



The Equal Rights Trust

126 North End Road
London W14 9PP
United Kingdom

Tel.: +44 (0) 20 7610 2786
Fax: +44 (0) 20 3441 7436
info@equalrightstrust.org
www.equalrightstrust.org

Board of Directors

Bob Hepple (Chair)
Sue Ashtiany
Tapan Kumar Bose
Hywel Ceri-Jones
Sonia Correa
Asma Khader
Claire L'Heureux-Dubé
Gay McDougall
Bob Niven
Kate O'Regan
Michael Rubenstein
Stephen Sedley
Theodore Shaw
Sylvia Tamale

The Equal Rights Trust
is a company limited by
guarantee incorporated in
England and a registered
charity. Company number
5559173. Charity number
1113288.

Dimitrina Petrova
Executive Director

The Equal Rights Trust (ERT)

Stakeholder Submission to the:

Universal Periodic Review of the United Kingdom, 21 November 2011

The Human Rights of Stateless Persons in the United Kingdom

1. The Equal Rights Trust (ERT) is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice.
2. Since May 2008, ERT has been carrying out research and advocacy on the human rights of stateless persons around the world, including in the United Kingdom. Over this period, ERT has developed strong links with other UK NGOs, which have also provided information for ERT to use in this submission.¹
3. In this submission, ERT highlights some of the most significant concerns and challenges with regard to the human rights of stateless persons in the UK:
 - a. The lack of a statelessness determination procedure in the UK.
 - b. Immigration detention practices which do not take into consideration the unique context of statelessness.
 - c. Other human rights concerns, including enjoyment of socio-economic rights.

It is our view that the failure of the UK to systematically identify stateless persons subject to its jurisdiction, and the consequent failure of the UK to respect, protect and fulfil the rights of such persons under all aspects of its law and policy including in the exercise of immigration control, amounts to the violation of its international human rights obligations as well as its obligations under the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention).²

The international law obligations of the United Kingdom

4. The UK has ratified many international human rights treaties including:
 - a. International Covenant on Civil and Political Rights (ICCPR);
 - b. International Covenant on Economic, Social and Cultural Rights (ICESCR); International Convention on the Elimination of all forms of Racial Discrimination (CERD);
 - c. Convention on the Elimination of all forms of Discrimination Against Women (CEDAW);
 - d. Convention on the Rights of the Child (CRC);
 - e. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and
 - f. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW).
5. The UK is also party to the European Convention on Human Rights (ECHR).³ Consequently, the UK has certain human rights obligations towards stateless persons within its territory and subject to its jurisdiction. ERT notes in particular that serious issues exist in respect to the right to a nationality,⁴ the rights to equality and non-discrimination,⁵ the right to freedom from torture, cruel, inhuman or

¹ ERT is particularly grateful to Asylum Aid (<http://www.asylumaid.org.uk/>) and Detention Action (<http://www.detentionaction.org.uk/files/modules/content/?id=1>) for their input to this submission.

² Convention Relating to the Status of Stateless Persons, ECOSOC RES/526 A(XVII) (1954) (1954 Convention).

³ European Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14 (4 November 1950) (ECHR).

⁴ See, for example, Article 15 of the Universal Declaration of Human Rights, UNGA RES/217A (III) (1948), Article 24 of the ICCPR, and Article 7 of the CRC.

⁵ See, for example, Articles 2(1) and 2(2) of the ICCPR and ICESCR respectively, and Article 26 of the ICCPR.

degrading treatment or punishment,⁶ the right to liberty and freedom from arbitrary arrest and detention,⁷ the right to education,⁸ the right to the highest attainable standard of health,⁹ the right to work and related rights.¹⁰

6. The UK is also party to a number of international treaties relevant to statelessness including the 1954 Convention, the 1961 Convention on the Reduction of Statelessness,¹¹ and the 1951 Convention Relating to the Status of Refugees.¹²

Statelessness within the UK

7. There is no accurate estimate of the total population of stateless persons in the UK. In part this is because the UK does not have a mechanism in place for the identification of stateless persons, and also because UK immigration statistics do not effectively capture the stateless population. In their study *Mapping Statelessness in the United Kingdom*,¹³ UNHCR/Asylum Aid concluded that due to flaws in the way data on stateless persons is recorded and presented “it is currently impossible to provide an accurate estimate of the total number of stateless persons in the UK”.¹⁴ The report identifies various problems in the way stateless persons are recorded and categorised by the UK Border Agency (UKBA), including that nationality categories are “numerous, confused and overlapping” resulting in “significant inconsistencies between a number of important data sets”.¹⁵ Consequently, not only is it impossible to count the stateless population in the country, but it also “increases the risk that some stateless persons are not identified and that, as a result, their protection needs are not met.”¹⁶
8. A *de jure* stateless person is defined under international law as a person “who is not considered as a national by any state under the operation of its law”.¹⁷ A person who cannot access or prove his or her nationality due to legal, administrative, procedural or practical barriers may also be considered *de jure* stateless under international law.¹⁸
9. A person who has a legal nationality which is ineffective - for example, a person who does not benefit from consular or diplomatic protection from his or her country of evident nationality, is considered to be *de facto* stateless.¹⁹ Persons sharing similar characteristics have also been referred to in the UK as “unreturnable” persons.²⁰

⁶ See, for example, CAT in general as well as Article 7 of the ICCPR.

⁷ See, for example, Article 9(1) of the ICCPR.

⁸ See, for example, Article 13 of the ICESCR.

⁹ See, for example, Article 12 of the ICESCR.

¹⁰ See Articles 6, 7 and 8 of the ICESCR.

¹¹ Convention on the Reduction of Statelessness, G.A. Res. 896 (IX) (1961).

¹² Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, Vol. 189, p. 137.

¹³ UNHCR and Asylum Aid, *Mapping Statelessness in the United Kingdom*, November 2011.

¹⁴ *Ibid.*, Executive Summary, Key Finding 1.

¹⁵ *Ibid.*, p. 58.

¹⁶ *Ibid.*, p. 7.

¹⁷ See above, note 2, Article 1(1).

¹⁸ See UN High Commissioner for Refugees, *Expert Meeting - The Concept of Stateless Persons under International Law (Summary Conclusions)*, 2010 (UNHCR Prato Expert Meeting), Para 8 – 21, available at: <http://www.unhcr.org/refworld/docid/4ca1ae002.html>.

¹⁹ *Ibid.* See also The Equal Rights Trust, *Unravelling Anomaly: Detention, Discrimination and the Protection Needs of*

10. Despite the lack of statistical information, our work in the UK and that of our partner organisations has led us to conclude that there are many *de jure* and *de facto* stateless persons in the UK who face significant human rights problems that must be addressed as a matter of urgency.

The lack of a statelessness determination procedure

11. One of the prerequisites to protecting stateless persons and ensuring their human rights is identifying them as stateless. This obligation is implicit to the 1954 Convention,²¹ and the UK has failed in this regard.
12. The failure to identify *de jure* and *de facto* stateless persons has resulted in a situation where they are subject to various human rights violations including lengthy and at times indefinite detention pending removal from the UK, which is arbitrary and in violation of the UK's human rights obligations. Other violations include enforced destitution, violations of the right to privacy and family life, and of the right to work.
13. The following edited extract of a case study taken from the UNHCR/Asylum Aid report illustrates the multiple human rights violations that can arise when statelessness is not identified and acted upon by the authorities:

Derek's story²²

Derek fled the civil war in Liberia in 1999 after his mother was killed, and was brought up in a refugee camp in Nigeria. He was never granted permanent residence or citizenship before travelling hidden in a container ship to the UK, arriving in April 2006 aged 19.

He claimed asylum and was detained in Harmondsworth Immigration Removals Centre, where his claim was considered in the detained fast track procedure. After seven months in immigration detention he was released because his removal could not be effected. The UKBA had received confirmation from both the Liberian and the Nigerian consular authorities that they did not accept Derek as a national. Each asserted that he was a national of the other country. Since then, no new evidence has come to light that either Liberia or Nigeria would be willing to treat him as a national, despite the fact that UK Border Agency officials continue to submit requests for him to be issued with an emergency travel document.

He was, at first, granted section 4 support and accommodation,²³ but this has been stopped on four occasions because it was claimed that he was not cooperating with attempts to remove him. However, Derek applied twice for assisted voluntary return and was told by the International Organisation for Migration that he could not apply again.

Stateless Persons, 2010, available at:

<http://www.equalrightstrust.org/ertdocumentbank/UNRAVELLING%20ANOMALY%20small%20file.pdf>.

²⁰ See above, note 13, p. 14, where a working definition of “unreturnable” persons is provided as those who are “subject to UK immigration law, but cannot return or be returned to any country including, if known, their country of nationality”.

²¹ UN High Commissioner for Refugees, *Expert Meeting - Statelessness Determination Procedures and the Status of Stateless Persons (Summary Conclusions)*, December 2010, Para 1, p. 2, available at <http://www.unhcr.org/refworld/docid/4d9022762.html>.

²² See above, note 13, pp. 117-118, for the full case study. In the report the interviewee is referred to as Derek but this is not his real name.

²³ Support provided to refused asylum seekers under section 4 of the Immigration and Asylum Act 1999.

Derek is in a relationship with a British woman and they have a son together. Derek was dispersed to live in Birmingham and is forced to live apart from them. Derek describes his anxiety to regularise his immigration status in order that he can be a proper father. “My biggest worry is not living with my son. I’m not able to see him the way I want to see him.”

At the time of his interview, Derek was once again facing destitution. His solicitor sent a number of letters to the UKBA making further submissions, including on the basis that he is stateless, but all have been refused. Derek has been in limbo for 52 months.

14. ERT recommends that the UK follow the good practice of France, Hungary, Italy, Mexico and Spain, all of which have statelessness identification procedures in place, and develop an effective, accessible and fair procedure of its own. In this respect, ERT reiterates the recommendation made by UNHCR/Asylum Aid that “[t]he Home Office and UK Border Agency should develop an accessible procedure for identifying stateless persons on the territory in order to meet the UK’s legal obligations under the 1954 and 1961 Conventions and in international human rights law”.²⁴
15. The forthcoming ERT Guidelines on the Identification and Detention of Stateless Persons “elaborate how existing human rights principles relating to detention and non-discrimination, and international law on statelessness apply to the specific challenges of the identification and detention of stateless persons”.²⁵ ERT recommends that the UK should draw from the Guidelines when developing a procedure for the identification of stateless persons, and that the UK should draw on the expertise of the UNHCR for this purpose.
16. Furthermore, ERT recommends that all refused asylum seekers and foreign ex-offenders who are at risk of removal are automatically subject to statelessness identification procedures, to ensure that any stateless persons amongst them are recognised and protected under international law.

The detention of stateless persons

17. One of the most significant concerns with regard to the treatment of stateless persons in the UK is its present immigration detention policy. Stateless persons in the UK – particularly those who are refused asylum seekers or foreign ex-offenders,²⁶ are often subject to immigration detention for the purpose of removal from the UK.
18. Between April 2006 and September 2008, an unpublished policy of the UKBA established a presumption of detention in respect of all foreign ex-offenders. The Supreme Court ruled this to be unlawful.²⁷ Consequently, this policy is no longer applied and the present policy contains some protections for stateless persons.²⁸ However, ERT continues to have concerns over its implementation.

²⁴ See above, note 13, p. 89.

²⁵ The Equal Rights Trust, *Guidelines on the Identification and Detention of Stateless Persons*, forthcoming. For a draft version, see The Equal Rights Trust, “Guidelines on the Detention of Stateless Persons: Consultation Draft”, in *The Equal Rights Review*, Vol. 7, 2011, pp. 105 – 116, available at: http://www.equalrightstrust.org/ertdocumentbank/ERR7_guidelines%20draft.pdf.

²⁶ The UKBA refers to foreign ex-offenders as “Foreign National Prisoners” or “FNP’s”.

²⁷ *Lumba (WL) v Secretary of State for the Home Department* [2011] UKSC 12.

²⁸ See above, note 13, p. 109, for a more detailed examination of the situation.

19. It is ERT's view that no adequate consideration of stateless status (*de jure* or *de facto*) is taken by the authorities at the time a decision to detain is made. The failure to identify statelessness at this stage, and consequently the failure to establish with due diligence whether the individual is removable within a reasonable period of time, and in compliance with the principle of *non refoulement* and other human rights principles, all can lead to arbitrary detention.
20. The UK has opted out of the European Return Directive which establishes a six month maximum time limit for immigration detention.²⁹ Consequently, the UK is one of the very few countries in Europe which do not observe a maximum time limit for immigration detention. This, coupled with the failure of the UK to identify stateless persons within the immigration detention system, places the stateless at heightened risk of indefinite detention.
21. On 30 June 2011 there were 2685 people detained in immigration detention facilities. 217 people had been detained for more than one year and 74 had been detained for more than two years.³⁰ There is no record of how many are *de jure* or *de facto* stateless.
22. These immigration statistics do not include detainees who are held in prison, as opposed to Immigration Removal Centres (IRC), after the end of their sentences. They also calculate the length of detention from the time of entry into IRC and do not include the time spent as immigration detainees in prison before transfer to an IRC. This has led Detention Action to claim that "UKBA statistics on lengths of detention are at best misleading, and at worst present a picture that is simply false".³¹
23. A study by Detention Action, which monitored 167 cases of indefinite detention over several years, found that "if deportation has not been possible after a year, continued detention is unlikely to make it become possible". Of this sample group, only one third were successfully deported. The average period of immigration detention across the whole sample group was 24 months.³²
24. UNHCR/Asylum Aid's recent study found that one third of the stateless and "unreturnable" research participants had spent time in detention under immigration powers. The amount of time ranged from three days to five years.³³
25. The following edited extract of a case study taken from the UNHCR/Asylum Aid report highlights the human rights concerns brought to light through the experience of one such detainee:

²⁹ European Union, *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*, 2008/115/EC, 16 December 2008. This time limit can be extended by a further twelve months in exceptional circumstances and subject to strict controls.

³⁰ Home Office, *Detention Data Tables: Immigration Statistics April 2011- June 2011*, available at: <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-tabs-q2-2011v2/detention-q2-11-tabs>.

³¹ Detention Action, *Indefinite detention in the UK: Length of detention snapshot statistics for 1 June 2009 - Asylum Rights Campaign Detention Sub-Group*, June 2009, available at: <http://www.detainedlives.org/wp-content/uploads/ldsgreport-0609.pdf>.

³² Detention Action, *No Release, No Return, No Reason: Challenging Indefinite Detention*, September 2011, available at: <http://www.ldsg.org.uk/files/uploads/NoReasonReport0910.pdf>.

³³ See above, note 13, p. 104.

Kathem's story³⁴

Kathem was born to Jewish parents in Naseriah, Iraq. According to Kathem he was not recognised as an Iraqi citizen because he was Jewish. When he made enquiries about applying for full citizenship he was told that he was not eligible. When Kathem was 16 his father was arrested and killed by the authorities. Afterwards, Kathem himself came under threat by the authorities. He was forced to flee to the UK on a false document, and claimed asylum in February 2003.

His asylum claim was refused in September 2003, but he was granted exceptional leave to remain for six months. Kathem obtained a job as a machinist and started renting his own flat. His application for extension of leave was refused in August 2004, but notification sent to the wrong address. He only discovered this in 2007. He therefore had no legal entitlement to work and was forced to give up his job, and after exhausting his savings he eventually had no option but to quit his rented accommodation. He applied for section 4 support but was refused. By now destitute, he went to stay with a friend living in Birmingham.

Kathem attempted to leave the UK to make a fresh start in France, but he was arrested in Folkestone for using a false Romanian ID card. He was sentenced to one year in prison, and a deportation order was issued in May 2009. After serving six months, his prison sentence ended, but his detention was continued under immigration powers. He applied for bail, but this was refused at a hearing in April 2010.

Following a bail hearing in November 2010, one year after the end of his prison sentence, Kathem was released from detention and subsequently provided with section 4 support. He remains in limbo. Because of his conviction he is not eligible for regularisation under paragraph 395c of the Immigration Rules.

26. ERT recommends that the UK implements a maximum time limit for immigration detention of no more than six months. ERT also recommends that the UK does not subject stateless persons to immigration detention for purposes of removal.
27. ERT recommends that the UK imposes an “alternatives to detention” regime, to ensure that detention is not arbitrary, and is only pursued as a necessary final resort that is proportionate to the administrative objective at hand.
28. ERT recommends that the UK draws from the ERT Guidelines on the Identification and Detention of Stateless Persons so as to protect the rights of stateless persons and fulfil the UK's obligations under international law.³⁵

Other human rights concerns

29. Stateless persons released from detention remain in a state of legal limbo and are subject to severe restrictions on their enjoyment of human rights. Without the right to work and with limited access to social support, some find themselves destitute, unable to access adequate health care and with barriers to the enjoyment of private and family life.
30. Nearly all stateless persons are excluded from mainstream benefits and employment. Those that have had asylum claims refused may be eligible for section 4 support. Section 4 support amounts to little

³⁴ See *Ibid.*, pp. 115-116, for the full case study. In the report the interviewee is referred to as Kathem but this is not his real name.

³⁵ See above, note 25.

more than 50 per cent of standard income support.³⁶ These lower payments are justified on the basis that they are “short-term”,³⁷ however stateless persons may be in legal limbo for long stretches of time, running into several years. In addition, section 4 support often results in dispersal to different areas in the UK, which can impinge on the private and family lives of stateless persons who may have spent prolonged periods in the UK. To be eligible for section 4 support, failed asylum seekers must be destitute and be taking steps to leave the UK. This second step, in practice, means that they must apply for voluntary assisted return. This policy does not take sufficient account of the situation of stateless persons. In their study, UNHCR/Asylum Aid found that 28 of the 37 participants interviewed had experienced destitution.³⁸

31. In 2003, the Home Affairs Select Committee stated that “where the removal of a failed asylum seeker is delayed through no fault of his own, it is morally unacceptable for him to be rendered destitute [...] We believe it is absurd to refuse leave to remain to people who for whatever reason cannot be removed. We recommend that such people be granted a temporary status which will allow them to support themselves.”³⁹
32. ERT therefore recommends that the UK at all times respects, protects and fulfils the human rights of stateless persons subject to its jurisdiction. ERT specifically recommends that stateless persons are allowed equal access to work, healthcare and education.

³⁶ British Red Cross, *Not Gone, But Forgotten*, June 2010, available at: <http://www.redcross.org.uk/About-us/Our-advocacy-work/~media/BritishRedCross/Documents/About%20us/Not%20gone%20but%20forgotten%20destitution%20report.ashx>.

³⁷ Still Human, Still Here, *Submission to the Committee on Economic, Social and Cultural Rights’ (CESCR) review of the UK, 42nd session, 4-22 May 2009*, p. 2, available at: <http://stillhumanstillhere.wordpress.com/resources/>.

³⁸ See above, note 13, pp.93–102, for a more detailed examination of relevant issues.

³⁹ Select Committee on Home Affairs, *Fourth Report “Summary of Conclusions and Recommendations”*, 2003, available at: <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmhaff/654/65409.htm>.