

# Briefing: Indefinite detention and deportation to Somalia



September 2013

## Summary

Hundreds of people from Somalia have been indefinitely detained under immigration powers in the UK. Having fled a war-torn country in which human rights abuses are endemic, often as children, they have spent years in the UK, becoming part of their local communities. Many are British but for one piece of paperwork. Somalia has been so dangerous for many years that both the European Court of Human Rights and the UK courts have ruled that it is not safe or lawful for the vast majority to be returned there. However, the UK and other EU states have recently begun to explore restarting forced deportations to what is still one of the most dangerous countries in the world. A recent judgment from the European Court of Human Rights that the security situation has improved may well give momentum to this drive,<sup>1</sup> despite warnings from observers like the United Nations High Commissioner for Refugees (UNHCR) that it is still too dangerous.

For many years, the dangers of return have meant that people cannot generally be deported to Somalia. Nevertheless, the Home Office has persisted in detaining them. Immigration detention is supposed to be for the purposes of removal, but where deportation is impossible, Somali people have spent years detained indefinitely in high-security centres. The majority have eventually been released, often after the courts have found their detention to be unlawful. The impact on their lives has often been devastating.

## Somalia: too dangerous for return

Somalia has suffered over two decades of conflict and the collapse of the state since the fall of the Siad Barre regime. It has a terrible human rights record. This year, it has been described as one of the “worst of the worst” countries with the lowest standards of political rights and civil liberties.<sup>2</sup> The Foreign and Commonwealth Office advises against all travel to Somalia. The UNHCR has reported nearly 1.5 million internally displaced persons within Somalia and nearly as many refugees and asylum-seekers who have fled the country.<sup>3</sup> Most live in refugee camps across the border in Kenya. Some make it to Europe and to the UK.



However, despite this background, with some improvements to the security situation, European countries are starting once again to try to return people to Somalia. Denmark, the Netherlands and Norway have all attempted to forcibly remove people since December 2012, although this is being challenged in the courts. Fears that the UK may be reviewing their policy have been exacerbated with the publication of new guidance for Home Office officials in September.<sup>4</sup> Amnesty International believes that the improvements in security are “fragile and volatile”, and it warns that “conditions in Somalia are not conducive to safe or sustainable return”.<sup>5</sup> The UNHCR concludes that “the vast majority of Somalis in exile are still in need of asylum” as conditions are not yet safe for a large-scale repatriation.<sup>6</sup>

<sup>1</sup> *K.A.B. v Sweden*, Application No 886/11, 5 September 2013

<sup>2</sup> *Freedom in the World 2013*, Freedom House, 2013

<sup>3</sup> *UNHCR Statistical Snapshot 2012*, accessed 07/09/2013, <http://www.unhcr.org/pages/49e483ad6.html>. 1,356,845 IDPs and 1,107,879 refugees and asylum-seekers.

<sup>4</sup> *Somalia Operational Guidance Note, v24.0*, September 2013, accessed 18/09/13, <http://www.refworld.org/docid/522733429.html>

<sup>5</sup> Amnesty International, Public Statement, AFR 52/008/2013, 15 May 2013

<sup>6</sup> UNHCR, 9 July 2013, Visit of UNHCR to Mogadishu, quoted in dissenting opinion in *K.A.B. v Sweden*

While there has never been a blanket ban on returns, the courts found in 2011 that there is a general risk of breaches of human rights due to indiscriminate violence (Article 15c) and that the great majority of the population would be at risk of ill-treatment (Article 3).<sup>7</sup> In *Sufi and Elmi*, the European Court of Human Rights found that the level of violence in Mogadishu is of sufficient intensity to pose a real risk of inhuman and degrading treatment for the vast majority of people who are not exceptionally well connected.<sup>8</sup> The Home Office agreed to reconsider applicants' asylum claims. This outcome followed years of legal arguments in the UK courts and the European Court of Human Rights, as the government fought hard to return people. Since then, states' attempts to remove people to Somalia have been suspended by the European Court of Human Rights, as well as domestic courts in Denmark and the Netherlands.

However, in September 2013, the European Court of Human Rights found that "available country information does not indicate that the situation is, at present, of such a nature as to place everyone who is present in [Mogadishu] at a real risk of [inhuman and degrading] treatment".<sup>9</sup> Two judges disagreed with the decision. The judgment is yet to become final, and the suspension of removals remains in force at present. It seems possible that we will return to a situation of Somalis waiting for months or years in detention for decisions.

## The experience of Somalis in detention in the UK

### Living in the UK: "I've lived in London all my life"

Detention Action's research shows that the majority of Somalis in detention came to the UK as children, spending their formative years in this country. 61% of the 84 Somali people we have supported in the last eight years were children when they arrived in the UK. Over one third of our clients spent more of their lives in the UK than outside the country before they were detained. Having fled Somalia with their families or alone, they have grown up here, attending school, making friends, becoming part of their local communities. Some have worked and paid taxes in this country. Some have married and have children here.

*"I moved to Leeds with my mum about 10 years ago. 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 felt good about it, because I was helping people. I went to school, I worked a couple of jobs. I studied electric installation at college." Mohammed*

Our clients often tell us of their shock at discovering that the Home Office wants to send them back to a country of birth with which they have little connection, having always thought of themselves as British.

*"My whole family lives here in the UK, my Mum, my sisters, my brothers, everyone I know is in the UK. I see Harrow as my home town. My mum come and see me about two months ago, I told her not to come down here because she was shocked, she had to come through four gates, the whole experience." Adam*

However, while they may have indefinite leave to remain in the UK, they do not always become British citizens. Paperwork goes missing, parents misunderstand immigration rules or are badly advised, or a young person simply never has the opportunity to travel outside the UK so a passport seems irrelevant. Without the protection of British citizenship, they remain vulnerable to deportation if they are given a criminal sentence.

*"I came from Somalia when I was ten years old. The rest of my family have all got British passports, except me. The reason I don't have a passport is when I was young I was taken into care." Adam*

Even those who have not grown up here have often spent years trying to build a life in the UK, where their fragile immigration status means that it is one small step from being part of the community to living on the margins of society.

*"I wanted to study interior design at St Martin's College and I thought I could make something of my life.*

<sup>7</sup> *AMM (Somalia)* CG [2011] UKUT 00445 (IAC)

<sup>8</sup> *Sufi and Elmi v UK* (Applications nos. 8319/07 and 11449/07, 28 June 2011)

<sup>9</sup> *K.A.B. v Sweden*

*But then after a year they refused to extend [my leave to remain] so I couldn't work or study anymore. That's when everything began to go wrong. I was sent to prison for shoplifting." Abdullah*

### Removal to Somalia: "It would be signing my own death warrant"

The risk of return is all too familiar to people in detention. They have told us about their traumatic experiences in Somalia and their fears about being sent back there.

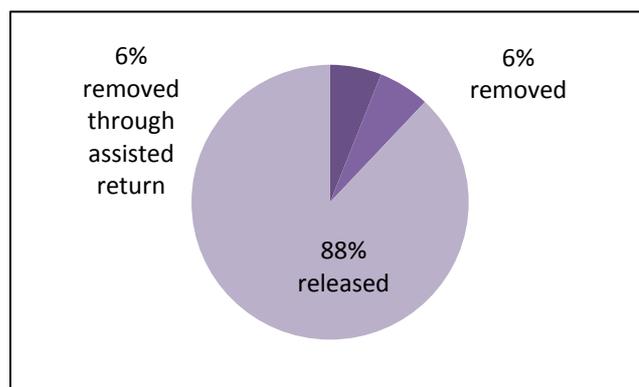
*"It would be signing my own death warrant. If I landed today, the people would know straight away I'm not from there. I don't speak the language that well." Adam*

*"Sometimes I have trouble sleeping, especially when I watch the 10 o'clock news." Mohammed*

## The indefinite detention of Somalis

Many Somalis spend years in high-security detention centres because they cannot be removed. 88% of Detention Action's clients were released into the community, rather than returned to Somalia.<sup>10</sup> Their detention served no purpose.

59% were held for one year or longer before being released. 20% were held for three years or longer. Not only was their detention pointless, but it was also very expensive. Research has shown that £76 million per year is wasted by detaining migrants who are ultimately released.<sup>11</sup>



### Unlawful detention

The long-term detention of Somalis has frequently been found to be unlawful by the High Court. In 2009, Mr Justice Charles found that it was unlikely that a Somali migrant known as MM could be deported within 18 months. Describing the length of time that migrants could be detained as "like elastic", he declared "enough is enough, the elastic has broken".<sup>12</sup>

| Period detained before release | Number of people | Percentage of total |
|--------------------------------|------------------|---------------------|
| Less than 1 year               | 18               | 41%                 |
| 1 to 2 years                   | 11               | 25%                 |
| 2 to 3 years                   | 6                | 14%                 |
| 3 to 4 years                   | 8                | 18%                 |
| 4 to 5 years                   | 0                | 0%                  |
| More than 5 years              | 1                | 2%                  |

Leading solicitors maintain that many Somalis could take action against the government because their detention may be unlawful. Jane Ryan of Bhatt Murphy Solicitors argues that "there are clearly very strong arguments to make concerning the lawfulness of detention". Any claim for unlawful detention depends on the particular facts of the case, and the High Court does not always find the detention of Somalis to be unlawful.<sup>13</sup> However, particularly after the decision in *Sufi and Elmi*, Ryan believes that "it would be extremely difficult for the Secretary of State to establish that there was sufficient prospect of removal to Mogadishu within a reasonable time and to establish that removal would be compatible with the European Convention on Human

<sup>10</sup> 44 of 50 case files where there is a full set of data available. This figure does not include 13 people who were transferred to other detention centres as the outcome of their case is unknown. We researched case files for our Somali clients between June 2005 and June 2013.<sup>10</sup> In total, we analysed 84 files, with a full set of data available from 50 files. We interviewed Somali clients currently in detention and those who have subsequently been released. We reviewed recent case law and a leading practitioner provided detailed advice on the lawfulness of the removal and detention of Somalis.

<sup>11</sup> *An economic analysis of alternatives to long-term detention*, Matrix Evidence, January 2012

<sup>12</sup> *MM* [2009] EWHC 2353 (Admin), High Court of Justice Queen's Bench Division, 22 July 2009

<sup>13</sup> The Court of Appeal in *R (Muqtaar) v SSHD* [2012] EWCA Civ 1270 found that the detention of a Somali national for 41 months was lawful (all the detention bar the final two weeks was prior to *Sufi and Elmi*).

Rights, i.e. the circumstances in Somalia are such that removal would breach human rights and thus could not lawfully be done.”

### The human impact of indefinite detention: “I will never forget this place”

The testimony of Detention Action’s Somali clients makes clear the devastating human impact of long-term immigration detention.

*“I am losing confidence and am very lonely. I am always in my room alone, painting when I can get the materials.” Abdullah*

Many Somalis have told us that they experience their detention as a double punishment, often far worse than their original prison term.

*“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.” Mohammed*

HM Inspectorate of Prisons (HMIP) has criticised the prison-like conditions of high security detention centres, designed for short stays but commonly used for long periods.<sup>14</sup> In fact, many Somalis tell us that immigration detention is more difficult than prison, largely because of the lack of time limit in immigration detention. They do not know if and when they will be released.

*“I’ve stayed this long in detention. Two years of my life have been taken, if this is to show me or to teach me a lesson, it has to be enough. I want to be free once more. All I want is to live life and have a family and do the things that the other people do. I pray to God that this will come to finish and I will have my freedom one day, and walk on the streets as a free man.” Mohammed*

## Recommendations

- States should not forcibly return people to Somalia, while security concerns and human rights abuses continue.
- While the situation remains too dangerous for returns, people from Somalia should be granted leave to remain.
- People from Somalia should not be detained under immigration powers. Instead, while their immigration cases are pending, Somalis should be accommodated and supported in the community.
- The government must introduce a time limit on immigration detention.

## Take action

Write to your MP enclosing this briefing and asking them to ask the Immigration Minister to implement a time limit on immigration detention. See [www.detentionaction.org.uk/timelimit](http://www.detentionaction.org.uk/timelimit).

## Detention Action

Detention Action is a registered charity that supports migrants in immigration detention in London and campaigns at a national level for change.

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<sup>14</sup> For example, in its *Report on an announced inspection of Harmondsworth IRC, 14-25 November 2011*, and its *Report on an unannounced full follow-up inspection of Colnbrook IRC, 16-27 August 2010*.