Hagop went to a police station to ask them either to detain and return him, or to grant him a residence permit. Later, he refused to be released from detention back onto the streets. He wanted a solution for his situation. So, to put pressure on the system, he did not want to leave the detention centre. Police force was needed to remove him. Finally he was put on the streets again, with a new order to leave the country.

***“One month, but I wanted to stay there for a year. I wasn’t lucky. They even removed me by force. My social assistant wanted to release me and I said to her: ‘listen, I do not want to make any trouble. I live here for one month now and I did not cause any problems, I lived here very peaceful. I do not want to leave until you either send me back or resolve my problems.’ After that, they called the police. They put me in the ‘cachot’. You know what it is ‘cachot’? So they came with five guards to take me and they put me in ‘cachot’ they called the police and they came with three police cars and they removed me by force. In the Detention centre of Merksplas! Do you understand? Is that normal?”*** – Hagop, Turkey (BE)

He preferred to stay in the detention centre, despite the hardships of detention. He avoided contact with other detainees and had a bad impression of the staff of the centre.

***“They laugh together with you, but behind your back they put a knife in your back. Friendly persons do not exist in there.”*** – Hagop, Turkey (BE)

Boban regarded detention as a matter of “deportation camps.” More than once he expressed his feelings against a system that deprives people of their freedom. But because he had been living on the streets for so long, he couldn’t deny that he was happy to have a roof over his head, and not to have to live on the streets.

***“It was beautiful. I’ve never seen something better than that [ironically]. Can you understand? I thought: here I would like to stay. Better here than on the streets. Can you believe that? I was angry when Macedonia gave a negative answer again. I wanted to stay in there. Strange isn’t it? A lot of people look forward to going outside, to being released. I wanted to stay in there for some months. I had food, I could sleep, I could smoke. I always had fresh coffee. What more does one need? When the social assistant asked me what I would do once released, I answered that I would ask for asylum once again. She said, ‘No, no you can’t do that, they will lock you up again.’ And I said that I wanted that, and she laughed very hard.”***

– Boban, Macedonia (BE)

## The story of **HAGOP** 29, from Turkey, living in Belgium



*Hagop came to Belgium as a teenager with his mother and sister after his father was murdered. The whole family applied for asylum. The appeal court gave its decision thirteen years later, after Hagop's mother had passed away. In the meantime, various other regularisation procedures had also been launched, and are still pending. Hagop wants to return to Turkey because living on the move without any stability cannot be called a life. He has been in administrative detention twice, but returning is impossible because the Turkish authorities cannot find any trace of him in their registers. Hagop is 29 now and has nowhere to turn. He still does not have any documents, a home or a future.*

### In search of safety

"I belong to the Armenian minority that lives in Turkey. When my father was murdered, my mother decided to take my sister and me to Belgium. We arrived in 1998; I was 13 at the time. We applied for asylum immediately, but three years later our application was rejected. I don't know anything about the interview my mum did. I don't have any information; all I know is the name of my village. Despite our situation, we tried to build a normal life for ourselves. I went to school and even started an internship, but I could not complete it because we lost our papers.

"In 2002, I also applied for regularisation on humanitarian grounds. Until this day, I still haven't received any reply, neither yes nor no.

"When my mother died in 2008, my problems really started. The house was too big for me and I couldn't afford to pay the rent. I looked for another apartment but the commune never wanted to register me and so I had to live on the streets, which is still the case today. I slept in homeless shelters or outside in the cold, and I had no choice but steal to survive. I eventually got in trouble with the law and ended up in prison."

***"I don't want to live illegally anymore, I'm fed up. I just want to go back to Turkey. Release me? Forget it. I do not want to leave until you either send me back or resolve my problems"***

### The cruelty of the system

"The first time I ended up in detention was after completing a prison sentence. Instead of releasing me, I was kept in prison for six extra months under administrative detention, which I felt was really unfair. Six extra months in prison, because they couldn't send me back to my country! The authorities tried to send me back to Turkey but this turned out to be impossible. They told me that Turkey does not want me and

that I cannot return because they won't provide me with any travel documents. When they finally released me, I was ordered to leave Belgium immediately.

I made my way to Sweden, hoping they might grant me asylum. Things got better; I had a social life and even had a girlfriend. Two years later, however, I was arrested

HAGOP	
1998	Father murdered. Family flees to Belgium.
2001	Asylum claim rejected.
2002	Request for regularisation.
2008	Mother dies. Becomes homeless.
2009	Claims asylum and stays in open centre. Asylum claim rejected, homeless again.
2010	In prison before trial, followed by 6 months of migration detention. Regularisation claim rejected. Leaves Belgium for Sweden.
2011	Final rejection of first asylum claim.
2012	Sent back to Belgium. Voluntary return rejected.
2013	Arrested and detained in closed centre. Released one month later because unreturnable. Appeal against regularisation rejection still pending.

and sent back to Belgium – and to make matters worse, Belgium then ordered me to leave the country again! Where was I supposed to go? I don't understand why Belgium made me come back. I wanted to kill myself ... how could they treat me like this? I have lost everything. [He shows us the self-harm scars on his arms.]

I'm sick and tired of this life. I've even tried returning to Turkey voluntarily, but again the reply was negative, as Turkey won't acknowledge me as one of their citizens. Apparently, they can't find any trace of my name in their registers. Anything is better than this life. I would gladly move anywhere else, to any country that would accept me – even Somalia!"

**When detention is better than freedom**

"In January 2013 I was arrested and sent to a detention centre. After a month I was released again, but I didn't want to leave. Life was good there ... I had a roof over my head, I had my MP3 player and I minded my own business. I lived like a king.

I didn't want to leave until they either sent me back, or resolved my problem. They had to call the police to throw me out of detention – can you believe that?

I just want a normal life. I want to find a job, an official job. I want to turn my life around. Do you think I like being a criminal? I'm tired of all this. I want to do something good, start a family ... get a cat. Belgians love cats, don't they?"

**Sixteen years in Belgium**

*Still undocumented and unreturnable for administrative reasons*

# 4 State practices addressing unreturnability

## Social welfare for unreturnable people

Being unreturnable is now one of the grounds on which it is possible to obtain social welfare in Belgium.<sup>77</sup> In 2012, a Brussels court decided that somebody who is unreturnable and undocumented is entitled to support from the social welfare system, because each human being has the right to live in dignity<sup>78</sup> and each person in need has the

right to this kind of support.<sup>79</sup> Belgium's Public Centre for Social Welfare had stated that the person in question was not entitled to support, as he was undocumented. At least one other comparable case is known, as a result of which an unreturnable Palestinian is now receiving welfare support to address short-term needs. But in practice access is still very problematic, as migrants must prove that they are unreturnable and in special need. The burden of proof lies with the unreturnable migrant and the threshold is high, as migrants receiving support from friends with resources are not eligible.

Boban and Hagop both applied for this support. Both have clear proof of unreturnability, but their applications were refused. Boban was refused due to confusion over which city authority was responsible for him. Hagop was not accepted as destitute because he could stay temporarily with a friend, who cannot prove that he does not have sufficient income to support Hagop.

## A special shelter

In Hungary there is an open community shelter for unreturnable migrants who have been released after reaching the maximum legal time limit in detention: eighteen months. Unreturnable



Boban

77 Tribunal du travail, Bruxelles, 6 septembre 2012, N°8530/11.

78 Art 23 Constitution.

79 Art 1 law on social support (La Loi CPAS 8 juillet 1976).

# The story of **MAZIM** 29, from Iraq, living in Hungary



In a Hungarian detention centre

*Mazim, 29, fled from Iraq for political reasons. Neither the Hungarian authorities nor the Iraqi embassy can identify him because he has no legal documents. He was detained for nine and a half months.*

## In search of freedom

“I came three years ago, in 2011. For me it is really bad in Iraq, and not just because I am Kurd, but I do not want to live under dictator. I came from Turkey, I took a train in Istanbul and I was travelling until Serbia. I arrived in Hungary by train. The rail cargo company man found me and called the police in Budapest. I was begging for him not to call them, but he did. I came without documents.”

## Struggling for legality

“I asked for asylum, but they brought me to a detention centre next to the airport. I was there for a month, then in another detention centre for four months. Finally my case was closed after 11 months, which I spent in an open camp [reception centre] cooperating with the Immigration Office. They brought me back in detention at the end of February. Now I have in total nine and a half months here.

*“My mind is blocked here inside”*

“I was working in the town where the camp was, and also in another town nearby, and it was very good for me. The salary was not so high – 350 euro a month, but I was happy with it. Mostly at night times I went back to the camp to take rest. It was tiresome, but I got the feeling that I belong to somewhere.”

## Life in detention

“In the morning I wake up, I go outside to walk around, after that I come back, maybe I take a shower and I play some ping-pong, after that social workers come and sing for us, or teach Hungarian, we have TV, internet, like this.

“The personal conversations and common activities are colouring my day. A little light in a prison. The painting course was awesome. I really have to say thanks for it. I also love playing music with social workers.

“Night-times are difficult. Because I think, think and think. Why they put me in the jail? I’m not a criminal. It’s difficult for me. Why, why? I don’t have problem with this country. This country has a very good law, why did they put me in the jail?”

## Stuck in the system

“The prison shocked me the most, it’s very bad! Because I’m not a criminal and they put me in the prison. I have only a small problem: I came to Hungary and I don’t have documents.

“When I asked for asylum, they told me ‘OK’ but finally they gave me negative. I was here for 5 months. After that I got free, they caught me again and put me back here in prison, I become crazy. It’s difficult for me, you know.

MAZIM	
<b>2011</b>	Arrived in Hungary (on a freight train), claimed for asylum. Detention for 5 months.
<b>2012</b>	Stayed in an open centre for 11 months (till the refusal of his asylum claim).
<b>2013</b>	Detained again (second asylum claim was also refused, there is an expulsion order against him).

First of all, I have to manage some legality for myself, so I can start working. I want to get married, I want to study, normal life, you know. No problem, that, but I want to study, Hungarian or to be a teacher, like this. I want to help everybody. I don’t know. My mind is blocked here inside.”

**Two years in Hungary**

*Still undocumented and unreturnable for administrative reasons*



migrants receive accommodation, meals, social and medical services for a maximum of eighteen months. They can use the internet and telephone to keep in contact with acquaintances, and leave the shelter during the day.

However, they do not have the right to work, so have little chance of living independently outside the shelter.

***“I decided to come here because I didn’t get a job. I had to pay too much for the rent without getting any money from anywhere. It was just stress. Maybe a little work, you know, it wasn’t enough to sustain my stay in Budapest, and so I came here.”***

– Michael, Nigeria (HU)

The shelter is a short-term solution to destitution and homelessness, but it does not resolve the underlying limbo, as migrants must leave after eighteen months and are granted no form of status. While in the shelter, they have no opportunity to study or work, so integration into Hungarian society remains impossible. They have no long-term security, and no prospect of resolving their situations.

# 5 Searching for a way out of limbo

## In the research countries

Most of the interviewees have explored different procedures to legalise their stay. All were either refused outright, or granted only temporary leave, which soon expired.

### *Temporary residence permits*

Several of the interviewees had their stay legalised for a limited period, which did not resolve their limbo situation. While they had legal status, they could finally move forward in their integration, but this hope was wiped away with the loss of their temporary status.

In Hungary some interviewees had received temporary leave to remain as a result of an amnesty for irregular migrants who were willing to disclose their identity to the authorities. Kambale had a temporary residence permit renewed several times. In those years he had the opportunity to learn Hungarian and become qualified to drive a truck, which enabled him to get a permanent job in a supermarket near Budapest. However, his residence permit expired.

***“After the interview they told me that I’d get a ‘befogadott’ [tolerated stay] for two years. So then I searched for a job and could do some work. I moved to Budapest alone, searched for job and a flat to rent. And something new has started then. I started working, paying for my flat.”*** – Kambale, Angola (HU)

### *Medical regularisation*

In some European countries it is possible to apply for temporary leave on medical grounds. However, practices vary considerably, and in practice migrants face considerable obstacles to accessing them.

In France and Belgium, a person needs to prove his identity by showing identity documents to access any regularisation procedure, including the medical procedure which can lead to a one-year residence permit.<sup>80</sup> Hence, migrants who lack identity documents cannot apply for medical regularisation, however serious their medical conditions. Michel could not apply because he did not have any identity papers, but he could not return to Burundi because of the lack of these documents and because no treatment was available for his illness.

Even seriously ill migrants with documents are not always able to resolve their limbo through medical regularisation.

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<sup>80</sup> Article L. 313-11 11° of the *Ceseda* (Immigration and asylum law): a temporary residence permit is delivered to the foreigner whose state of health requires medical care; if without it he could suffer consequences of exceptional seriousness, and if there is no appropriate treatment in his country of origin. The administration take the decision according the opinion of the local healthcare referee (*Médecin de l’agence régionale de santé*: Doctor of the regional health agency) but the administration decision can disregard it.

# The story of **MICHAEL** 35, from Nigeria, living in Hungary



© UNHCR

*Michael, 35, fled from Nigeria for religious reasons. He is unreturnable as the government cannot identify him without documents, and the Nigerian authorities do not allow him to return. He has been detained for eleven months.*

## Three years of peace

"I think this place was not my destination, but somehow I was stuck here with my girlfriend, we had two kids.

"When I lived in Budapest, I had a befogadott [a kind of temporary residence permit in Hungary] for two years, so I was working. First I had it for one year, then it was prolonged, but after they stopped giving me visa, problems started, you know. I asked for asylum, but they detained me in Békéscsaba [detention centre] for a while.

"After my release I was transported to a reception centre. The situation in this camp was terrible; there was so much bugs that you couldn't see. They bit you, so you couldn't sleep.

Blood, blood, blood. The camp was too bad, so I had to run away from that place. You know, I wanted to stay with my girlfriend in Budapest. So I left the camp, and I didn't return. The police started to look for me. They came to my place where I was living with my girlfriend, and they took me to the immigration office. From there they put me into a detention centre. That was the reason for putting me there."

*"This situation is devil. I would go back, because it was better for me to go home."*

## Six months in hell

"Well, the previous detention centre was like a home, though we did not have freedom to go out. But in this one, it was the worst experience I have ever had. It was like hell, you know. Even in African countries you can't see such treatment. The policemen and the security guards do not have human sympathy. They said always that they should beat the inmates a little when they needed to behave. It was a terrible situation there.

"We got this small, little soap may be for one month or two. It was absolutely nothing. Sometimes you entered the bathroom to bath and they stopped the hot water. There was a small place and maybe twenty minutes for all the people with only two or three taps, you know. Imagine how it was there. It's like devil, believe me. I hope they could close that detention centre, I hope, because people are really suffering there.

"After my release I lived in Budapest for five or six months. I was not doing much anyway because I didn't have permission to work. I helped some friends or did some

<b>MICHAEL</b>	
<b>1978</b>	Born in Zaria, Nigeria.
<b>2002</b>	Claimed asylum, received a residence permit based on humanitarian leave to remain one year. This was prolonged for two years.
<b>2003-06</b>	Lived in Budapest.
<b>2006</b>	Claimed asylum, held in detention for five months. Transferred to an open reception centre, but due to the extreme hygiene problems, he left without permission and moved to Budapest to his family to stay there.
<b>2007</b>	Lived in Budapest for six months.
<b>2008</b>	Detention for five months twenty days. Moved to Budapest.
<b>2010</b>	Claimed asylum. Moved voluntarily to an open community shelter, a special shelter for unreturnable and undetainable foreigners who have served the maximum possible time set by the law in detention.

casual work. I did not get a job, but I had to pay too much for the rent. It was just stress. Maybe a little work, you know, but it wasn't enough to sustain my stay in Budapest. So I decided to come here, and live in here."

### **Unreturnability, uncertainty**

"I am not a lazy person, you know, I always liked to do things. Unfortunately, here I do not have the opportunity to do anything. I was studying for this ECDL European Computer Driving License in Budapest before. But these people have to impose laws that prohibit coming back to the shelter after ten o'clock. I feel I am trying to spring up, help myself, but they enact laws against it. You try to do something, but there is always something to bring you down, you know.

"This situation is devil. I would go back, because it was better for me to go home. But I cannot."

## **Twelve years in Hungary**

### ***Still undocumented and unreturnable for administrative reasons***

In Belgium only migrants with critical life-endangering illnesses are granted a temporary residence status on medical grounds. As a result, the refusal rate is 98 per cent in 2012.<sup>81</sup> This means a significant number of unreturnable people cannot be regularised because their illness is not critical. Belgium's policy toward seriously ill undocumented migrants has been criticised the last year. Many migrants have medical needs that are insufficient for regularisation but severe enough to prevent their expulsion.<sup>82</sup>

Those who can access the process in Belgium and France still face considerable delays in the procedure. At the first stage, it can take months to learn whether an application is considered admissible, after which it can take over a year to receive a final answer. While the application is pending, people are only entitled to urgent medical care.

In France, migrants experience difficulties because of the local practices of different prefectures. Several French interviewees were placed in an immigration detention centre because the prefectures refused to regularise them, either because the prefecture didn't enforce the legislation, or because they go beyond legal requirement.<sup>83</sup> Unfortunately, the administrative court doesn't always quash these decisions by the prefecture. Marian obtained a residence permit because of his diabetes, but needed to renew this permit when he moved to another prefecture. The prefecture let him wait seventeen months while it merely examined his new application, then refused him without any specific reason. The administrative court quashed the decision and recognised his right to a permit. He is seriously ill and this instability caused by the administration is particularly bad for his health.

***“In 2008, I moved and therefore transferred my file to the prefecture of Essonne. I was badly received in this prefecture. The woman at the counter told me that France doesn't have to welcome all Moldovan diabetics. I waited seventeen months to get an answer from the prefecture. In March 2010, they refused to extend my residence permit. I don't know why the prefecture refused to deliver me a residence permit the first time and then why they refused to renew it. The prefecture's decision doesn't specify any reasons”*** – Marian, Moldova (FR)

### ***Humanitarian admission based on family reasons***

Belgian law requires that applications for family reunification must be made from the country of origin. Marie's partner and child have permanent residence in Belgium but not citizenship, so she is required to go to the Democratic Republic of Congo to make this application. There is no guarantee that the family reunification will be approved. She has applied for humanitarian regularisation on the grounds that her situation is sufficiently exceptional that she should not be required to go to Congo. This would be asking a mother of a young child to leave her child behind, for an uncertain period of time, without guarantee that they can be reunited.

81 Interpellation in Parlement by Belgian parliamentarian Bert Anciaux. <http://www.vluchtelingenwerk.be/bestanden/parlement/12.11.06.Senaat,ComBZ,Bull177,de-spectaculaire-daling-van-het-aantal-medische-regularisaties.pdf>

82 *9ter – Une protection médicale juste et humain ?*, Quolloquium, Ciré, Medimigrant, Brussel. 22 March 2013.

83 See La cimade ([www.lacimade.org](http://www.lacimade.org)) report “Devant la loi”: enquête sur les conditions d'accueil des étrangers dans les préfetures, l'information du public et l'instruction des dossiers, June 2008. See also report of Mathias Fekl, May 2013, Member of Parliament on immigration to the Prime Minister (<http://www.gouvernement.fr/presse/remise-du-rapport-de-matthias-fekl>).

## Barriers for ex-offenders

The prospects of a way out of the limbo situation are most remote for migrants with criminal convictions. All of the states featured in the research are extremely reluctant to grant permits to migrants who have been convicted of offences.

Belgian law states that public order convictions are a criterion for not granting a regularisation claim on humanitarian grounds. In a directive of 2012, the State Secretary for Asylum and Migration states that regularisation will not be provided in the case of a conviction of an offence which *could* lead under Belgian criminal law to imprisonment for six months or more.<sup>84</sup> In reality, undocumented migrants with sentences of under six months are denied access to regularisation. This means that Hagop and Boban no longer have a chance of regularisation, and face living in permanent limbo.

In France, residence permits are refused to people considered to be a threat to the public order, as interpreted broadly by the administration. Ex-offenders with a legal ban from the French territory, such as Betty and Muhammad, face particular barriers. A legal ban is a sentence by the criminal judge that can be added to prison terms for certain offences. Migrants have first to obtain the deletion of the legal ban, before they can apply for regularisation.

In the UK, the detention and deportation of foreign ex-offenders is a high political priority for the Home Office, following intense political and media pressure. Where the ex-offender is unreturnable, they face life in permanent limbo.

## Good practices in other European countries?

In a few European countries there is an acknowledgment of the existence of unreturnable migrants. Proof of this is the existence of procedures to obtain a residence permit on the grounds of unreturnability. Other countries, like Spain, have measures that can prevent repeated detention. Although limited and imperfect, these practices may suggest solutions for the limbo situation of unreturnable migrants in other EU countries.

## Duldung in Germany

Germany recognises tens of thousands of migrants as unreturnable. However, this status brings few rights or protections. Unreturnable migrants in Germany can be issued a document called a *Duldung*, granting tolerated status, if the Foreigners Registration Authority considers that they cannot be deported. A *Duldung* certifies that someone is obliged to leave but cannot do so at present, so does not confer permission to stay permanently.<sup>85</sup> Around 86,000 migrants have this status, of whom around 53,000 have been in Germany for longer than ten years.<sup>86</sup>

A *Duldung* can be granted for a variety of reasons, including “inability to travel, lack of a passport or lack of a travel route to a war-torn country”.

The duration of a *Duldung* varies according to the reasons for which deportation is impossible. If it is issued on grounds of illness, the person will be tolerated until their health

<sup>84</sup> *Rapport annuel migration 2012*, CECR, p 136.

<sup>85</sup> *Basic Information: Temporary Toleration Certificate (Duldung)*, Land in Sicht! Arbeit für Flüchtlinge in Schleswig-Holstein.

<sup>86</sup> *Für eine neue Bleiberechtsregelung*, Pro Asyl, Caritas, Diakonie, 2011, p 6.

# The story of **MUKTAR**

26, from Somalia,  
living in the UK



*Thinking  
My Way Out,  
by Said  
Zakouri,  
detained  
in the UK.*

*Muktar came to the UK from Somalia when he was a young child, and was granted indefinite leave to remain with his family. He was detained after serving a prison sentence, but after 14 months in detention the Home Office has still not decided whether to issue a deportation order. As a result, he cannot appeal, and remains in detention.*

## Childhood in the war

“I don’t remember no-one in Somalia. I left Somalia when I was eight years old. Where my family’s from, Mogadishu, there was war all the time. I remember one of my uncles, he got shot. Auntie bring him to the house and there was a lot of blood.”

## Growing up in Leeds

“I moved to Leeds with my mum about ten years ago. When we first moved to Leeds, there was not a lot of Somali people living there. I lived in an English-speaking community. And in 2008 they opened a Somali community centre in Leeds and I used to help the people who couldn’t speak English, filling in application forms. I was helping people and they used to invite me to their house, they were good people.

“I studied electric installation at college. I was working in a warehouse one time for pick and pack and then a few months I was working in Morrisons [supermarket].”

## Waiting for a year in detention

“Sometimes I have trouble sleeping, especially when I watch the 10 o’clock news. When I see Somalia on the news I get stressed. And I think about it, and imagine if I really get deported there. It scares me.

“I haven’t been to court. Sooner or later they’re just going to come and take me to Somalia because I haven’t been to court yet. I had indefinite leave to remain [permanent residence]. I don’t know what’s happening, it’s been nearly a year.

“It’s not easy to take someone to Somalia because there’s no embassy, it’s hard for them to get travel documents. If they get me a ticket today I can get a letter from the European human rights court and I’ll get an injunction and it will get stopped.

“They’re trying to say that I’m not complying with them. The Home Office gave me a letter to fill in and it said, ‘Where’s the closest police station to your house in Somalia?’ And I told them, in Somalia there is no police station. Only small things I can remember. So I said to them, ‘If you guys want more information, speak to my Mum.’”

“In the last 11 months of my sentence, I was in an open prison which you could go

***“I left Somalia when I  
was eight years old”***

<b>MUKTAR</b>	
<b>1999</b>	Arrives in UK, given indefinite leave to remain.
<b>2010</b>	Sentenced to 4 years and 8 weeks in prison.
<b>January 2012</b>	Detained on completing sentence.
<b>September 2013</b>	Released on Bail.

out any time. My probation said I was low risk of everything. Now the Immigration say I'm high risk.

"The mistake, I've paid for it. I've been in prison and I don't think it's fair, paying twice for the same crime. It was four of us that were arrested, and three of them are English. They all got released."

### Fifteen years in the UK

*Still undocumented and unreturnable because of risk of torture and inhuman and degrading treatment*

improves sufficiently. If the country of origin is refusing to permit the person to return, then a *Duldung* does not offer protection against deportation: the person can be returned as soon as the situation changes, even if they have a valid *Duldung*. People often live for years in Germany with short-term *Duldungen* that are regularly renewed.<sup>87</sup>

People with a *Duldung* are prohibited from work for the first year or longer, and subsequently can only take employment if no other candidates are available. They receive benefits at the reduced level set for asylum seekers, 40 per cent below unemployment benefit, for four years or longer. They are required to live in the area to which they are allocated, and need permission to travel.

There are routes for migrants with a *Duldung* to get permission to stay ("*Aufenthaltsrecht*"). Young people aged between fifteen and twenty can apply for permission to stay if they have lived for six years in Germany, have no criminal history, and have been "successfully" in school. However, the criteria for permission to stay are restrictive, and many people do not meet them. For example, migrants who have been excluded from the labour market, often for years, must immediately demonstrate that they can support themselves and their families. People who are old, ill or disabled usually cannot meet these requirements. Even people granted permission to stay risk losing their permit if they lose their job.<sup>88</sup>



A German *Duldung* – “Temporary Toleration Certificate”.

### *No-fault procedure in the Netherlands*

In the Netherlands, unreturnable migrants can access a “no-fault procedure” to apply for a residence permit, but they are rarely successful.

Migrants whose applications have been rejected, including irregular, undocumented or unreturnable people, can be granted a residence permit for a limited time if they are unable to leave the Netherlands through no fault of their own. The permit is granted on condition that the migrant leaves the Netherlands if this becomes possible at a later stage. After three years, the holder of the no-fault residence permit becomes eligible for another residence permit for limited time.<sup>89</sup>

The applicant has to meet four stringent cumulative requirements. Firstly, they must prove that they have tried independently to leave the Netherlands. Secondly, the International Organisation for Migration (IOM) must have indicated that it is not able to assist them in leaving due to lack of travel documents. Thirdly, mediation by the Return and Departure Services to obtain the necessary travel documents must have been unsuccessful. Fourthly, the applicant must show that he or she cannot leave the Netherlands through no fault of his or her own. Under the current no-fault procedure, the burden of proof lies exclusively with the applicant.

<sup>87</sup> *Land in Sicht!*, *op cit.*

<sup>88</sup> Pro Asyl *et al.*, *op cit.*

<sup>89</sup> *Mapping statelessness in the Netherlands*, UNHCR, November 2011, p 37.

This procedure is at the time of writing under discussion, as many unreturnable migrants cannot fulfill the requirements. The Advisory Commission on Foreign Affairs (ACV) published a report with recommendations for improving the procedure.<sup>90</sup> The Dutch Refugee Council recommends that each case should be looked at individually and there should be an individual plan of action agreed between the official return service (*Dienst Terugkeer en Vertrek*) and the foreigner concerning his return.<sup>91</sup> If the authorities of the country of return do not respond within one year to a request for travel documents, a residence permit on the grounds of non-removability should be granted.

### *Residence permit based on “obstacles to deportation” in Denmark<sup>92</sup>*

In Denmark there is a procedure by which very small numbers of unreturnable migrants are granted permission to stay on the grounds of obstacles to return. In 2009 six people were granted permits, and in 2010 only one.<sup>93</sup> To get a permit, migrants must sign their consent to voluntary return, and cooperate regarding the return. A permit is only granted once the police, who are responsible for the return, accept that deportation is impossible, usually after many years of trying. This type of residence permit is only valid for one year at a time and it has to be reissued every year. The NGO Refugees Welcome criticised the lack of clarity over the required level of cooperation, the requirement for voluntary return and the influence of the police.<sup>94</sup> Refugee Welcome recommends a temporary residence permit of one year, where a person is unreturnable after one year.<sup>95</sup>

### *Unreturnability in Spain*

In Spain too, unreturnable migrants are in legal limbo. The Spanish Alien Act states that persons who cannot be removed should be released, but there is no requirement to grant them legal status. Migrants are given an order to leave the country, lasting for three to five years (ten years for exceptional cases, with, in most cases, an additional two years extension), which prevents them from applying for regularisation.<sup>96</sup>

However, in theory migrants detained for more than sixty days cannot be redetained. A regulation stipulates that at the moment of release each migrant should be issued a certificate indicating the cumulative time in detention, which cannot exceed the legal maximum of sixty days. But in practice irregularities have been reported where people did not receive this document and were immediately redetained.<sup>97</sup>

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90 *Waar een wil is maar geen weg. Advies over de toepassing van het beleid voor vreemdelingen die buiten hun schuld niet zelfstandig uit Nederland kunnen vertrekken.* Adviescommissie voor Vreemdelingenzaken (AVZ), juli 2013.

91 *Als terugkeer niet mogelijk is. Over beleid en praktijk van “buitenschuld”,* Vluchtelingenwerk Nederland, september 2013. (this report also includes seven personal stories of unreturnable migrants).

92 Art9 c (2) in the Danish Alien Act.

93 *Asylum Camp Limbo*, 2011, p 20..

94 *Ibid.* p 20.

95 *Ibid.* p 49.

96 ‘Los centros de internamiento de extranjeros en España: Origen, funcionamiento e implicaciones jurídico-sociales’, in : *Documentos CIDOB Migraciones* 26, Octubre 2012, p 7.

97 *Ibid.* p 10.

# 6 Hopes for the future

The unreturnable people we spoke to just want to finally to have a normal life in their new country. Their dreams are not excessive, they just want the things which most people take for granted: work, a salary, to rent a house, marriage, children. And above all, they want to be part of society.

***“First of all, I have to manage some legality for myself so I can start working. I want to get married, I want to study, a normal life, you know.”*** – Mazim, Iraq (HU)

***“A job, a family and changing my life. Nothing more. I’m very tired. I want to have a cat. I want to do something good. Because Belgians love cats, don’t they?!”***

– Hagop, Turkey (BE)

Many interviewees wanted to pick up previous jobs from happier times in their lives. Marie wants to go back to work in the old people’s home. Abdul has clear plans.

***“First thing I will try to get a house and then a job in a restaurant. I love cooking and I enjoy being a chef. I will try to set my life up again. I hope one day I’m able to start my own restaurant. That is really my long cherished dream.”***

– Abdul, Burma (UK)

For some, their priority is their children.

***“I have one big ambition. I don’t want my son to be an uneducated person, like me. Because uneducated persons are blind. Not blind that their eyes don’t open. Blind means when you can’t read the letters, you can’t read the boards, you can’t understand the people’s language.”*** – Rehan, Afghanistan (HU)

***“I want to find a job and earn enough money to take care of my children. I want to find a house big enough so all my children can live with me. I don’t have a life at the moment but I have children.”*** – Betty, Ghana (FR)

For now, however, they are just surviving. Thinking about the future can seem like a dream.

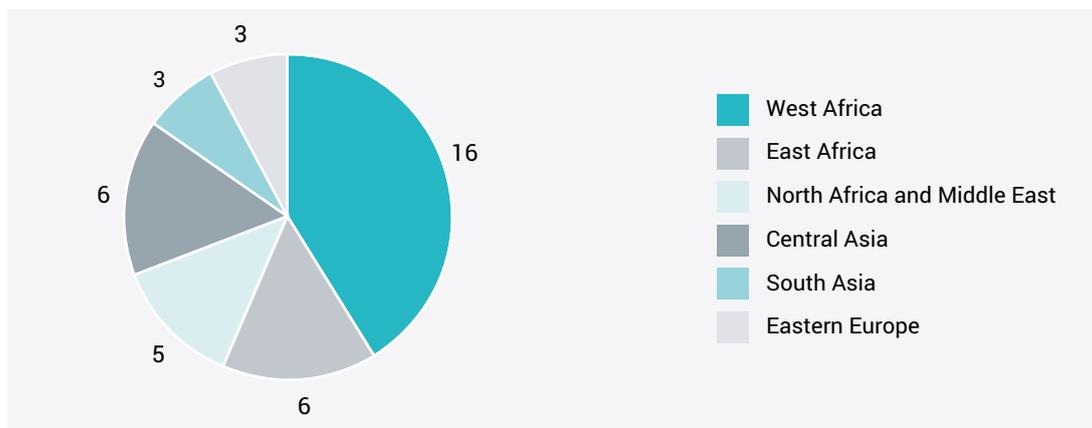
# 7 Statistical findings

## Number of interviewees, by age



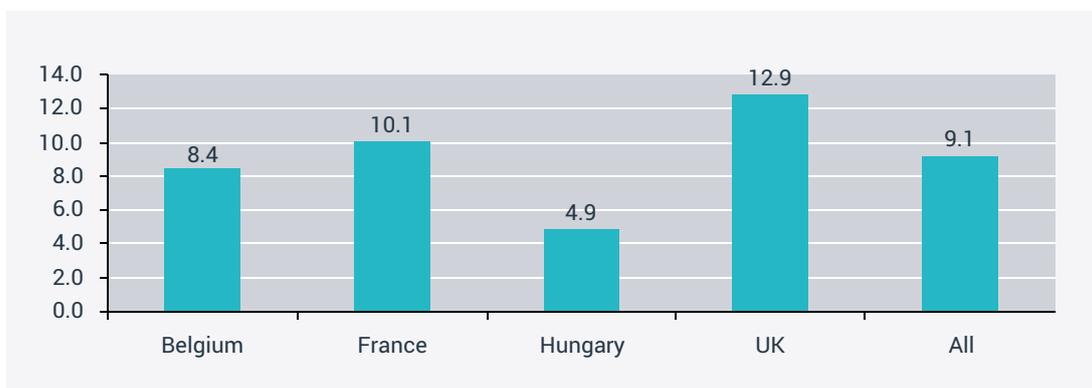
The majority of the interviewees were men. Only five (13%) were women.

## Number of interviewees, by region of origin

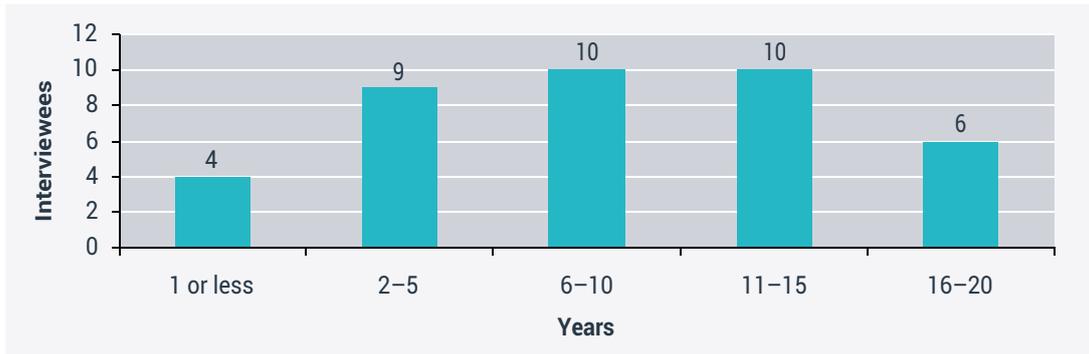


Interviewees were from 28 countries altogether.

## Average length of stay, by country (years)

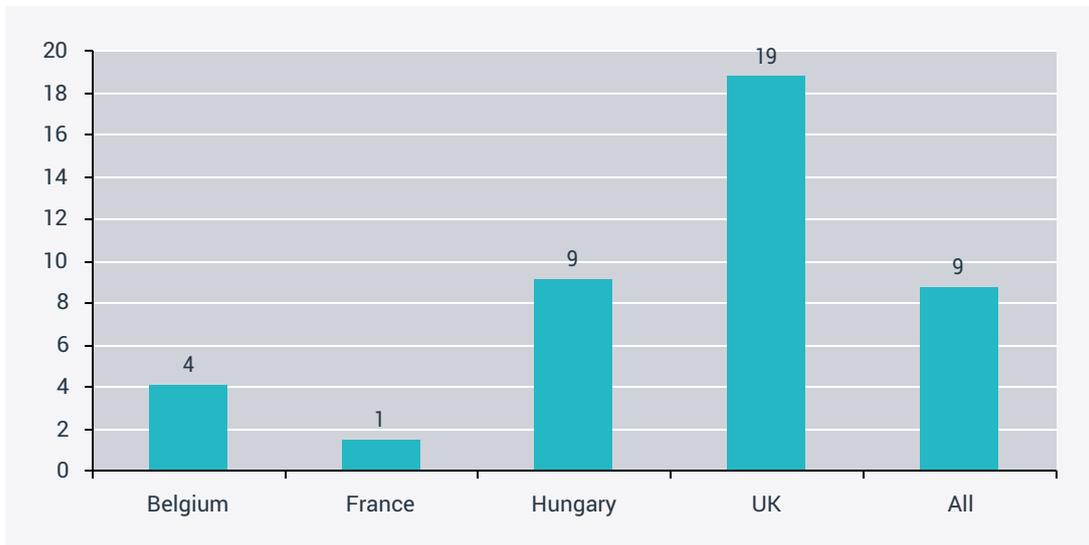


### Time spent in country



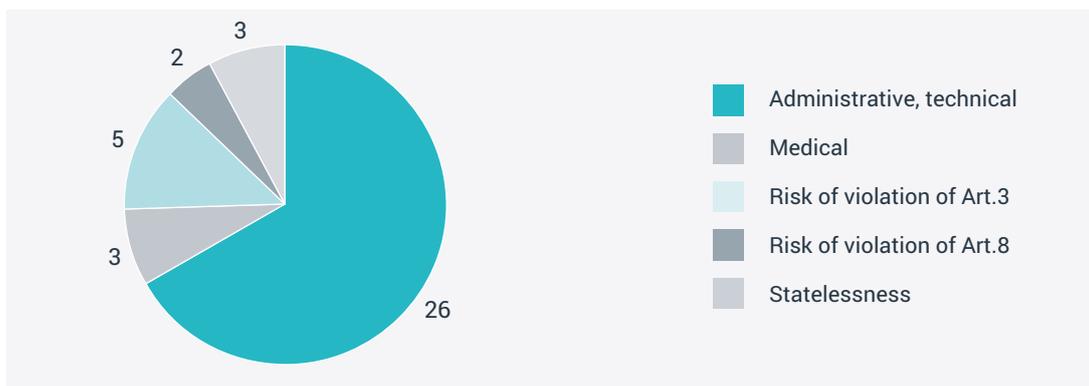
The shortest time spent in the country of residence was less than a year, the longest was twenty years. Three interviewees arrived in their present countries of residence in 1993.

### Average length of stay in detention, by country (months)



5 interviewees had spent only one month or less in detention. 15 had spent 2–6 months, 9 had spent 7–12 months, and 9 had spent more than a year in detention. The longest period of detention at the time of the interview was 36 months. 16 people were interviewed while still in detention. 23 had been released by the time of the interview.

### Number of interviewees, by reason of unreturnability



# 8 Conclusion

This research demonstrates that unreturnable people exist. It identifies a range of circumstances in which, through no fault of their own, migrants cannot return to their countries of origin, yet are refused leave to remain. Some are legally stateless, and need to be granted leave to remain on that basis. Many more may not qualify as stateless, but are stuck in the limbo of unreturnability.

Most often, the barrier to removal is obstruction by the authorities of their country of origin. Without a valid passport, irregular migrants must seek a travel document from their national embassy, if they are to return. Yet many embassies make obtaining such documents impossible.

Other migrants fall between the cracks of national immigration policies. Their risks on return, their family ties in Europe, or their medical situations are serious enough that the host country will not enforce removal, yet not sufficient for them to be granted leave.

Regularisation procedures can be inaccessible, or too narrow, for many people who should qualify. Formal or informal amnesties can be a solution, but where only temporary residence permits are granted, migrants simply become irregular again once they expire. Procedures for regularisation on medical grounds can be so complex as to exclude those unreturnable migrants who may need them most. Ex-offenders are generally excluded from any possibility of regularisation.

Detention is no solution – on the contrary. The lack of a time limit to detention in the UK, and the reluctance to release ex-offenders facing deportation, mean that migrants are routinely detained indefinitely for periods of years. The fact of this indefinite detention, and the eventual release of most-long-term detained migrants, is clear evidence of the intractable nature of unreturnability.

Migrants interviewed for this research had lived for an average of eight years in their countries of residence. Without fundamental rights, they move between the literal jail of detention and the jail without walls of long-term limbo. They told us of homelessness, depression, humiliation, self-harm. They hold onto their dreams of normal lives, education, work, domesticity. But they can see no way of getting there.

This research is limited in scope, being based on 39 interviews with migrants in four countries. It focuses on the experiences of migrants rather than legal analysis of their cases. However, it indicates clearly that the phenomenon of unreturnability is real.

While unreturnability is easiest to identify in detention, where the detaining authority is legally required actively to pursue removal, it is likely that many more unreturnable migrants live in limbo in the community. Further research is required to estimate the numbers and give a clearer indication of the range of situations causing unreturnability.

Nevertheless, the voices of migrants contained in this report show clearly the human impact of the failure to recognise unreturnability. Their stories highlight the costs to states, both in terms of the resources wasted in the futile use of detention, and in the dysfunctional nature of immigration regimes that cannot manage unreturnability.

## 8. CONCLUSION

It is essential that state policies take pragmatic account of the fact of unreturnability. We hope that this research will initiate momentum across Europe to recognise unreturnability, to ensure that unreturnable people are not detained, and to end this situation of indefinite limbo.

# 9 Recommendations

## To Member States

### *Assessment of unreturnability*

- 1 States should thoroughly assess whether a migrant is returnable. Ideally this assessment should take place as part of the asylum or immigration decision-making process. Alternatively or additionally, unreturnability should be assessed at the point at which detention and forced removal is contemplated.

### *Avoiding detention for unreturnable migrants*

- 2 Alternatives to detention should be developed, which allow migrants to live in the community while their cases are being assessed and resolved. These alternatives should be in accordance with the Return Directive which holds that detention should be used only as a last resort, proportionately to the circumstances of the case, where less coercive alternatives are not available or have proved unsuitable.
- 3 Once unreturnability is established, migrants should not be detained. The Return Directive states that detention is foreseen “in order to prepare return and/or carry out the removal process,” – circumstances which cannot apply for unreturnable migrants.
- 4 Periods of detention should be kept to an absolute minimum. Where there is no time limit to detention, one should be introduced.
- 5 In particular, migrants should be released from detention if there is no prospect of return because the national embassy refuses a travel document or “bounces” a returnee back to the returning country. Further interviews with the embassy should be arranged while the person is in the community, without the use of detention.
- 6 Detention should not be used for nationals of countries to which forced returns are not generally possible.
- 7 If returns to a particular country are only possible on a voluntary basis, detention should never be used coercively to incentivise voluntary return or to punish refusal to return voluntarily.
- 8 Migrants should not be repeatedly detained for the same reasons, without changes of circumstances.
- 9 On release, migrants should be issued a document stating the period(s) of their detention and the reasons for release.

### *Solutions for protracted limbo*

- 10 When a migrant is found to be unreturnable, he or she should be granted at least a temporary permit to stay. If there is still no prospect of return at the expiry of the permit to stay, a longer term or indefinite permit should be granted.
- 11 People who are recognised as being stateless should be granted a residence permit, bringing rights comparable to those of recognised refugees.
- 12 A permit to stay should give unreturnable migrants access to their fundamental rights to work, healthcare and benefits.

### **To EU institutions and agencies**

- 13 EU institutions must promote the implementation of policies that prevent the detention of unreturnable migrants. This requires a strict application of the safeguards laid down in EU law and international human rights law to avoid arbitrary detention at the national level. The European Commission should issue interpretative guidelines to help Member States in the interpretation of key notions in the Return Directive that are directly relevant to assessing unreturnability. Such key notes could include lack of cooperation of the third country national or the country of origin and due diligence with regard to removal arrangements.
- 14 The European Commission should continue to closely monitor Member States' policies vis-à-vis unreturnable migrants through the Return Directive Contact Committee. The European Commission should also consider further amendments to the Return Directive to ensure effective access to fundamental rights for persons who are not removed, following the evaluation of the implementation of the Directive.
- 15 The European Commission must ensure effective implementation of the requirement under Article 14(2) of the Return Directive. This article provides persons whose removal has been postponed with written confirmation that return will temporarily not be enforced. This should be a useful tool under EU law to prevent unreturnable migrants from being detained or re-detained.
- 16 The Fundamental Rights Agency should undertake further research into situations of unreturnability in EU Member States in the light of Member States' obligations under EU law and the EU Charter of Fundamental Rights, in particular Article 1 (human dignity), Article 6 (right to liberty and security), Article 21 (non-discrimination), Article 24 (the rights of the child), Article 35 (health care) and Article 47 (right to an effective remedy and to a fair trial).
- 17 Forthcoming strategic guidelines on the areas of freedom, security and justice, to be adopted by the European Council in 2014, must acknowledge the need to develop a rights-based approach, addressing situations of unreturnability in EU Member States. This approach should aim at preventing legal limbo situations and excluding the use of detention for unreturnable migrants. The strategic guidelines should also state the objective for all EU Member States to accede to the 1954 Statelessness Convention and introduce a statelessness determination procedure as soon as possible, as an effective solution to this particular category of unreturnable migrants.

## To the Council of Europe

- 18 The Council of Europe Commissioner for Human Rights and the European Committee for the Prevention of Torture must systematically screen situations of unreturnability, in particular, in their work related to immigration detention, and take appropriate action in accordance with their mandate to contribute to respect for the human rights of unreturnable migrants.

# Annex 1: Methodology

This report is the result of small-scale qualitative research involving desk research and field research, conducted in the period between October 2012 and September 2013. The research focused on the situation of unreturnable migrants in detention in four European countries: Belgium, France, Hungary and the UK, alongside consideration of the EU framework.

## Desk research

We conducted a literature review of previous research on the issue of unreturnable migrants in detention. Each project partner researched available literature relating to their own national context, while ECRE looked at reports at the EU level. Some reports on practices in other EU countries were also consulted. There is little existing literature focusing specifically on unreturnability. More often, unreturnability is mentioned in passing in reports on broader topics such as undocumented migrants, returns and detention.

## Fieldwork

In the four EU countries we identified migrants who appeared to fit the criteria of being unreturnable and having experienced detention. In total we found around 80 migrants who at first sight seemed to be unreturnable. After screening the cases, each partner interviewed ten people from the long list (with exception of France, where nine migrants were interviewed), between October 2012 and August 2013. In total we held semi-structured interviews with 39 unreturnable migrants, based on a common questionnaire.

The semi-structured interviews gave the interviewees freedom to explain their stories and express their views and thoughts on their situation. Given the vulnerabilities of the interviewees, interviews were held at a time and in a format that suited them: some interviews took place over several days, and we made clear that interviewees could change their mind about participation at any time.

The use of a common questionnaire made it possible to compare the stories. We asked about the situation the interviewee was living in, the impact of detention and the impact of their unstable status on their lives. Why were they unreturnable and what were the consequences of this unreturnability? What were their dreams and perspectives?

Twenty of these stories are included in this report and are available on the website [www.pointofnoretturn.eu](http://www.pointofnoretturn.eu). These stories were selected as powerful examples highlighting the range of issues encountered. In some cases pseudonyms have been used to guarantee the person's privacy.

This report contains analysis of these interviews and their common themes. We considered the testimony alongside information from interviewees' case files, where it was possible to access them.

On the basis of this analysis, we have formulated recommendations, directed, on the one hand, to EU member states and, on the other hand, to EU institutions and agencies.

## Interview formats in the four countries

Owing to the different circumstances of the interviewees in the four countries, the ways in which the interviews were held varied.

Flemish Refugee Action is a coordinating partner of the consortium of official accredited NGOs visiting the detention centres. The monitoring of these visits was used to identify unreturnable migrants. As recorded interviews are not possible inside the detention centres in Belgium, the researcher always had to wait until people were released. Release also makes it clearer that the person could not be removed. As unreturnable migrants often lack stability, it was not easy to meet with them again. Some interviews were attended by relatives or friends.

In France, out of the sixteen identified unreturnable migrants, nine people agreed to be interviewed. Here, several of the interviews were conducted in the detention centre while the person was still detained. The majority of interviews were conducted after their release, either at the headquarters of France terre d'asile in Paris for people living nearby, or over the telephone for people living in another region. All of them had been detained in one of the four immigration detention centres where France terre d'asile has an office.<sup>98</sup>

In the UK all interviewees were held in immigration detention, and were clients of Detention Action. Six were held in Colnbrook Immigration Removal Centre, and four were held in Harmondsworth Immigration Removal Centre. Both centres are situated just outside the perimeter of Heathrow Airport, west London. Case notes were reviewed in the selection of potential participants, in order to check whether they met the criteria. Consideration was also given to whether potential participants had relationships of sufficient trust with the organisation to allow discussion of the research by telephone. People in distress or mental health crisis at the time of the interviewees were not asked to participate, for ethical reasons. It was not possible to interview migrants detained in prisons, as they are not permitted access to telephones. Interviews were conducted over the telephone by Detention Action staff members and volunteers.

In Hungary, interviewees were selected with the assistance of Menedék – Hungarian Association for Migrants' social workers, who helped to review each case. Some of the potential interviewees were still being detained in a detention centre, and some were residing in a special shelter for unreturnable and undetainable foreigners, having served the maximum possible time set by the law in detention. Official permission therefore had to be obtained before the field work started from the Alien Policing Department of National Police (in the case of detention centre) and from the Alien Policing Directorate of the Office of Immigration and Nationality (for the detention centre and shelter), to allow the researchers to enter and undertake research in both places.

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98 IDC's of Coquelles, Plaisir, Palaiseau, Rouen-Oissel.

## Annex 2: The interviewees

### In Belgium

**HAGOP**, 29, from Turkey (pages 70–71)

***“I don’t want to live illegally anymore, I’m fed up. I just want to go back to Turkey. Release me? Forget it. I do not want to leave until you either send me back or resolve my problems”***

16 years in Belgium

Still undocumented and unreturnable for administrative reasons

**BOBAN**, 33, from Macedonia (pages 25–26)

***“I wouldn’t wish this kind of life on my worst enemy”***

8 years in Belgium

Still undocumented and unreturnable because he is stateless

**TAREQ**, 27, from Iraq (pages 19–20)

***“Locked up or on the streets – there’s no difference”***

6 years in Belgium

Still undocumented and unreturnable for administrative reasons

**MARIE**, 39, from Democratic Republic of Congo (pages 41–42)

***“I’d rather suffer in the cold than be sent back to a detention centre without my son”***

12 years in Belgium

Still undocumented and unreturnable due to family ties

**LALA**, 50, from Armenia (pages 48–49)

***“I was told that I would never make it to Armenia, that I would die on the way”***

9 years in Belgium

Still undocumented and unreturnable for medical reasons

### In France

**MICHEL**, 31, from Burundi (pages 13–14)

***“Because of the impossible situation I’m in, my life has been put on hold”***

13 years in France

Still undocumented and unreturnable for administrative reasons

**TIDIANE**, 16, from Mali (pages 38–39)

***“I was having breakfast when about 15 policemen came in with dogs”***

1 year in France

Undocumented and unreturnable because of risk of inhuman and degrading treatment.

**MUHAMMAD**, 32, from Iran (pages 59–60)

***“My situation is hopeless. The disease that I caught here in France is slowly killing me, but there’s nothing I can do about it”***

3 years in France.

Still undocumented and unreturnable because of administrative reasons

**MARIAN**, 44, from Moldova (pages 45–46)

***“Staying in France can guarantee me a longer life. In Moldova I would have died years ago”***

11 years in France

Still undocumented and unreturnable for medical reasons.

**BETTY**, 43, from Ghana (pages 63–64)

***“I was transferred to a detention centre in order to be sent back to Ghana, but was told my children would be staying in France. I was so upset”***

20 years in France

Still undocumented and unreturnable because of administrative reasons

## In Hungary

**REHAN**, 22, from Afghanistan (pages 21–22)

***“This pain remains in my heart forever”***

2 years in Hungary

Still undocumented and unreturnable for administrative reasons

**MICHAEL**, 35, from Nigeria (pages 77–78)

***“This situation is devil. I would go back, because it was better for me to go home”***

12 years in Hungary.

Still undocumented and unreturnable for administrative reasons

**DAVID**, 33, from Sierra Leone (pages 67–68)

***“I am hopeful. I think it’s just a matter of time before the government decides to let me stay, because I don’t have anywhere else to go”***

13 years in Hungary

Still undocumented and unreturnable for administrative reasons

**MAZIM**, 29, from Iraq (pages 73–74)

***“My mind is blocked here inside”***

2 years in Hungary

Still undocumented and unreturnable for administrative reasons

**KAMBALE**, 44, from Angola (pages 15–16)

***“Now, it has been for 12 years, and I still couldn’t find my place”***

12 years in Hungary

Still undocumented and unreturnable for administrative reasons

## In the UK

**MUKTAR**, 26, from Somalia (pages 81–82)

***“I left Somalia when I was eight years old”***

15 years in the UK

Still undocumented and unreturnable because of risk of torture and inhuman and degrading treatment

**ABDUL**, 30, from Burma (pages 29–30)

***“From the beginning, nothing was clear to me”***

13 years in the UK

Still undocumented and unreturnable because of statelessness

**JACOB**, 34, from Somalia (pages 34–35)

***“I could see black smoke all over the place, I could see soldiers and artillery”***

20 years in the UK

Still undocumented and unreturnable for risk violation art 3 ECHR

**ABDAL**, 30, from Sudan (pages 51–52)

***“Seven reports from seven different doctors, all of them come to one conclusion”***

12 years in the UK

Still undocumented and unreturnable for administrative reasons

**UNCLE**, 59, from the Gambia (pages 55–56)

***“Brothers, nephews, nieces, all British”***

20 years in the UK

Still undocumented and unreturnable for administrative reasons

## Annex 3: Recommended literature

Country sheets on “The detention of migrants” in Belgium, France, the UK and Hungary at [www.pointofnoretturn.eu](http://www.pointofnoretturn.eu)

Fact sheet: *Unreturnable migrants in detention in EU law and policy* is available in at [www.pointofnoretturn.eu](http://www.pointofnoretturn.eu)

*Als Terugkeer niet mogelijk is. Over beleid en praktijk van “buitenschuld”*, Vluchtelingenwerk Nederland, September 2013.

*Asylum camp limbo, a report about obstacles to deportation*, Refugees Welcome /The Committee for Underground Refugees Denmark, 2011.

*Becoming Vulnerable in Detention. Civil Society report on the detention of vulnerable asylum seekers and irregular migrants in the European Union* (The Devas Project), JRS-Europe, June 2010.

*Deportation, non-deportability and ideas of membership*, Refugee Studies Centre, University of Oxford, July 2010.

*Detained lives: the real cost of indefinite immigration detention*, Detention Action, January 2009

*Detention of third-country nationals in return procedures*, Fundamental Rights Agency (FRA), 2010

*Fundamental rights of migrants in an irregular situation*, FRA, 2011

*Guidelines on detention*, UNHCR, 2012.

*Guidelines to protect stateless persons from arbitrary detention*, Equal Rights Trust, June 2012.

*Hungary, as a country of asylum. Observations on the situation of asylum-seekers and refugees in Hungary*, UNHCR, April 2012

*Identification des demandeurs d'asile. Pratiques et défis en Belgique*, Étude ciblée du Point de Contact National belge du Réseau européen des migrations (REM), septembre 2012.

*Immigration Detention. Penal regime or step towards deportation? About respecting human rights in immigration detention*, Dutch Ombudsman, 2012.

*Los centros de internamiento de extranjeros en españa: Origen, funcionamiento e implicaciones jurídico-sociales*, Barcelona Centre for international affairs, octubre 2012.

*Mapping statelessness in Belgium*, UNHCR, 2013.

*Mapping Statelessness in the Netherlands*, UNHCR, 2012

*Mapping Statelessness in the UK*, UNHCR, 2011

- No way out, no way in, Irregular migrant children and families in the UK*, Research Report, May 2012.
- Ombuds report of the commissioner for Fundamental rights*, Hungary, August 2012.
- Rapport 2010 – centres et locaux de rétention administrative*, ASSFAM, Forum réfugiés-Cosi, France terre d'asile, La Cimade, Ordre de Malte France
- Rapport 2011 – centres et locaux de rétention administrative*, ASSFAM, Forum réfugiés-Cosi, France terre d'asile, La Cimade, Ordre de Malte France
- Rapport 2012 – centres et locaux de rétention administrative*, ASSFAM, Forum réfugiés-Cosi, France terre d'asile, La Cimade, Ordre de Malte France
- Practical Measures to Reduce Irregular Migration*, European Migration Network, October 2012.
- Study on the situation of third-country nationals pending return/removal in the EU Member States and the Schengen Associated Countries*, Executive Summary, Ramboll for the European Commission, January 2013.
- Unraveling Anomaly, Detention, Discrimination and the protection needs of stateless persons*, The Equal Rights Trust, 2010.
- Vreemdelingenbewaring of een lichter middel? Advies over de besluitvorming bij in bewaringstelling van vreemdelingen*, Adviescommissie voor Vreemdelingenzaken, Augustus 2013.
- La rétention administrative des étrangers : entre efficacité et protection*, Olivier LECUCQ, L'Harmattan, Paris, 2011.
- L'internement administratif des étrangers en situation irrégulière*, Solène CLEMENT, retour en haut de page L'Harmattan, Paris, 2011.

