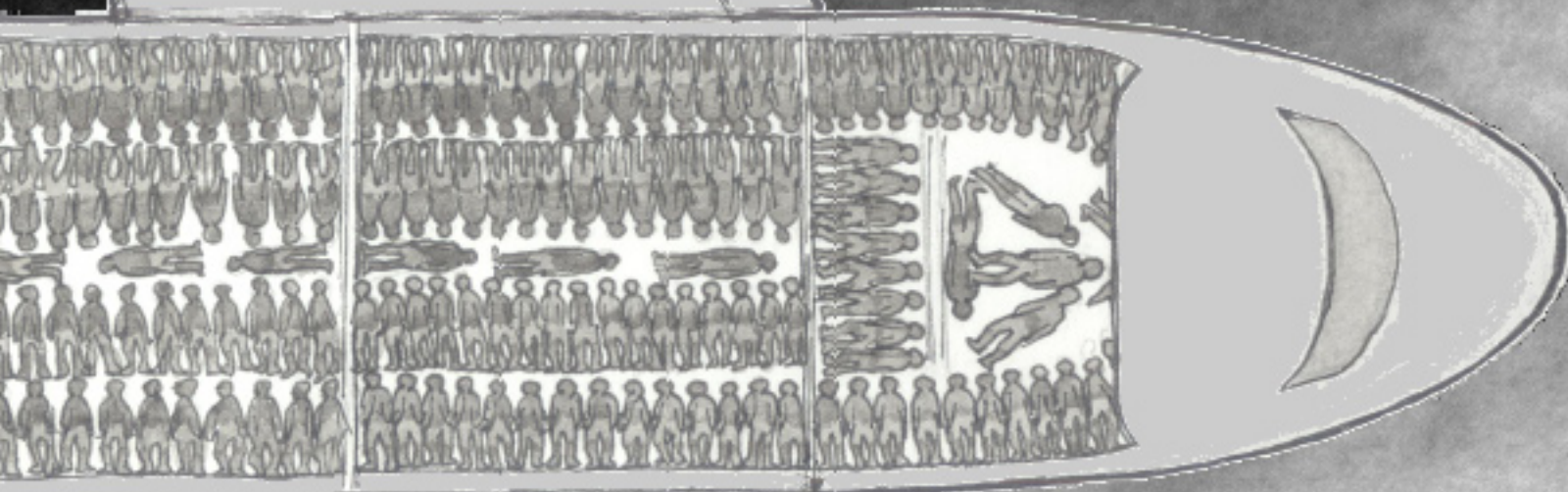


# COLLECTIVE EXPULSION



**The case  
against Britain's  
mass deportation  
charter flights**

Corporate Watch

Timeline of the UK's deportation charter flights programme, 2001-2013

**2011-12: Campaigners blockade detention centres again after charters start to Sri Lanka, Ghana and Pakistan**

**March 2011: First inspection of a charter flight**

**May 2010: Labour loses general election, coalition government formed**

**Charter flights start to Nigeria**

**June 2007: Charter flights start to Jamaica**

**July 2005: Foreign prisoner 'crisis' engulfs Home Secretary Charles Clarke**

**April 2003: Afghanistan charter flights start**

**February 2002: Government launches White Paper 'Secure Borders, Safe Havens'**

**June 2001: Labour govt. targets 2,500 removals per month**

13

11

09

07

05

03

01

**May 2011: G4S loses deportation contract to Reliance**

**March-June 2009: Campaigners blockade 3 detention centres in protest at charter flights**

**October 2007: UK Borders Act passed**

**Charter flights start to Iraq and Iraqi Kurdistan**

**2004: Carlson Wagonlit wins booking contract**

**September 2002: Roma deported to Czech Republic by charter flight**

**March 2001: Charter flights start to Kosovo and Albania**

Authors:  
**Phil Miller,**  
**Stop Deportation**  
**Shiar Youssef,**  
**Corporate Watch**

Illustrations:  
**Oviyan Arts**

Published by:  
**Corporate Watch Co-operative Ltd**  
**London, September 2013**

© 2013 Corporate Watch, under a  
Creative Commons Attribution license  
ISBN 978-1-907738-12-8

Printed by:  
**MWL Print Group**

<b>List of graphs and tables</b>	<b>4</b>
<b>Preface</b>	<b>5</b>
<b>Debunking the Home Office's arguments for mass deportations</b>	<b>6</b>
- <b>The myth of cost-effectiveness</b>	<b>6</b>
- <b>The myth of asylum intake</b>	<b>8</b>
- <b>The myth of foreign national prisoners</b>	<b>12</b>
<b>Ulterior motives</b>	<b>14</b>
- <b>Targets culture</b>	<b>14</b>
- <b>Response to 'disruptive behaviour'</b>	<b>16</b>
- <b>Political motives</b>	<b>17</b>
<b>Are the UK's mass deportation flights lawful?</b>	<b>21</b>
<b>Overbooking and the use of reserves</b>	<b>33</b>
<b>Deportation doctors and monitors</b>	<b>35</b>
<b>Appendices</b>	<b>37</b>
<b>Notes &amp; References</b>	<b>39</b>

## SUBSCRIBE AND SUPPORT

- **Become a 'friend of Corporate Watch'** - a regular subscription of £5 or more per month to receive paper copies of all our publications, via paypal or bank transfer (see below).
- **Become a subscriber** and receive four printed publications a year, including magazines, reports and briefings, for £12.
- **Set up a regular donation** with a standing order to Corporate Watch (see bank details below).
- Alternatively you can give us a small (or big!) **one-off donation** via PayPal, sending us a cheque (payable to Corporate Watch Co operative Ltd) or arranging a bank transfer.

Bank details:

Corporate Watch Co-operative Ltd, Account number: 50108062, Sort code: 08-92-50

Go to [www.corporatewatch.org/support](http://www.corporatewatch.org/support) for more details or  
call 02074260005 or email [contact@corporatewatch.org](mailto:contact@corporatewatch.org)

# List of Graphs and Tables

<b>GRAPH: Cost (in)effectiveness of UKBA charter flight deportation programme 2002-12</b>	<b>6</b>
<b>GRAPH: Asylum applications and enforced removals</b>	<b>8</b>
<b>GRAPH: Asylum applications and charter removals</b>	<b>9</b>
<b>GRAPH: Year-on-year change in asylum applications and removals</b>	<b>9</b>
<b>TABLE: Nationality of asylum applicants and number of removals to that country, in 2004 and 2011</b>	<b>10</b>
<b>GRAPH: Number of Iraqi asylum applicants and removals</b>	<b>11</b>
<b>GRAPH: Number of Afghani asylum applicants and removals</b>	<b>11</b>
<b>TABLE: Afghan prisoners and charter flights</b>	<b>13</b>
<b>TABLE: Cameroonian prisoners and charter flights</b>	<b>13</b>
<b>GRAPH: Number of Jamaican Prisoners in England &amp; Wales 1999-2002</b>	<b>13</b>
<b>TABLE: Are charter flights overbooked?</b>	<b>34</b>

---

# Preface

**T**his report examines the British state's most secretive and draconian immigration controls: mass deportation charter flights. The policy has existed in the shadows for over a decade, evading popular criticism and any meaningful review. Away from the public gaze, using specially chartered aircraft, the immigration authorities try to get rid of as many unwanted migrants as possible.

Indeed, these mass deportation charter flights are becoming the standard method of conducting enforced deportations to a growing list of destination countries. There is now at least one flight a week to 'popular destinations', such as Afghanistan, Pakistan and Nigeria, which are often closely linked to the UK's most controversial foreign policy adventures. Yet, the programme was, and is still being, sold to the public on the basis of unfounded myths and outright lies, which have gone unchallenged for far too long.

The UK Home Office has used specially chartered flights to deport rejected refugees and migrants en masse for 12 years now. The policy was introduced in 2001 ostensibly to save 'taxpayers money' and effect high 'volume removals' of people who refuse to 'cooperate' with the immigration authorities. Officials have also claimed the programme was designed to send a clear message, both to the British public and to migrant communities, that the UK is serious about enforcing its 'tough' immigration policy.

This report examines in detail each of these and other deceptions underpinning the programme and debunks them using previously unpublished data covering the first 10 years of the programme. The sources used range from Freedom of Information requests, statistical analysis of official figures, court cases, government reports and media articles, in addition to case studies based on testimonies from migrants deported on these flights or organisations that worked with them.

Having debunked the myths, the authors then attempt to unravel the 'ulterior motives' behind the UK's deportation charter flights, bringing to light little-known statements by government officials, secretive meetings and dodgy political deals. The motives examined range from a targets culture introduced by Labour and maintained by the current, Conservative-led coalition government, to the political agendas revolving around the UK's foreign policy and its disciplining of migrant diaspora communities.

The next section explores a number of important legal questions concerning mass deportation flights, delving into the murky depths of European and UK case law, international treaties and other legal instruments. Among other things, the authors argue that deportation charter flights constitute a de facto policy of 'collective expulsion' and must, therefore, be prohibited. Even without this argument, a number of procedural issues that can be used to challenge the legality of these flights are also explored in detail. This is followed by two short sections on specific issues with significant legal implications: overbooking and the use of 'reserves', and the more recent use of monitors and doctors on mass deportation flights.

It is important to remember that, unlike deportations on scheduled flights, there are often no commercial and procedural barriers to the exceptional, brutal policies and practices surrounding mass deportation charter flights. There are also no other passengers to witness what happens on these

flights, as some passengers did in the famous case of Jimmy Mubenga, leading to shocking revelations about the use of fatal restraint techniques and racist language. On charter flights, immigration officers and private security guards can get away with virtually anything, as they often do, in order to enforce the government's 'tough' immigration policy. Hence, this report not only calls for the immediate halt of the deportation charters programme on the basis of detailed factual findings and legal arguments, but also challenges different practices and procedures that have been institutionalised or taken for granted during the 12 years of this little-known-about programme.

A note on the language: throughout the report, the authors use the words 'removal' and 'deportation' interchangeably, even though the two terms have different meanings in law and official jargon. 'Administrative removal' is a power enjoyed by normal Home Office immigration case workers who can decide, as they often do, to remove someone from the country after their immigration or asylum claim has been refused. Deportation, on the other hand, is used for foreign national offenders who have been sentenced to a criminal sentence of 12 months or more and are then deported – whether with or without a court order – as a second punishment because they are 'not conducive to the public good'.

The interchangeable use of the two terms, or using 'deportation' for both, is a conscious choice: the authors of the report believe deportation should not be an administrative power or an additional punishment (the latter issue is explored in depth in the section on foreign national prisoners). The same goes for the interchangeable use of immigration prisons, (administrative) detention centres and immigration removal centres (IRCs), as they are officially called now.

In a similar vein, the terms 'migrants' or 'migrants and refugees' are often used by the authors for all types of migrants, unless a legal distinction is necessitated by a specific context. Derogatory, stigmatising and often inaccurate terms, such as 'failed asylum seekers', 'illegal immigrants' and so on, are used by politicians and the media to divide migrants into 'good' and 'bad' ones, legitimate and illegitimate, then demonise and illegalise those who do not fit one of these artificially constructed, politically motivated categories. The authors believe that people choose or are forced to migrate for a wide variety of reasons and should be able to travel and live wherever they want or need to.

Whilst writing this report, the UK Border Agency (UKBA) was split into two separate operational units: Visas & Immigration and Immigration Enforcement. It is the latter that is responsible for most of the policies and practices covered in this report (detention, deportation, etc.). The head of the unit is David Wood, who also features in the report as the previous head of Criminality and Detention within the UKBA.

Thanks are due to Frances Webber, Juliane Heider, Bethan Bowett-Jones, Amanda Sebestyen, Sita Balani and everyone else who helped us with this report, whether by providing information or financial support, reading or commenting. Thanks are also due to the detainees and deportees who shared their tragic experiences with us. It is to them, and all the other migrants and refugees who have faced and will face similar fates, that we dedicate this report.

# Debunking the Home Office's arguments for mass deportations

**E**very time the Home Office, or its UK Border Agency (UKBA), is asked about their mass deportation charter flight programme – whether in parliamentary questions, Freedom of Information requests or press enquiries – they repeat what has become an official mantra:

'Charter flights are used to augment removals by scheduled services. Charters may be used where:

- there is a sizeable pool of individuals to be removed to the same country. In these circumstances, removal by charter flight is more cost effective, reduces pressure on the detention estate and makes more cost and time effective use of escorts;
- asylum intake is high from the country concerned;
- the availability of scheduled flights is not in line with demand either because the scheduled route is infrequent or the carrier limits the number who can be returned per flight;
- there is a significant number of foreign national prisoners [i.e. non-British citizens in UK prisons] awaiting return';
- disruptive behaviour would frustrate attempts to remove by scheduled service.'

The following sections will assess each of these claims and show how the 'evidence' on which they are supposedly based (i.e. official statistics and data) are either distorted, exaggerated, fabricated or simply non-existent.

## The myth of cost-effectiveness

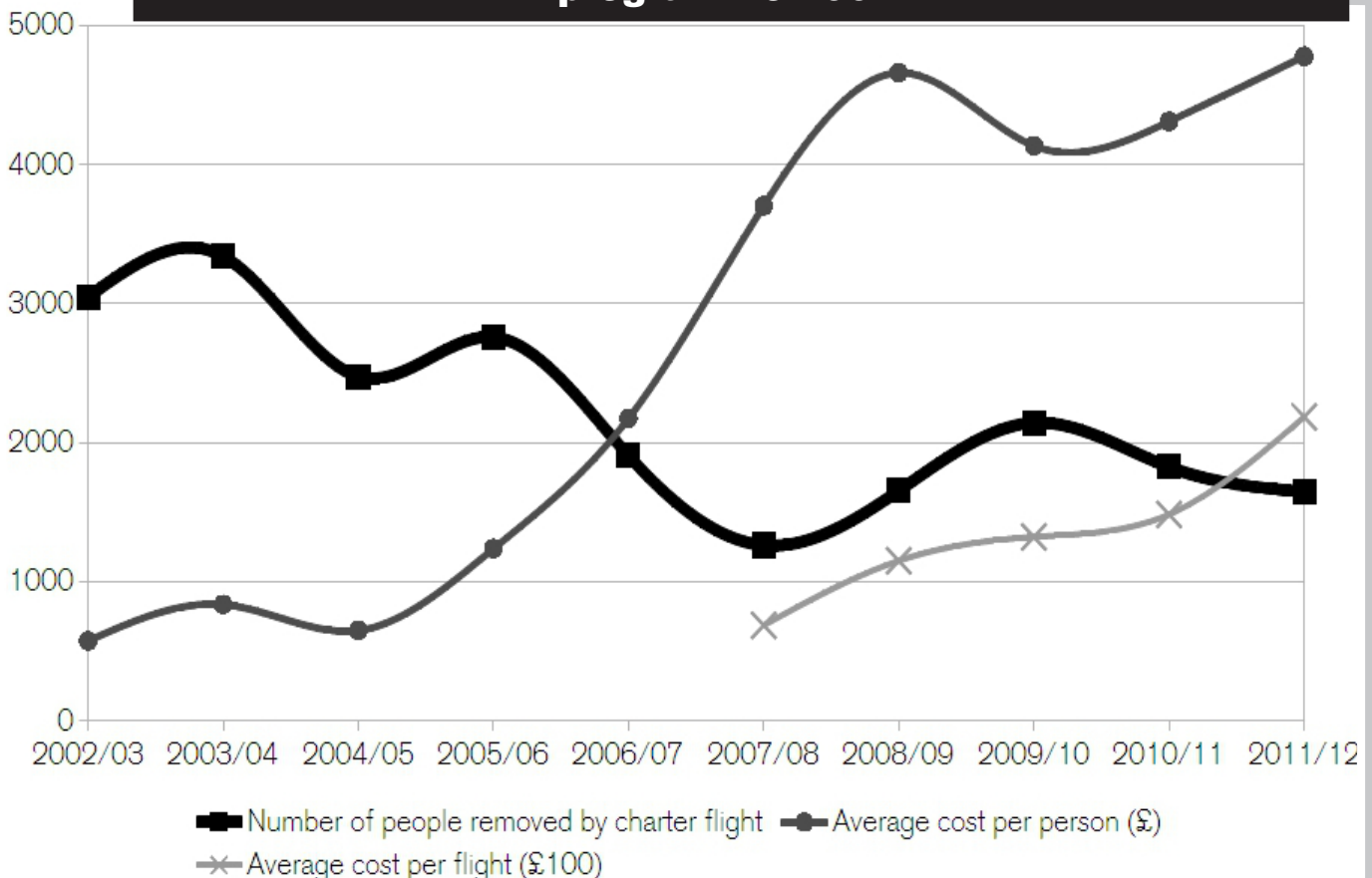
**S**ince the UK government started using specially chartered flights for mass deportation purposes in 2001, the Home Office has always argued that, whenever there is a "sizeable pool of individuals to be removed to the same country, in these circumstances, removal by charter flight is more cost effective, reduces pressure on the detention estate and makes more cost- and time-effective use of escorts."<sup>1</sup>

However, figures obtained under Freedom of Information legislation by the authors show the UK Border Agency's annual expenditure on deportation charter flights increased from £1,752,991 in the financial year 2002/03 to £7,870,209 in 2011/12. At the same time, the annual number of people deported on those flights decreased from 3,048 to 1,647 over the same period.<sup>2</sup>

This means the average cost of deporting one person by charter flight – as opposed to scheduled commercial flights – has steadily increased from £575 in 2002/03 to £4,779 in 2011/12 – that is more than an eight-fold increase. The average cost of a deportation charter flight also rose from £68,796 to £218,617. The graph below illustrates these trends.

The total cost of the programme has exceeded £50 million since 2002 (no data are available for the first year of the programme). Asked how they can explain or justify this increase in the costs of charter flight deportations, a UK Border Agency spokesperson insisted that charter flights "still represent the most cost-effective way of removing large numbers of people."<sup>3</sup>

**Cost (in)effectiveness of UKBA charter flight deportation programme 2002-12**



## LONG HAUL

The UKBA had previously claimed the increased expenditure on charter flights was due to the agency's returning of more people to more long-haul destinations.<sup>4</sup> However, a comparison of the newly released figures with other available data (the number of flights and the number of people deported to each country) reveals that this is simply not true.

In the financial year 2003/04, when the UK started forcible deportations to Afghanistan, 343 people were deported to the war-torn country, at a total cost of £1,259,661. In 2007/08, the figures had risen to 522 and £1,979,740 respectively. In 2011/12, they stood at 829 and £3,874,894. This means the average cost of deporting one person to Afghanistan by charter flight has jumped from £3,614 in 2003 to £4,674 in 2012 – a 29% increase. On a commercial airline, the cost of a one-way ticket from the UK to Afghanistan is between £500 and £700.

Similarly, the cost of deporting one person to Kosovo and Albania by charter flight rose from an average of £544 in 2002/03 (2,404 people deported at a total annual cost of £1,307,111) to £1,927 (221 people at a cost of £425,975) – a staggering 254% increase.

Similar trends can be observed with other destination countries, such as Nigeria (a 121% increase between 2008/9 and 2011/12) and Iraq (a 47% increase between 2008/9 and 2010/11). The table produced in Appendix 2 at the end of this report shows detailed figures for each destination country since 2002.

The other reason that the UKBA has cited to justify the increased expenditure on its charter flight programme is "the general increase in aviation costs over recent years." However, aviation statistics, such as those provided by the UK Civil Aviation Authority,<sup>5</sup> do not seem to support this claim: The average increase in the cost of both scheduled and charter flights over the last decade is significantly less than that of deportation charter flights.

Another UKBA justification for the use of charter flights is that sometimes scheduled flights do not operate on that route. However, one only need do a quick search on the web for (cheap) flights to any of the UK's deportation charter destinations to find tens of airlines that fly there, including British ones. To give a couple of examples, airlines that fly directly from the UK to various Pakistani airports include Airblue, Florida Coastal Airlines and PIA, in addition to scores of airlines that provide indirect flights, including Turkish Airlines, Emirates, Qatar Airways and many others.<sup>6</sup> Airlines that fly directly from the UK to Nigeria include British Airways, Virgin Atlantic and Arik Air, in addition to scores of airlines that provide indirect flights, including Air France, KLM, Lufthansa, Alitalia, Iberia, Kenya Airways, Etihad Airways, Turkish Airlines and many others.<sup>7</sup>

## CASE STUDY

In December 2012, three HM Inspectors of Prisons accompanied a mass deportation flight to Colombo, Sri Lanka. The specially chartered flight only carried 29 deportees, out of an original total of 60 deportees. As is common with charter flights, many deportees do not fly due to last-minute legal challenges. According to the inspection report, the 29 deportees were accompanied by 72 overseas escort staff, a chief immigration officer and three healthcare staff. "Some escorts were stood down [did not board the plane] at the airport," the report said, "but there were still too many staff with little or nothing to do during the removal."<sup>13</sup>

### 'EXCESSIVE CONTRACTOR STAFF'

The UKBA claims that, since charter flights "provide a controlled environment, the ratio of escorts needed per removal on a charter flight is lower than the ratio needed for escorted removal on scheduled flights. Escort costs overall are therefore lower for charter removals."<sup>8</sup>

However, the agency has admitted in a recent parliamentary debate that deportation charter flights often carry twice or three times more immigration officers and private security guards than deportees<sup>9</sup> – which is comparable or greater than the ratios for commercial flights. In 2012, four charter flights had three times more staff than deportees and 15 flights had twice as many. In 2011, the figures were two and 22 flights respectively.<sup>10</sup>

Last year, a parliamentary inquiry into the death of Jimmy Mubenga – who died in October 2010 after being 'restrained' by three G4S 'escorts' during his forcible deportation to Angola on a scheduled British Airways flight – found evidence of "excessive numbers of contractor staff" being used by the agency, to the extent that HM Chief Inspector of Prisons believed that "escort numbers are in some cases detrimental to the removal process."<sup>11</sup> This "excessive numbers of escorts," according to the final report by the House of Commons Home Affairs Committee, "is hard to justify against a background of reduced staffing levels across the public sector."<sup>12</sup>

The UKBA claims that its deportation charter flights programme is "subject to ongoing review, and flight frequency and capacity [are] altered in response to changing demands of UKBA." However, when asked for a copy of these reviews under Freedom of Information legislation, the UKBA's Country Returns Operations and Strategy team (CROS) said: "There are no review documents."<sup>14</sup>

## From G4S to Reliance to Tascor

**In 2010, following the death of Jimmy Mubenga at the hands of three G4S security guards,<sup>15</sup> Reliance Secure Task Management was awarded a four-year, multi-million pound contract with the UKBA to provide 'detainee escort services',<sup>16</sup> replacing G4S. The majority of G4S' escort staff, including the three men responsible for Mubenga's death, were transferred to Reliance in accordance with EU employment regulations. The company was bought up by Capita in August 2012 and renamed Tascor.<sup>17</sup>**

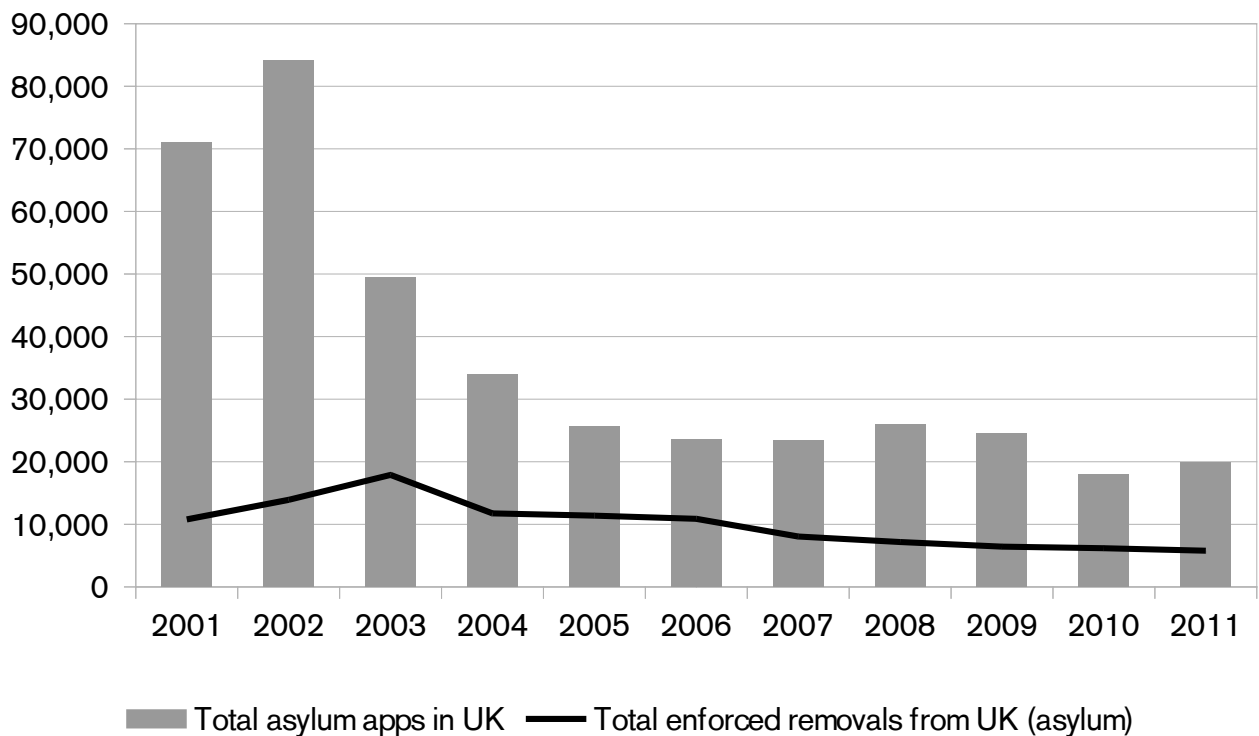
# The myth of asylum intake

Since the UK government started using specially chartered aircraft for mass deportation purposes in 2001, the Home Office has always claimed that these flights provide “a means of delivering volume removals” (i.e. deporting a high number of people) and that one of the reasons to use them for certain destination countries is that “asylum intake is high from the country concerned.”<sup>1</sup> However, a thorough examination of the Home Office’s statistics on asylum applications, enforced removals

and deportation charter flights reveals this claim to be unfounded.<sup>2</sup>

There is some overall correlation between the number of asylum applications and the number of enforced removals. However, a closer look at the figures in each of the first ten years of the charter flights programme (2001 – 2011) reveals years of exception, where asylum applications increased but the number of removals fell – see 2007 – 2009 in the graph below.

## Asylum applications and enforced removals



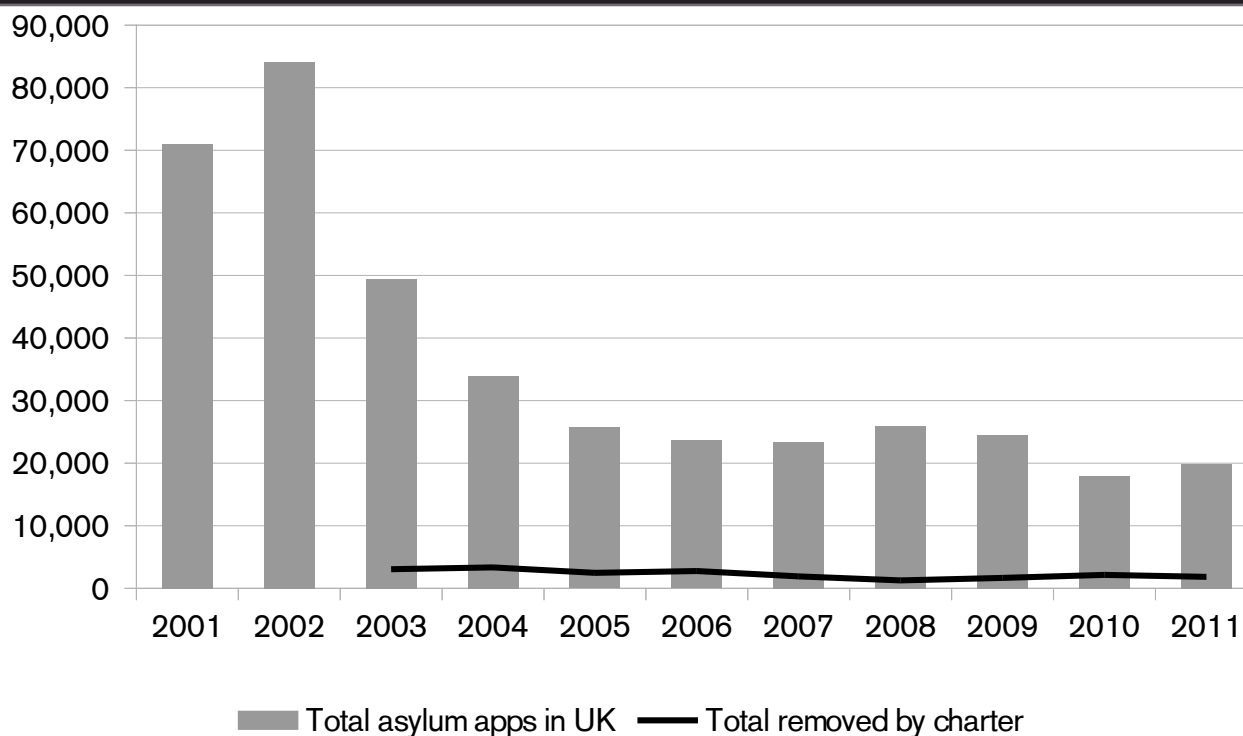
Note also how the line representing enforced removals decreases steadily, which does not seem to correspond to fluctuations in the number of asylum applications. Therefore, this suggests that the government actually uses fixed removal targets rather than hire

flights in accordance with asylum intake. We will be discussing the ‘targets culture’ later in the report.

Charter removals, which make only a fraction of total removals (around 10% on average), show even less correlation.

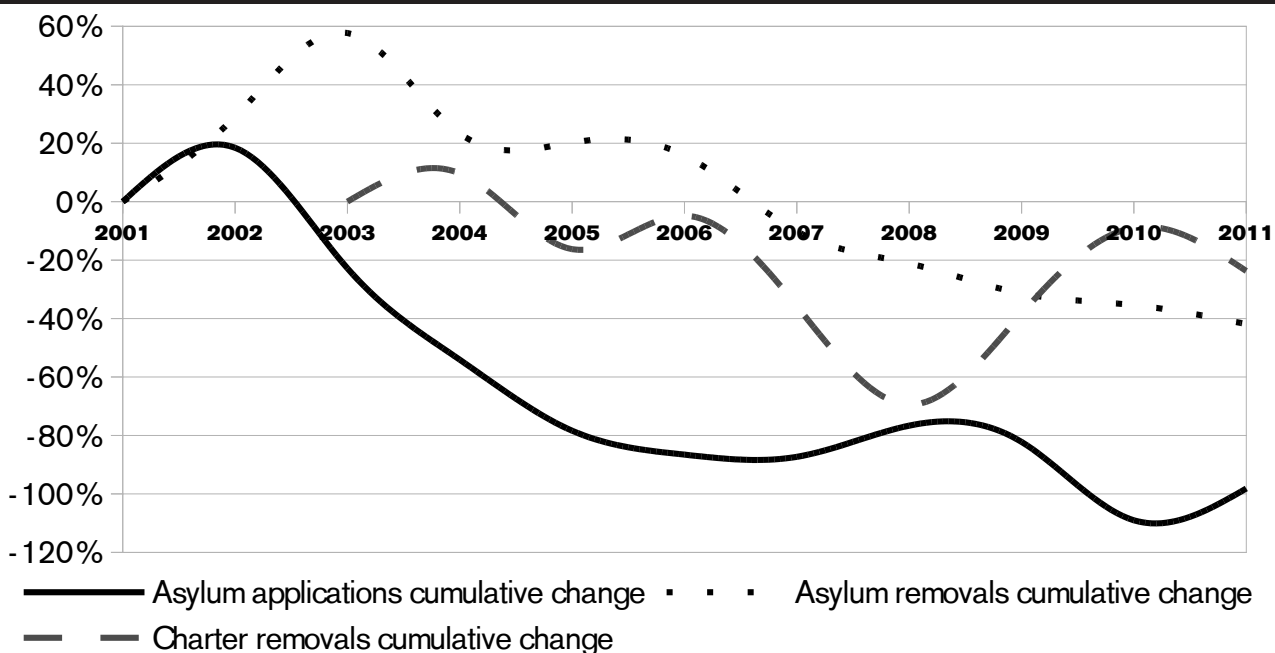


## Asylum applications and charter removals



Again, note the steady line representing charter removals, which does not seem to correspond to changes in the number of asylum applications. To see this more clearly, the graph below shows how each of the three totals changed year on year between 2001 and 2011.

## Year-on-year change



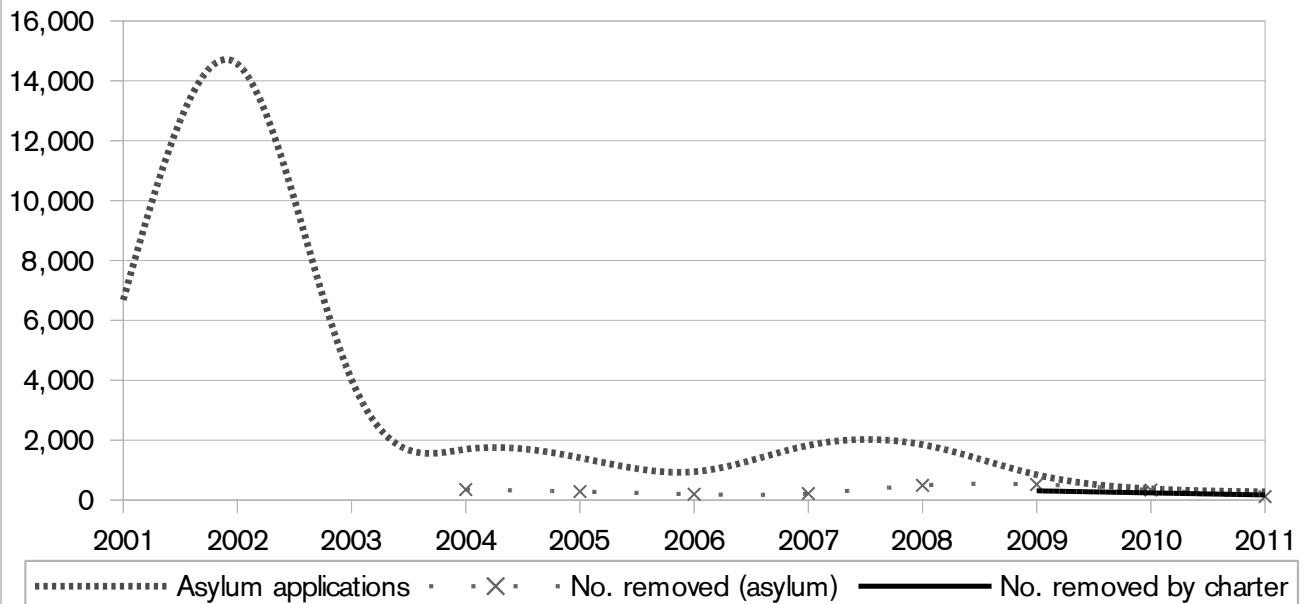


Here are the results for two sample years, 2004 and 2011. The first thing to notice is that many of the top nationalities in terms of the number of asylum applications – such as Iran, China and Somalia – are far from the top in terms of the number of enforced removals. For example, in 2004, asylum applications by Somalis were the second highest, but the number of enforced removals was ranked low at 31. Compare this to Jamaica, ranked 19th in terms of asylum applications, but first for enforced removals. The second thing to notice is that many of the top nationalities in terms of enforced removals – such as India, China and Turkey – have not seen charter flights to those countries. Our explanation for this apparent

inconsistency is that charter flights often serve a political agenda (foreign policy and populist election campaigns), rather than being a consistent, universal policy. To illustrate this more clearly, let us look at some of the individual countries to which charter flights have been sent in recent years.

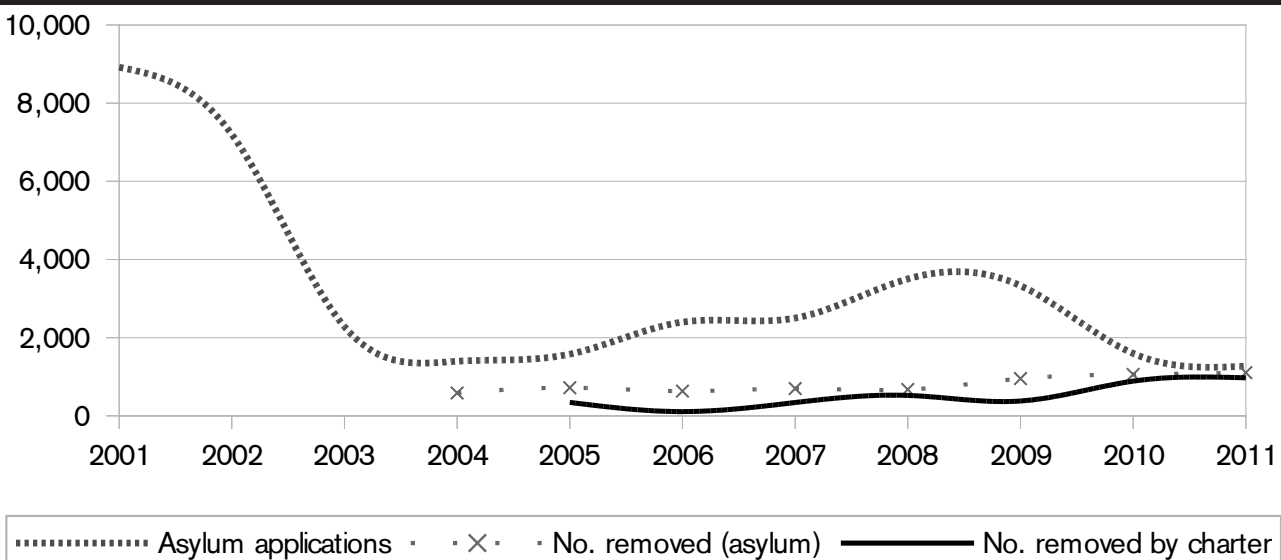
In the case of Iraq, the charter flights programme was started years after the number of Iraqi asylum applications had significantly dropped, primarily to convince the British (and European) electorate that the US and UK-led invasion of Iraq has finally led to a 'stable democracy' where refugees can be safely returned, despite abounding evidence to the contrary.

## Iraq: number of asylum applications & removals 2001-2011



A similar discrepancy over time between the number of asylum applications and removals can be seen in data for Afghanistan below.

## Afghanistan: number of asylum applications & removals 2001-2011



The Home Office acknowledges that world events "have an effect on which nationals are applying for asylum at any particular time."<sup>4</sup> Yet, when it comes to removals and mass deportation programmes, this impact is less obvious due to the targets culture dominating

the UK's immigration policy, as well as foreign and domestic policy considerations. Both factors are explored in detail in the 'ulterior motives' section.

# The myth of foreign national prisoners

**A**n insidious argument that the Home Office now uses to justify its mass deportations is that these charter flights are “vital to ensure we remove foreign criminals and individuals who refuse to leave the UK voluntarily.” Since 2005, the ‘issue’ of deporting foreign prisoners has become one of the most toxic issues in contemporary British politics. The Conservatives-led government portrays it as a ‘crisis’ that warrants Britain scrapping the Human Rights Act and retreating from Europe.<sup>1</sup> This section reveals that there is almost no correlation between the nationalities of foreign prisoners and the destinations of deportation charter flights. Associating deportees with criminality should be seen as a smear tactic, because over 80% of removals by charter flight in 2012 did not involve foreign offenders.<sup>2</sup>

While conducting this research, the authors also found significant distortions within the official prisoner statistics which added to the false impression that British jails are overcrowded with dangerous foreign criminals.<sup>3</sup> Our in-depth analysis of official data found that, of the 10,861 so-called foreign national prisoners (FNPs) held in England and Wales on 30th June 2012, 1,140 were in fact immigration detainees held solely under administrative immigration powers and not serving a criminal sentence. These include people held in three immigration detention centres run by the Prison Service (Dover, Haslar, Lindholme), which are counted as prisons. Their inclusion had the effect of inflating the foreign prisoners figure by 10.5%. In addition, foreign prisoners are now twice as likely to be held on remand than British prisoners, which further distorts the proportion of foreign nationals in the prisoners count. And contrary to popular stereotypes, our detailed examination found that foreign prisoners are less likely to be convicted for violence or stealing offences than British inmates, and are no more likely to commit sexual offences. Having explored this wider context, next we specifically examined links between foreign prisoners and the Home Office’s use of charter flights.

## DO CHARTER FLIGHTS TARGET DEPORTATIONS TO COUNTRIES WITH A LARGE NUMBER OF THEIR NATIONALS IN UK PRISONS?

In every press statement and FOI response related to charter flights over the last couple of years, a UKBA spokesperson would repeat verbatim that: “Charter flights are vital to ensuring we remove foreign criminals and individuals who refuse to leave the UK voluntarily.” In a letter to the Administrative Court dated 14 September 2012, prior to a charter flight to Sri Lanka, the Treasury Solicitors, acting on behalf of the UKBA, told the High Court judges: “charter flights allow UKBA to effect [high] volume returns to countries ... where there are a significant number of foreign national prisoners awaiting return.” These letters have become a standard practice where the UKBA lawyers ask judges not to consider last minute Judicial Review applications so as not to “disrupt or delay” the costly operations.<sup>4</sup>

Contrary to these submissions to High Court judges, it appears that the Home Office does not know if its charter flights actually target FNPs. For example, we asked the Home Office if it had carried out “any evaluation into whether removals/deportations by chartered flights are impacting on the number and nationality of foreign nationals held in prison in the UK?” The department replied that “No such evaluation has been conducted.” When asked about specific details, such as the proportion of FNPs or ex-FNPs on charter flights to specific destinations, the reply was:

*Unfortunately the information concerning deportation of FNP’s on charter repatriation flights is not held in the format you have requested. In order to provide you with this information we would*

*have to run a report on our database and then cross reference this information with all of the individual paper files. This would involve significant resource and expense. Under the FOIA we are not required to create information to respond to a request. We have estimated that to gather and collate the information you have requested would exceed the £600 cost threshold.<sup>5</sup>*

Occasionally, figures have been disclosed to the press, seemingly to justify a mass deportation operation and sully its critics. An article published in the *Independent* on 16 February 2012, following a protest against a charter flight to Ghana, revealed that the UK Border Agency had “confirmed on Wednesday that 22 people were removed. They included two convicted criminals, 12 immigration offenders, and eight failed asylum seekers.”<sup>6</sup> In this case, less than 10% of people forced on to the plane were ‘convicted criminals’. Home Office data from December 2011 (soon after the launch of charter flights to Ghana) show that Ghanaian nationals accounted for only 0.17% of all prisoners in England and Wales.<sup>7</sup>

Interestingly, when the UK’s deportation charter flights programme began in 2001, there was absolutely no mention of charter flights being used for foreign national prisoners or offenders. Rather, the programme was aimed at removing larger numbers of failed asylum seekers and was motivated by arbitrary numerical targets for enforced removals.

Back then, the Home Office did not consider the nationality of prisoners to be a factor worthy of discussion in their publication *The Prison Population in 2001: A Statistical Review*.<sup>8</sup> The Scottish prison service still does not centrally record the nationality of each prisoner – strange for something that is supposedly such a big concern for the government.<sup>9</sup> We have, therefore, conducted our own review to work out whether deportation charter flights are indeed sent to countries that have a large number of their nationals in British prisons, or whether that is just another bogus claim to justify the controversial programme.<sup>10</sup>

## OUR EVALUATION

We found that deportation charter flights have been sent from the UK to Jamaica, Nigeria and Pakistan, whose nationals are consistently in the top ten of FNPs in England and Wales. However, the majority of flights have been to countries whose nationals are ranked in the high teens or mid-twenties, such as Albania and Afghanistan. They have also been to countries whose nationals account for a minuscule number of FNPs, such as DRC and Cameroon. The timing of when charter flights begin or end to a particular destination is also inconsistent with a programme that allegedly seeks to remove foreign national prisoners, as in the case of Jamaica.

When the programme began with charter flights to Kosovo and Albania in March 2001, the Home Office prison statistics for that year did not even list Kosovan as a nationality. There were only two Albanians in prison in England and Wales at that point in time, 112 prisoners from Yugoslavia as well as one from Serbia, one from Montenegro and 11 from Bosnia-Herzegovina. This is out of a total of 6,926 recorded foreign nationals in custody at that time. We can compare this, for example, to the 110 Italians and 203 Dutch prisoners held in the UK at the time.

The statistics for June 2002 still did not list Kosovan nationals but Yugoslavia was no longer a category. There were 74 Albanians, nine from Bosnia-Herzegovina, and 114 from Serbia and Montenegro. This is out of a total of 7,719 recorded foreign nationals in custody at that time, of which 663 were from the Republic of Ireland and 204 from the Netherlands. In 2003, Albanians were ranked the 29th highest nationality in prison in England and Wales, accounting

for 0.09% of all recorded foreign nationalities. This has risen incrementally to the 14th rank in 2012, at 0.24%. By this point, however, the charter flights to Albania had stopped, because there were hardly any Kosovan or Albanian asylum seekers any more.

A similar pattern is evident with Afghans, who also represent a negligible proportion of all prisoners in England and Wales.

## AFGHANS

Afghan Prisoners	Rank	% of all Prisoners	Charter?
2003	14 <sup>th</sup>	0.17%	No
2004	32 <sup>nd</sup>	0.10%	No
2005	27 <sup>th</sup>	0.16%	Yes
2006	28 <sup>th</sup>	0.15%	Yes
2007	34 <sup>th</sup>	0.12%	Yes
2008	25 <sup>th</sup>	0.16%	Yes
2009	24 <sup>th</sup>	0.17%	Yes
2010	19 <sup>th</sup>	0.19%	Yes
2011	20 <sup>th</sup>	0.19%	Yes
2012	18 <sup>th</sup>	0.20%	Yes

Source: Prison Population data for England and Wales

When the UKBA organised charter flights to Kinshasa in the summer of 2012, DR Congo nationals accounted for 0.01% of all prisoners in England and Wales, ranking at 86th. Figures for Cameroon, another target of deportation charter flights, show a similar pattern.

Jamaicans are disproportionately incarcerated in England and Wales and have been the highest ranked foreign nationality of

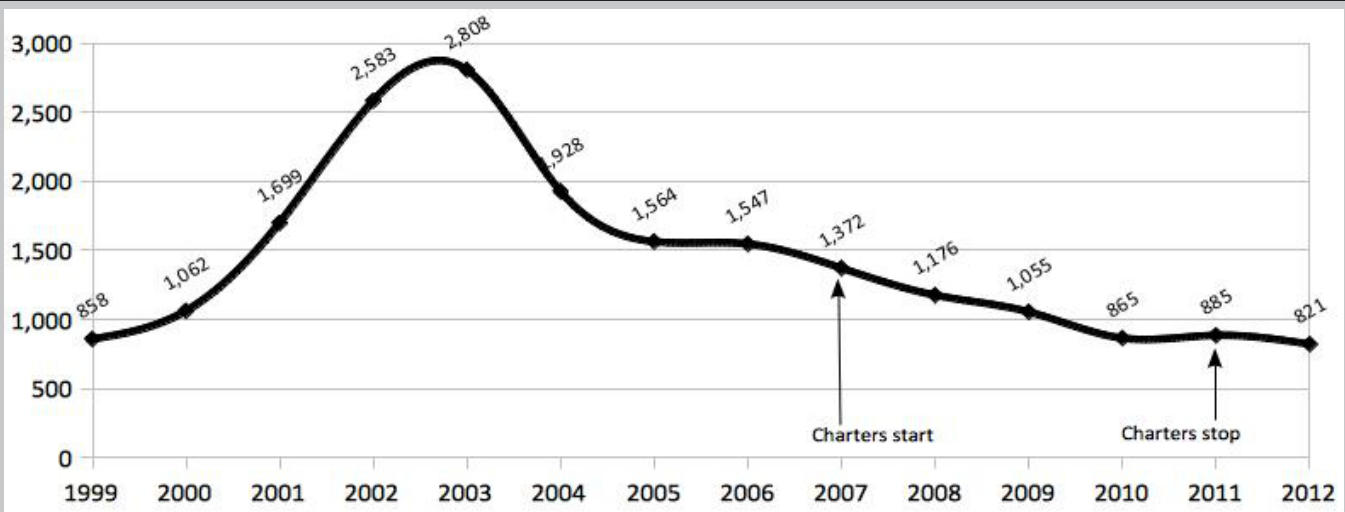
## CAMEROONIANS

Cameroonian Prisoners	Rank	% of all Prisoners	Charter?
2003	59 <sup>th</sup>	0.02%	No
2004	56 <sup>th</sup>	0.03%	No
2005	55 <sup>th</sup>	0.04%	No
2006	53 <sup>rd</sup>	0.04%	No
2007	48 <sup>th</sup>	0.05%	Yes
2008	46 <sup>th</sup>	0.05%	Yes
2009	51 <sup>st</sup>	0.05%	Yes
2010	52 <sup>nd</sup>	0.04%	Yes
2011	55 <sup>th</sup>	0.04%	Yes
2012	68 <sup>th</sup>	0.02%	No

Source: Prison Population data for England and Wales

prisoners throughout the deportation charter flight programme. There is not enough space here for a sociological analysis of the criminalisation of the African-Caribbean community in Britain, but it is noteworthy that, when flights to Kingston started in 2007 and stopped in 2012, Jamaicans were still ranked as the number one foreign nationality in UK prisons. As such, why the programme started and why it stopped seems unrelated. It is also important to stress that, when mass deportations began to Jamaica, Jamaican national prisoners levels had already fallen dramatically to 1,372 from a high of 2,808 in 2003.

## NUMBER OF JAMAICAN PRISONERS IN ENGLAND & WALES 1999-2012



# Ulterior Motives

**So, if the Home Office's claims to justify the use of specially chartered aircraft for mass deportations are unfounded, why does it insist on continuing the programme regardless?**

## TARGETS CULTURE

**W**e believe that arbitrary numerical targets have largely governed mass deportation charter flights. In June 2001, the Labour government set a target of removing 2,500 refused asylum seekers per month, promising to remove a total of 30,000 by Spring 2003. The government's 2002 White Paper on immigration, entitled *Secure Borders, Safe Havens*, stated that, to achieve this aim, the government would "use charter flights to remove large numbers of asylum seekers," among other methods.<sup>1</sup> After celebrating the 'achievement' of removing 1,707 Kosovan Albanians in this way between March 2001 and February 2002, the White Paper noted: "Despite the cost of charter flights, this is a very efficient way of enforcing the volume departure of those who have no right to stay here."

This was a numbers game. Under New Labour, a pernicious 'targets culture' gripped the public sector. Arbitrary targets shaped policy and drove its implementation down particular paths that might otherwise have been avoided. The Tory-led coalition government, which replaced Labour in May 2010, continues to have a target-driven approach to immigration policy.

When the Yarl's Wood detention centre opened in 2001, it was the largest of its kind in Europe and was built specifically to meet new deportation and detention targets. Administered by Group 4 at the time, half of the prison was burnt down during a riot by detainees within a year. An inquiry into the fire and the 'disturbance' by the Prisons and Probation Ombudsman produced a 460-page report in 2004. The report provides a valuable insight into how Whitehall and Downing Street became mesmerised by removal statistics and explains the early bureaucratic rationale behind deportation charter flights, so it is worth quoting it at length here.

In the inquest report, Stephen Shaw, the then Prisons and Probation Ombudsman, explains how the new deportation and detention targets came about around the 2001 general election:

*"The political climate at the time is important in understanding much about Yarl's Wood. Dr Mace [then Deputy Director General (Operations) at the Immigration and Nationality Directorate (IND), which would later become the UK Border Agency] said that, at times, IND was in the media almost daily. The coverage was very critical and suggested that there was a lack of political grip. Mrs Roche [former Immigration Minister] was in touch regularly with*

*Ms Liz Lloyd (No.10 special adviser). No.10 wanted immigration and asylum sorted out. Mr Ian Boon, former Director [of the] Immigration Service's Regional Operations, said that Ministers were in discussion at this time with the Treasury about funds. Lots of money was being made available to IND – some for the year 2000, and more over a three-year cycle. The Treasury was concerned that money allocated to IND should be spent in the financial year(s) for which it was intended and that there should be an early return on the investment. They wanted bigger and earlier outcomes. The 30,000 target was therefore moved forward.*

*[...]*

*Mr Boys Smith [the Director General of IND] said that No.10's decision, post-election (i.e. June 2001), to weigh in on immigration and asylum issues - including detention - had increased the pressure on the new Home Secretary and consequently on IND. The Prime Minister's delivery team had been set up and had started to monitor targets. It quickly picked up on both the 2+4 and 30,000 targets. [2+4 was a new target set by the then Home Secretary and refers to two months for the decision to be taken and four months for completion of appeal before removal was enforced.] No.10 had had an increased input on policy, and this had tended to be on the theme of whether the policy being implemented was radical enough. Mr Boon said he got the impression that No.10 were effectively "auditing" all IND's work. It was clear that the necessary resources would not be forthcoming unless No.10 was kept on board. There was thus a combination of the Home Secretary, No.10 and the Treasury all driving the work forward. All underlined the need for benefits to be realised as quickly as possible. Dr Mace said the 30,000 target suddenly took on disproportionate prominence. This had significant impact on priorities over the subsequent six months, and, taken in isolation, this was wrong.*

*[...]*

*Thus the Whitehall bandwagon had been rolling in favour of removals. There had been no argument of principle concerning investment in the system and the Treasury wanted a high target for removals, as for other activities. [...] The target had become part of IND's card to play in obtaining money. There had been no incentive or pressure for them to disentangle the 30,000 target. It had been an internally generated figure, it had looked reasonable, and Mr Boys Smith said that he took responsibility for it."<sup>2</sup>*

A number of key players feature in the report, many being senior civil servants closely associated with the development of the UK's deportation and detention policies. One of them was Boys Smith. Having headed the police department and been director of police policy from 1996 to 1998, he was brought in to become the Director General of IND. According to the report, Boys Smith played some part in "developing immigration strategy to embrace removals."

*"As Director General, he had subsequently also been involved in approving the targets. These had their basis in the discussion that followed the White Paper leading to the 1999 Immigration Act. Ministers had signed up to this. At the same time, as a matter of government-wide policy, formal targets had been introduced; these were bound to change the framework and atmosphere within which an organisation such as IND was working."*

The second key player was Dr Mace, who was brought in from the Ministry of Defence to "fix their IT problems." He subsequently became the Deputy Director General (Operations) at IND.

*"Dr Mace told me that a specific target for removals had been created in order to sharpen focus, but he did not know exactly how the 30,000 figure had been derived. However, he believed it had developed around the beginning of 2000. Ms Kate Collins (who until May 2000 was Director (Operations) in IND) and her team had worked up a rationale which generated a removal figure. Dr Mace said a lot of effort went into creating it. Ms Collins thought that the target setting was all in the context of the attempt to gain an overall grip on asylum and the various kinds of resource (money, staff, legislation, etc.) needed to achieve that... Dr Mace said he inherited the figure and it was progressively refined further before being added as a note to the internal IND Business Plan. Dr Mace considered the proposed removal target was reasonable given the numbers of failed asylum cases, but at that stage it was by no means clear how it would be achieved."*

Then there is Ian Boon, the former director of the Immigration Service's Regional Operations.

*"Mr Boon spoke at this time at an Immigration Service conference [in autumn 1999] of an impending step change in the Service. Mr Boon had made it clear that resources were going to be made available. Inspectors and senior managers had to be ready to act. Mr Masserick [a Deputy Director at IND] said that reference to the 30,000 target had been met with shrieks of hollow laughter. However, significant resources in terms of finance and staff were made available and things had started to happen."*

*Mr Boon described the development of targets for provision of detention spaces. He explained that, towards the end of 1999, IND's research unit produced models of patterns of illegal immigration and asylum, together with projections for likely patterns during the coming years...*

*it was agreed that more detention places were necessary to increase the number of removals. There was no scientific formula to express the relationship between detention spaces and removals, but the rule of thumb was 8.75 removals per detention space per year."*

It was against this background that the then Home Secretary Jack Straw announced on 25 March 2001 that "the return of significantly higher numbers of unsuccessful applicants will be the focus of

asylum efforts" during the financial year 2001-2002. He thus announced the target of 30,000 failed asylum seekers to be returned every year. In an effort to meet these arbitrary targets, a raft of draconian measures were introduced, including some 1,800 new detention spaces "to facilitate removals" and specially chartered flights.<sup>3</sup>

In practice, the removals target never came close to being met. Only 11,600 people (including dependants) were removed in 2001-2002, a rise of 7% but little more than one third of the target. Even immigration officials at the time knew the target was not realistic:

*"Mr David Wilson, Mr Masserick's successor after November 2000, told me that removals targets were Dr Mace's absolute priority. He said the 30,000 target was artificial and unachievable – the previous target had been much lower. Immigration Service managers had found themselves informing their staff of targets that everybody knew could not be met. Dr Mace did not publicly acknowledge this until late in the day."*

[...]

*Mr Brewer told me that, when he joined IND as Mr Boon's successor as Director of Detention in April 2001, he considered the 30,000 target "laughable" and "plucked out of the sky". This view was based initially on the views of experienced Immigration Service staff and very rapidly his own observations and judgement. He went so far as to describe the target as some kind of fantasy which you had to publicly acknowledge or you were branded 'not one of us' and a 'troublemaker'. Disturbingly, he said reasoned debate was 'forbidden'."*<sup>4</sup>

In its report on Asylum Removals, published in May 2005, the House of Commons Home Affairs Select Committee commented:

*"We depreciate the setting of wholly unrealistic targets which serve only to arouse false expectations and which can only prove demoralising for all concerned. We are at a loss to understand the basis for the belief that a target of 30,000 removals a year was achievable and Ministerial pronouncements on the subject are obscure."*<sup>5</sup>

The government's response, published as an appendix to the report, stated: "The Government recognises that the 30,000 target was too challenging and beyond the capability of IND to deliver. A revised target has now been set."<sup>6</sup> Indeed, when David Blunkett became Home Secretary in June 2001, he apparently considered that the 30,000 annual deportation target was "not achievable" and had therefore "revised" it to a monthly target of 1,500.<sup>7</sup> But this revision did not stop the launch of charter deportations on an industrial scale, a method that had come to be seen within the civil service and government as essential for meeting any deportation targets.

To summarise, the emphasis in mass deportation flights appears to be on enforcing removals at any cost, so as to appear 'tough on immigration', even though everyone knew that the publicly declared targets were 'unrealistic'. In addition to all the above quotes, this is evidenced by the fact that the Home Office has failed – despite our repeated requests in numerous Freedom of Information requests – to provide the authors of this report with any documents concerning internal evaluations of the programme, whether in regard to cost-efficiency, reducing foreign nationals held in UK prisons or any other supposed aim underpinning the programme. Each time we were told "no such evaluation has been conducted" or "there are no review documents," despite repeated claims that the deportation charter flights programme is "subject to ongoing review."

## RESPONSE TO 'DISRUPTIVE BEHAVIOUR'

Contrary to some claims in the right-wing media about the "inefficiency" of the programme and "wasting taxpayers' money,"<sup>8</sup> the UKBA appears to be well aware that charter flights cost more and are more difficult to organise than individual seats on commercial flights. Yet it is happy to carry on with the programme because charter flights appear to be effective as far as their real motivations are concerned: they allow the UKBA to intimidate migrants facing deportation and restrict their access to legal help.

In May 2009, the then head of Criminality and Detention at the UKBA, David Wood, admitted in an interview with the *Telegraph* that the charter flights programme was

*"a response to the fact that some of those being deported realised that if they made a big enough fuss at the airport - if they took off their clothes, for instance, or started biting and spitting - they could delay the process. We found that pilots would then refuse to take the person on the grounds that other passengers would object. So although we still use scheduled flights, we use special flights for individuals who are difficult to remove and might cause trouble."*<sup>9</sup>

Indeed, in all the FOI responses we have received from the UKBA regarding deportation charter flights, one of the reasons given as to why they are used, along with the asylum intake and costs arguments, is that "Charters may be used where [...] disruptive behaviour would frustrate attempts to remove by scheduled service."<sup>10</sup> The agency was not, however, able to provide us with data on the number of 'disruptive deportees' booked on charter flights.

Immigration authorities are determined to suppress any possible 'disruption' caused by people resisting or protesting against their forcible deportation. Detainees booked on charter flights have repeatedly reported that Detention Custody Officers (DCOs) warn them in advance against 'non-cooperation' and that force will be used if they did anything 'stupid'.

In response to criticisms by MPs and HM Inspector of Prisons regarding the use of excessive numbers of private escorts on mass deportation flights (see above, 'Excessive contractor staff'), the UKBA had this to say:

*"The UK Border Agency operates a working ratio of two escorts per detainee for chartered flights; this ratio is in line with our EU counterparts who also operate similar flights. However, it is not fixed and can be either increased or decreased depending on the specific circumstances of each flight. Reliance [the name of the escort company at the time] carries out a risk assessment of every enforced removal and allocates an appropriate number of escorts to each flight which is based on a combination of factors including the lay-out of the aircraft, the anticipated conduct of each detainee based on an individual assessment, any **specific intelligence about attempts to disrupt the operation**, and the duration of the flight given the requirement for escorts to be provided with rest periods to ensure they remain alert at all times, particularly to long haul destinations like Jamaica."<sup>12</sup> (emphasis added)*

According to Amnesty International, the use of sub-contracted escorts is "a widespread feature of the current removals process, particularly for specific charter flights."<sup>13</sup> This obviously raises serious questions about the levels of training, accountability and accreditation. Such concerns, regarding deportation escorts not meeting the required qualifications, have been raised repeatedly about staff directly employed by the UKBA's contractors, let alone subcontractors. Numerous examples can be found in the prison inspector's reports.<sup>14</sup>

Indeed, there is plenty of evidence that charter flight deportees are subjected to more violence and abuse than those deported on scheduled commercial flights. The reason is obvious: on charter flights, there are no other passengers to see and report what happens.

Following the death of Jimmy Mubenga in October 2010 and the revelations concerning the use of dangerous and unlawful restraint techniques by deportation escorts (which we only heard about because some passengers contacted the *Guardian* and testified to what had happened on board the plane), the Home Office suspended any use of force during deportation operations for 10 days. Charter flights were exempted from this ban, despite posing a higher risk of abuse than deportations by commercial flights.<sup>15</sup>

## CASE STUDY

**Following a mass deportation flight to Iraqi Kurdistan on 18 September 2008, one of those deported, Fazzel Abdul, reported the following to the International Federation of Iraqi Refugees (IFIR):**

**"They woke us up early, switched our phones off and handcuffed us. None of us wanted to go back – we were terrified. We tried to get up from our seats before the flight left. All these security guards came on straight away, shouting at us and beating us with their hands and batons. They hit me then rammed my head against a window."<sup>11</sup>**



## POLITICAL MOTIVES

Charter flights are not just used to (literally) kick people out of Britain. The Home Office also believes that extreme forms of detention and deportation can be used to deter asylum seekers from even coming to Britain in the first place, as well as to discipline diaspora communities who have settled in the UK. To understand this cynical agenda, it is necessary to revisit the evolution of the current immigration controls.

On 9 March 2000, following discussions with senior IND officials (Dr Mace and Boys Smith), the then Home Secretary Jack Straw asked for advice on "how we would urgently expand detention accommodation to 4,000 places." According to the aforementioned prisons ombudsman's report on Yarl's Wood, Dr Mace "was not sure" how the figure of 4,000 detention places had been calculated but he suggested it was linked to the 30,000 annual deportations figure. The ombudsman was of another view:

*"It seems likely, however, that the additional 1,250 (beyond the 2,750 calculation) detention places was as much to do with **detering** potential asylum seekers [from entering the UK] as removing those that were not so deterred. (emphasis added)*  
[...]

*no matter how many places existed, they could be filled. It was therefore a political/financial matter how many immigration cases should be in custody and not necessarily very directly related to the number of removals achieved."*<sup>16</sup>

To back up his point about deterrence, the ombudsman cites two high-profile letters. The first is from Sir David Omand, then Permanent Secretary in the Home Office, to the Head of the Home Civil Service Sir Richard Wilson, dated 10 March 2000. It states the following:

*"Detention is a key element in effective enforcement and it contributes to the impression potential asylum seekers have of the UK [...] We also believe that up to a further 1,500 places would significantly enhance the deterrent effect for new asylum seekers."*

The second letter is from the Home Secretary to the Chief Secretary to the Treasury, dated 14 April 2000. It states:

*"The investment will deliver both tangible and intangible benefits. They will help establish arrangements to increase very significantly the number of removals of failed asylum seekers. That will of course reduce the cost of support and the demands on my support budget. But it will also send a strong message to potentially unfounded claimants that we are administering a firm immigration control. The more effective way of tackling the problem of removals is to reduce significantly the number of claimants seeking entry."*

On 20 March 2000, Jack Straw agreed the target of 4,000 detention places and advised he "would like it progressed as soon as possible." Pressure to deliver was increased by the then prime minister Tony Blair, who reportedly took "a close and pressing interest in the question of removals." According to a note, dated 4 April 2000, from the Prime Minister's Private Secretary to the Home Secretary's Principal Private Secretary (which was also copied to Home Office Ministers and IND officials), the Prime Minister

*"thinks that, in the interim, we need to ensure that a greater number of those refused asylum are removed from the UK immediately. We should particularly ensure that this is the case in respect of those from countries who are particularly abusing the system, such as Central and Eastern Europe."*<sup>17</sup>

The Treasury was apparently also "keen on enforced removals"

because these "would save money by creating a disincentive to come to the UK."<sup>18</sup>

Before 2000, the general perception was that a large number of refused asylum seekers and migrants would leave voluntarily once their applications have been refused. This was definitely true of many Eastern Europeans in the UK. It was, in fact, one of the assumptions underlying the 30,000 target, and was the approach taken at the time in other European countries, particularly in the Netherlands. This perception somehow changed and many politicians and civil servants now believed that the use of force was necessary to effect removals and deter more migrants and refugees from coming here, even though the number of Eastern European asylum cases had actually fallen drastically.

## FOREIGN POLICY

But this is not the whole story. Charter flights have only been sent to a handful of countries, which are not necessarily from where most refugees and migrants to the UK originate. For a deportation to take place, the UKBA must establish – at least on paper – that a country is now safe for people to return to. The sequence of major deportation charter routes opening to Kosovo (from 2001), Afghanistan (from 2003), Iraq (from 2008) and other frequent destinations must also be understood in the context of British military interventions in Yugoslavia (1999), Afghanistan (2001), Iraq (2003) and so on. The symbolic value – both in Britain and in the destination countries – of refugees returning to countries 'liberated' by British forces should not be underestimated.

"Asylum seekers...  
should get back  
home and recreate  
their countries  
that we freed from  
tyranny, whether  
it be Kosovo or now  
Afghanistan... We are  
freeing countries of  
different religions  
and cultural  
backgrounds and  
making it possible for  
them to get back home  
and rebuild their  
countries."

**David Blunkett, Home Secretary,  
Telegraph, 19 September 2002**

A House of Commons research paper, dated 23 April 2002, notes that, in relation to the government's proposals to use charter flights to remove large numbers of asylum seekers, officials have observed:

*"these are 'extremely high profile events' which draw attention to the people being returned. As a consequence, they say, the individuals being returned to their home countries may be put at risk upon their return. They suggest that the use of such techniques should be used sparingly, and only when such risks to the individuals do not arise."*<sup>19</sup>

But this is, perhaps, exactly what charter flights are there to serve: high-profile events that send a clear deterring message to migrant communities. In most cases, the diaspora groups targeted with mass deportations also represent a particular liability for the UK's foreign policy and the propaganda machine surrounding it. For instance, does the UK government want Afghan or Iraqi refugees speaking out defiantly about the reality in their countries and conduct of British troops?

Of course, charter flights are no longer special events; they are becoming the standard way of conducting forced deportations to an increasing number of countries. There were at least 60 charter flights in 2012, deporting over 2,000 people in total. In February 2012, immigration minister Damian Green said in a parliamentary question: "We continue to exploit opportunities to increase returns. This includes opening and consolidating new charter routes to Ghana, Pakistan and Sri Lanka."<sup>20</sup>

Indeed, the UK government (and the EU) have been busy negotiating 'return agreements' (deportation deals) with many of these countries' governments, using existing or promised trade and aid agreements as an incentive and/or a pressure tool. Both the negotiations and the agreements are surrounded by secrecy and kept away from the public, because releasing this information may apparently "jeopardise the UK Border Agency's longer term ability to use these flights and, therefore, to maintain an effective immigration control," in the words of the UKBA.<sup>21</sup>

The Foreign and Commonwealth Office (FCO) has acknowledged that immigration controls have implications for diplomacy. In September 2012, the FCO's migration director, Susan Simon, said at an Information Rights Tribunal:

*"Many countries use visa and immigration policy as a foreign policy tool, reflecting their attitudes towards certain countries and the value of certain relationships. They expect us to do the same."*<sup>22</sup>

In contrast, Simon claimed Britain has a "risk-based approach" to immigration policy. It is quite extraordinary, then, that the UKBA's charter flights have almost exclusively flown to extremely risky parts of the world, where Britain happens to have very active foreign policy interests.

This relationship between the UK's deportation charter flights programme and its foreign policy is almost never mentioned in the majority of talk on deportation. The case studies below may illustrate some aspects of this relationship.

## FIRST 'SYMBOLIC' DEPORTATION TO AFGHANISTAN

On 28 April 2003, the UK government publicised its first mass deportation to Afghanistan, a country still deemed unsafe by the UNHCR, Amnesty International and other international organisations. Britain was the first European country to begin enforced removals to the war-torn country.

On the morning of the flight, the *Daily Telegraph* informed its readers how the deportees were "to be strapped to their seats for an eight-hour flight home today. They will be flown non-stop to Afghanistan amid tight security. They are the first of thousands of failed asylum seekers whom the Government plans to remove forcibly from Britain. The Afghans will board a jet at Stansted, Essex, as part of the Home Office's clampdown on illegal immigrants."<sup>24</sup>

The next day, the paper followed up on the story and acknowledged the wider symbolic value of an operation that may have cost the taxpayer £6,000 per deportee: "Around 20 Afghan asylum seekers arrived home yesterday after being forcibly deported from Britain... Yesterday's deportations were intended to be 'symbolic' to encourage others to return home. Officials refused to confirm suggestions that the cost of the operation was at least £120,000."<sup>25</sup>



## PHOTO OPPORTUNITY

On 20 September 2002, the Home Office invited media film crews to Stansted airport to witness the deportation of 48 Roma to the Czech Republic. The *Guardian* reported how "the deportation, codenamed Operation Elgar, was designed to demonstrate to the public both in Britain and the Czech

Republic that rejected asylum seekers were being removed from the UK... It is expected the pictures will be shown on Czech television in a particular effort to dissuade Roma travelling to the UK and claiming asylum."<sup>23</sup>

## Case studies

### PAKISTAN REPLACES AFGHANISTAN AS TOP CHARTER FLIGHT DESTINATION

According to US diplomatic cables, leaked via WikiLeaks, the Conservatives' then Shadow Defence Minister Liam Fox met the US Ambassador to Britain on 9 December 2009, less than six months before New Labour lost the general election in May 2010. The pair discussed foreign policy towards the Indian sub-continent: "Turning to India, Fox criticised the Labour government for policies which reinforce the Indian government's long-held view that HMG's [Her Majesty's Government's] foreign relations on the subcontinent are 'skewed to Pakistan.' Fox predicted this would not be a factor under a Conservative government, since the Conservatives are 'less dependent' than the Labour Party on votes from the British-Pakistani community."<sup>26</sup>

Once in office, Home Secretary Theresa May travelled to Pakistan on 24 October 2010. She met Pakistan's President Zardari and Prime Minister Gillani to discuss "a wide range of issues of mutual concern."<sup>27</sup> These diplomatic discussions continued with immigration minister Damian Green and cabinet minister Baroness Sayeeda Warsi visiting Pakistan between 19 and 23 February 2011. They met with Pakistan's Interior Minister Rehman Malik, who "stated his support for the return of illegal migrants by the UK."<sup>28</sup>

Prime Minister David Cameron made his first official visit to Pakistan, flanked by Joint Intelligence Committee chiefs, on 5 April 2011 to launch an 'Enhanced Strategic Dialogue' involving annual meetings between the country's leaders and bi-annual talks between foreign ministers. Cameron announced £650 million in "education aid" for Pakistan and set "a target of increasing bilateral trade in goods and services to £ 2.5 billion a year by 2015."<sup>29</sup>

The UK's first deportation charter flight to Pakistan took place on 24 November 2011. The flight returned 23 men and two women. Theresa May arrived in Pakistan on the same day and held a press conference with the Pakistani interior minister Rehman Malik, in which she stressed that bilateral ties were "stronger than ever."<sup>30</sup>

Since February 2012, the UKBA has organised monthly mass deportation flights to Pakistan, removing between 50 and 85 people per flight. Pakistan has overtaken Afghanistan as the 'highest-volume' destination for mass deportation flights from the UK. After the Pakistan route opened, the frequency of the flights to Afghanistan was reduced from fortnightly to monthly. The Afghanistan charters also have a lower average passenger capacity than the Pakistan ones (48 compared to 61). This shift in focus in the UKBA's mass deportation programme coincided with the focus of the NATO's military campaign shifting from Afghanistan to Pakistan, as well as the initiation of the Enhanced Strategic Dialogue with Pakistan.

### MULTI-DROP, PAN-AFRICAN MASS DEPORTATIONS

Mass deportation flights to Nigeria, approximately one every five or six weeks, were started when Labour was in power and have continued under the Tories. The UKBA still refers to them as 'Operation Majestic'. In September 2011, however, immigration minister Damian Green went on a tour of West Africa. First, Green visited the Nigerian cities of Abuja and Lagos "to discuss the challenges and opportunities of migration between the two countries... [and] enhance Bilateral Relations."<sup>31</sup> A Prisoner Transfer Agreement was reportedly the main discussion point. Cameron had already visited Lagos on 19 July 2011.<sup>32</sup>

After leaving Nigeria, Damian Green made a two-day visit to Ghana. The British High Commission in Accra reported: "During his visit, the Minister held constructive meetings with the Deputy Attorney General/Deputy Minister of Justice, the Deputy Minister of Interior and the Director of Immigration."<sup>33</sup>

The UKBA began using charter flights to remove people to Ghana on 4 November 2011, barely a month after these diplomatic discussions. There are now regular mass deportation flights to Ghana (Operation Gardner) from London, with six flights in the 12 months that followed Mr Green's visit.

This regional focus has also allowed the UKBA to combine its charter flights to Nigeria and Ghana, as well as the occasional addition of stopovers in Angola and the Democratic Republic of Congo (DRC). The Agency refers to these operations as "multi-drop". There were three in 2012.

The sudden resumption of charter deportations to the DRC attracted significant controversy, given the reputation of President Joseph Kabila for imprisoning returned asylum seekers.<sup>34</sup> The timing of the two flights which stopped over in the DRC has also aroused suspicion. There are direct commercial flights from London to Kinshasa, which the UKBA could have used instead of charter flights. Why were Congolese asylum seekers, many of them political dissidents, targeted by the UKBA in the summer of 2012?

Prior to the second flight, Mary Glindon, MP for North Tyneside, attended an informal meeting (i.e. un-minuted) of the All Party Parliamentary Group (APPG) on the Great Lakes Region on 25 June 2012. The meeting was addressed by the DRC Ambassador to the UK Barnabe Kikaya Bin Karubi. According to Glindon, when she "raised the issue of the failed asylum seekers plight... He type-cast all these people saying they have come to this country as members of the former oppressive regime in the DRC, are here because we [the UK] have a good benefit system and having committed terrible crimes in this country [DRC] have to be suitably punished when they return to the Congo."<sup>35</sup> At another meeting of the APPG two days later, the DRC Ambassador made a significant speech in which he urged British parliamentarians to "back investment in Congolese mining industry."<sup>36</sup>

Glindon's disclosure of the ambassador's remarks led to all but three deportees' removal directions being cancelled by the courts. One of the three returned was reported to have later been murdered.

## DEPORTING TAMILS TO TORTURE IN SRI LANKA

Under the New Labour administration, there was a brief batch of deportation charter flights to Sri Lanka in early 2009, as the war against the Tamil Tigers was drawing to its bloody conclusion. The coalition later resumed the charter flights on a much larger scale, despite the Rajapaksa presidency being accused of ongoing genocide, war crimes and crimes against humanity. According to a comment posted by an anonymous Home Office lawyer on the Free Movement blog on 29 February 2012, "The process of moving from the 'pause' in enforced removals to full scale charter operations (which stands up to judicial scrutiny in the majority of cases) had been a significant achievement."<sup>37</sup>

Indeed, the mass expulsion of Tamil refugees has been a very controversial foreign policy issue for the coalition government. It has been widely condemned, even within the establishment. For instance, in its report examining the "human rights work" of the UK Foreign and Commonwealth Office (FCO) in 2011, the House of Commons Foreign Affairs Committee highlighted the deportation of Tamils as inconsistent with the FCO's "avowed respect for human rights." The report added "there are persistent allegations that asylum-seekers who have been returned to Sri Lanka by the UK have suffered torture and ill-treatment." Yet, "when we tried to explore the issue, the Government was not particularly forthcoming about its efforts – in general and in specific cases – to assess the level of risk to the safety of those who are removed from the UK."<sup>38</sup>

As mentioned above, immigration minister Damian Green made official visits to Pakistan and Ghana before launching deportation charter flights to these countries. A year after resuming mass expulsions to Sri Lanka, no Home Office ministers had visited the country since the coalition was elected. So who negotiated and agreed the new enforced returns agreement between the UK and Sri Lanka?

The answer may lie in the numerous meetings that Foreign Office ministers and the now disgraced defence secretary Liam Fox had held with Sri Lankan officials, before and after the charter flight programme started.

For instance, Sri Lankan media reported that someone from Liam Fox's office – most likely his controversial associate Adam Werritty – secretly met with senior figures in the Rajapaksa administration on 9 June 2011 to discuss Sri Lankan refugees living in the UK.<sup>39</sup> The first charter flight to Sri Lanka left on 16 June. According to these media reports, the meeting also discussed how to handle "adverse publicity" that may result from the imminent deportations.

Alistair Burt is the only other UK government minister who has travelled to Sri Lanka during this period. Burt was subsequently exposed as a contact for lobbyists at the notorious PR firm Bell Pottinger, which had been hired by the Sri Lankan government to improve its international image after the war.<sup>40</sup> As the FCO Minister for South Asia, Burt travelled to Sri Lanka in February 2011, where he reportedly advised "reconciliation" between the government and the Tamil

communities. Like Fox, Burt is not part of the Home Office, yet he took it upon himself to refute medical evidence documenting how the Sri Lankan regime is torturing returned Tamils. In a letter to campaign group Freedom From Torture in January 2012, Burt insisted that "there have been no substantiated allegations of mistreatment on return."<sup>41</sup>

The second deportation charter flight to Sri Lanka from the UK, which took place on 28 September 2011, raised further questions. The *Guardian* reported that arrangements to monitor the welfare of the deportees had been delegated by the Home Office to the International Organisation for Migration (IOM), a shadowy inter-governmental body.<sup>42</sup> When the IOM denied this, the UKBA conceded that the only measure taken to ensure the safety of Tamils deported to Sri Lanka was "to give them the telephone number and address of the British High Commission in [the capital] Colombo."

Such intrigue would come to characterise the Tamil deportations. Less than a fortnight prior to the third Sri Lanka charter flight, the Deputy British High Commissioner Robbie Bulloch apparently rushed to Jaffna, in the northern parts of Sri Lanka, to meet with the IOM's Chief of Mission on 4 December 2011. Before joining the FCO, Bulloch had worked for the Home Office between 2000 and 2004 in various posts, ranging from criminal and prison policy to extradition and migration. Bulloch's visit was immediately followed by a self-congratulatory gathering of UK civil servants in the Sri Lankan capital:

*"The British High Commission in Colombo hosted a Regional Migration Conference from 6-7 December, 2011, organised by the FCO's Migration Directorate. The event brought together Deputy Heads of Mission and staff from five of the UK's top twelve priority countries for migration, as well as Directors from the FCO and UKBA. Participants discussed a wide range of issues including improving returns, organised immigration crime and visa services. A key focus of the discussion was how to use diplomatic engagement, the Returns and Reintegration Fund and better regional working to reduce illegal immigration and boost returns."*<sup>43</sup>

The FCO Director for Migration sits on the UKBA's executive board. Heavy FCO interference in the UKBA charter flights persisted, with Burt continuing to visit Sri Lanka and dismiss medical evidence that returned Tamil asylum-seekers were being tortured.<sup>44</sup> The Sri Lanka charter flights were eventually halted in February 2013, following sustained campaigning about the torture of deportees. The decisive court case revealed close collusion between the British and Sri Lankan officials who handled the deportations.<sup>45</sup> Throughout this affair, Britain has increased its trade and investment with Sri Lanka. This has included training the Sri Lankan police force<sup>46</sup> and a UK-listed company establishing the first successful oil drill in Sri Lanka.<sup>47</sup>

# Are the UK's Mass Deportation flights lawful?

**T**his section discusses some of the important legal questions concerning mass deportation flights, with the aim of providing campaigners and legal practitioners with some arguments and tools to challenge the lawfulness of these flights. It does assume some existing familiarity with technical legal terminology.

The main focus of the discussion below will be Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms (commonly known as the European Convention on Human Rights, ECHR) and the relevant case law. Article 4 of this protocol, which the UK has signed (but not yet ratified), prohibits the “collective expulsion of aliens.”<sup>1</sup> Article 1 of Protocol No. 7 to the same convention specifies the “procedural safeguards relating to the expulsion of aliens.”<sup>2</sup> This is another important protocol relating to the way in which charter flight operations are conducted, so we will be discussing it at length too, together with Article 32 of the 1951 Geneva Convention Relating to the Status of Refugees (often referred to as the Refugee Convention or Geneva Convention), which is similar in content to Protocol 7.

Though not exclusive to mass deportations, the “collective expulsion of aliens” may also give rise to issues related to Articles 2 and 3 of the ECHR and Article 33 of the Geneva Convention. Article 2 protects the “right to life”, while Article 3 prohibits “torture [and] inhuman or degrading treatment or punishment.”<sup>3</sup> Relevant case law has established that both provisions imply the responsibility of states not to expel an individual to a country where there are substantial grounds to believe that he or she would run a real risk of facing death or being subjected to ill-treatment. Article 33 of the Geneva Convention (known as the principle of ‘non-refoulement’) states that “No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”<sup>4</sup> We will also be discussing these legal instruments and their relation to mass deportation flights.

The prohibition of the “collective expulsion of aliens” and the expulsion of people to countries where they may face death or ill-treatment are reiterated in Article 19 of the Charter of Fundamental Rights of the European Union 2000. This states that “Collective expulsions are prohibited” and “No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.”<sup>5</sup> As the UK government is considering exiting the EU and/or some of its legal frameworks, there may be little value in discussing the EU charter. Nonetheless, the content of Article 19 will be discussed in relation to the other, similar instruments mentioned above.

It is important to note that not all the international and European legal instruments discussed here have been inscribed into the UK domestic law. This is the case, for instance, with Article 13 of the ECHR (the right to an effective remedy through the court system), which was not incorporated into the Human Rights Act (HRA) 1998 as it was assumed that the act itself was the effective remedy. However, Section 2(1) of the HRA requires the UK courts to “take

into account” the decisions of the European Court of Human Rights in Strasbourg (ECtHR) when determining a question that has arisen in connection with an ECHR right,<sup>6</sup> especially when the ECtHR has “clear and constant jurisprudence” on that matter.<sup>7</sup>

## LAW CHECKLIST

### European Convention on Human Rights

Article 4 of Protocol No. 4  
Article 1 of Protocol No. 7  
Articles 2, 3 and 13

### 1951 Geneva Convention Relating to the Status of Refugees

Article 32 and 33

### Charter of Fundamental Rights of the European Union 2000

Article 19

### Human Rights Act (HRA) 1998

Section 2(1) and 6

## COLLECTIVE EXPULSION

The European Convention on Human Rights (ECHR) was signed in Rome on 4 November 1950. Protocol No. 4 was added to the convention in 1963. The convention’s *travaux préparatoires* (the preparatory works or the official record of the negotiations) are not explicit regarding the meaning and scope of Article 4 of the protocol, which states that “Collective expulsion of aliens is prohibited.”<sup>8</sup> However, the Explanatory Report accompanying the protocol reveals that the Committee of Experts on Human Rights, who drafted the protocol, had in mind “a provision by which collective expulsions of aliens of the kind which have already taken place [during the war] would be formally prohibited.”<sup>9</sup> The committee thus replaced the word ‘exile’ with ‘expulsion’ in Article 3 of the protocol in order to “prohibit any constitutional, legislative or administrative or judicial authority from expelling nationals from their own country”, and from expelling aliens in the next article (Article 4). “More often than not,” they argued, “the expulsion of nationals, whether individuals or groups, is inspired by political motives.” Thus, “The word ‘expulsion’ is to be understood here in the generic meaning, in current use (to drive away from a place).” It should therefore be understood to mean the same as ‘removal’ or ‘deportation’ nowadays. Various judgements by the ECtHR have upheld such an interpretation.

Furthermore, the original draft of Protocol 4 by the Consultative Assembly of the Council of Europe was intended to limit the scope of Article 4 to those “aliens lawfully residing in the territory” of the expelling state, but the Committee of Experts was of the view

that it should also include “all those who have no actual right to nationality in a State, whether they are passing through a country or reside or are domiciled in it, whether they are refugees or entered the country on their own initiative, or whether they are stateless or possess another nationality.”<sup>10</sup> It follows that asylum seekers and refugees, as defined by Article 1 of the 1951 Geneva Convention, who had entered the UK to claim protection and had been residing in the country until the authorities decided they no longer had the right to remain here and should be removed, clearly fall under this definition and the protocol should apply to them – except when they are deemed to be a danger to public order or national security. However, the UK has not ratified Protocol 4, which complicates its utility for challenging charter flights. We will return to this issue later.

"The collective expulsion of aliens violates two basic principles: the prohibition of discrimination and the prohibition of arbitrariness."

The concept of “collective expulsion of aliens” involves foreign nationals or stateless persons being expelled or removed from a country *en masse* as a result of their nationality or membership of a particular racial or ethnic group, rather than as a result of a judgement on the particular circumstances of their individual cases. Under international law, collective expulsion would violate two basic principles: the prohibition of discrimination and the prohibition of arbitrariness. Once it is accepted that collective expulsion should be prohibited, the next step, then, is to prove that an expulsion is collective, i.e. arbitrary and discriminatory, and is not the result of a “reasonable and objective examination” of the case of each of the individuals being deported. We will now attempt to make such a case in our consideration of the practice of removal by charter flights in the UK.

## EUROPEAN CASE LAW

The European Court of Human Rights (ECtHR) has considered the issue of “collective expulsion of aliens” as set out in Protocol 4 in numerous cases. One of the earliest ones was the 1975 case of *Henning Becker v. Denmark*, which concerned the deportation of a group of approximately 200 Vietnamese children by the Danish government. Although it was ruled inadmissible, the judges in the case defined the collective expulsion of aliens as “any measure of the competent authority compelling aliens as a group to leave the country, except where such a measure is taken after and on the basis of a reasonable and objective examination of the particular cases of each individual alien of the group.”<sup>11</sup>

This definition has been relied upon by the ECtHR judges in many subsequent cases concerning Protocol 4. For example, in the 1999 case of *Andric v. Sweden*, the court used a similar definition: “any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group.”<sup>12</sup>

*Andric v. Sweden* revolved mainly around the appellant, a Croatian national, appealing against the Swedish authorities’ decision to forcibly deport him on the grounds that he was suffering from post-traumatic stress disorder, which would have made his removal a breach of his rights under Article 3 of the ECHR. The case was rendered moot when Andric was eventually allowed to stay in Sweden, but significantly, the court came to the following conclusion: “the fact that a number of aliens receive similar decisions does not lead to the conclusion that there is a collective expulsion when each person concerned has been given the opportunity to put arguments against his expulsion to the competent authorities on an individual basis.”<sup>13</sup>

The 1988 ruling in *Alibaks and Others v. the Netherlands* had made a similar finding: “the applicants’ expulsions do not reveal the appearance of a collective expulsion within the meaning of Article 4 of Protocol No. 4,” a judgement made on the basis that the Dutch authorities had individually considered and refused the asylum applications of all the 23 Surinamese applicants, and they had “individually received a reply from the Minister of Justice denying them suspensive effect for their review requests.”<sup>14</sup>

The first successful Protocol 4 case in the ECtHR was the 2002 case of *Conka v. Belgium*, in which the court found the Belgian government’s decision to deport a family of four, among a group of 70 Slovakian Roma, to be in breach of Articles 5(1), (2) and (4) of the ECHR, Article 4 of Protocol 4 and Article 13 taken together with Article 4 of Protocol 4.<sup>15</sup> The ruling also found that there was no violation of Article 13 taken together with Article 3.

The judgement concerning Protocol 4 was made by four votes to three. One of the dissenting judges argued that the applicants’ requests for asylum had already been considered and turned down by the Belgian authorities, that those decisions “were reasoned and taken following an examination of the aliens’ personal circumstances,” and that the personal circumstances of the applicants “were also examined briefly a third time,” when the police station they were held at contacted the Aliens Office to check whether any of them had leave to remain in Belgium.<sup>16</sup> Another judge argued that each of the refusal decisions had been “accompanied by an order to leave the territory. As the applicants did not comply, measures were taken for them to be forcibly expelled,” adding that the provision contained in Protocol 4 “does not, in my opinion, prevent States from grouping together, for reasons of economy or efficiency, people who, at the end of similar proceedings, are to be expelled to the same country.”<sup>17</sup>

However, the court’s final decision noted that the deportation order served on the Slovakian Roma families “was made solely on the basis of Section 7, first paragraph, point (2), of the [Belgian] Aliens Act, and the only reference to the personal circumstances

of the applicants was to the fact that their stay in Belgium had exceeded three months. In particular, the document made no reference to their application for asylum." Although the decision had been accompanied by an order to leave the territory, the court found that, "by itself, that order did not permit the applicants' arrest." Their arrest was ordered for the first time on a later date, on a legal basis unrelated to their requests for asylum, but was nonetheless "sufficient to entail the implementation of the impugned measures." In such circumstances, "and in view of the large number of persons of the same origin who suffered the same fate as the applicants," the court considered that "the procedure followed does not enable it to *eliminate all doubt* that the expulsion might have been collective." (emphasis added)

Indeed, the local police had lured the applicants into a trap by sending them, along with other Slovakian Roma families, a notice requiring them to attend the police station in order to "enable the files concerning their applications for asylum to be completed" (the court found that this amounted to a violation of Article 5(1) of the ECHR, which concerns the right to liberty and security). The Director-General of the Aliens Office had written to the Minister of the Interior and the Commissioner-General for Refugees and Stateless Persons to inform them of his intention to "deal with asylum applications from Slovakian nationals rapidly in order to send a clear signal to discourage other potential applicants." A note providing "general guidance on overall policy in immigration matters," approved by the Cabinet on 1 October 1999, contained the following passage: "A plan for collective repatriation is currently under review, both to send a signal to the Slovakian authorities and to deport this large number of illegal immigrants whose presence can no longer be tolerated." Shortly after the deportation date, the Belgian Minister of the Interior declared in response to a parliamentary question: "Owing to the large concentration of

asylum-seekers of Slovakian nationality in Ghent, arrangements have been made for their collective repatriation to Slovakia."<sup>18</sup>

Article 5 of the ECHR provides that "No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: [...] (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition." This exemption is often used by immigration authorities to arrest and detain migrants in order to effect their forcible removal. However, where the lawfulness of detention is disputed, including the question of whether "a procedure prescribed by law" has been followed, the judgement in *Conka v. Belgium* considered that the convention requires, in addition to conforming to national laws and procedures, that any deprivation of liberty should be in keeping with the purpose of Article 5; namely "to protect the individual from arbitrariness."<sup>19</sup> In the court's view, this requirement must be reflected in, among other things, the reliability of communications sent to potential deportees, irrespective of whether the recipients are lawfully present in the country or not. It follows that, "even as regards over-stayers, a conscious decision by the authorities to facilitate or improve the effectiveness of a planned operation for the expulsion of aliens by misleading them about the purpose of a notice so as to make it easier to deprive them of their liberty is not compatible with Article 5."<sup>20</sup>

Significantly, the ruling in *Conka v. Belgium* specified which factors may reinforce the suspicion that an expulsion is collective:

*"firstly, prior to the applicants' deportation, the political authorities concerned had announced that there would be operations of that kind and given instructions to the relevant authority for their implementation; secondly, all the aliens concerned had been required to attend the police station at the same time; thirdly, the orders served on them requiring them to leave the territory and for their arrest were couched in identical terms; fourthly, it was very difficult for the aliens to contact a lawyer; lastly, the asylum procedure had not been completed."*<sup>21</sup>

Following the *Conka* case, a series of applications to the ECtHR based on Protocol 4 were turned down or found inadmissible.<sup>22</sup> The case that is most relevant to our investigation is that of case of *Sultani v. France, 2007*. The applicant, an Afghan national, had claimed a violation of Article 3 and Article 4 of Protocol 4, among other things, on the basis of the risks he would face if he were returned to Afghanistan and of the conditions of his removal (on a mass deportation charter flight). Although the court ruled that the applicant's removal from France would not amount to a violation of Article 4 of Protocol 4 on the basis that the applicant's situation had been examined individually by the French immigration authorities, it pointed out that the conditions for effective domestic remedy had not been fulfilled. The remedy in this case would have been an acknowledgement by the national authorities, either expressly or in substance, of a breach of the convention, and affording the appellant a means of redress. The only reason why the applicant had not been expelled on a charter flight on 20 December 2005 was an interim measure adopted by the ECtHR on the basis of a Rule 39 application. The French government was therefore mistaken, the court found, in alleging that the complaint under Article 4 of Protocol 4 had become "devoid of purpose" because the applicant was still on French territory when he submitted his application to the ECtHR.<sup>23</sup>

The French government claimed that "the use of specific flights to transport a number of aliens" to their countries of origin was based on "practical considerations" and could not be analysed as a practice of collective expulsion within the meaning of Protocol 4. The introduction of such flights, it claimed, had been "made necessary by the difficulty, and even impossibility, of obtaining seats on scheduled flights to certain destinations, especially to countries

"The applicants had been trapped by the authorities, assembled as part of a collective repatriation operation and placed in closed centres where they were told that no appeal was available to them."

to which there were few scheduled services from French airports." Furthermore, states enjoyed "a scale of the margin of appreciation... in organising operations to expel aliens who were unlawfully present on [their] territory." It further claimed that, in the case in question, the French authorities had complied with the ECtHR's case law, since no official statement announcing an intention on the part of the French authorities to conduct collective expulsions had preceded the introduction of charter flights to Afghanistan, and that the applicant's request for asylum had been responded to in an individualised and personal decision.

The applicant, on the other hand, claimed that he had been arrested on the same date and at the same location as other Afghan nationals, in targeted arrests based on nationality, with a view to organising a 'grouped flight' to Afghanistan. He submitted that, in a large number of cases, "grouped flights were an expedient enabling the Government to return aliens to countries in which the major airlines no longer wished to land for security reasons," noting that direct flights no longer existed to Somalia, Ethiopia and Afghanistan. In this regard, he pointed out that, since the "joint return operations" (between France and Britain to Afghanistan) had proved "excessively onerous," the police were "governed by profitability objectives and were subject to considerable pressure when preparing such flights." Furthermore, and contrary to what the government had argued, there was "no effective individual and personalised examination of the risks in the event of return to the country of origin and French law provided no effective means of preventing the administrative authorities from carrying out collective expulsions." The administrative courts, he insisted, "did not carry out a genuine individualised check of the lawfulness of the expulsion orders, since they merely validated the negative decisions issued by the OFPRA or the Refugee Appeals Board." They only "used the claim that an individualised removal order was issued in respect of every foreigner as a pretext for systematically dismissing arguments alleging a violation of Article 4 of Protocol No. 4." The individual decision, he added, "was purely formal in nature [and] thus prevented acknowledgement of the collective nature of the removal."

To support his allegations, the applicant submitted several witness statements asserting that police had arrested a group of Afghans on 14 December 2005. He also produced evidence that the flight had been pre-planned: the Minister of the Interior had announced that the flight was imminent as early as 27 July that year, one day after the first Anglo-French charter flight carried 40 Afghan migrants to Kabul. The minister then indicated that other flights were being planned to Afghanistan, Iraq and Somalia.<sup>24</sup> Nonetheless, the case was dismissed because Sultani's asylum claim had been considered and refused twice by the French courts.

In February 2012, the ECtHR upheld the case of *Hirsi Jamaa and Others v. Italy* and found that an Italian 'push-back operation' in the Mediterranean sea (preventing migrant boats from reaching European shores and returning them to Libya) was in breach of Article 13 taken together with Article 3 and Article 4 of Protocol 4.<sup>25</sup> The case was originally brought in May 2009 by 11 Somali and 13 Eritrean nationals, who were among a group of about 200 migrants who left Libya aboard three vessels with the aim of reaching the Italian coast, but were intercepted by three Italian coastguard ships south of Lampedusa, transferred onto Italian military ships and returned to Tripoli, where they were handed over to the Libyan authorities. The details of the case are interesting, but what specifically concerns us here is whether each of the applicants had been given a chance to challenge his or her expulsion, and whether their individual circumstances had been subject to detailed examination by a competent authority.

The court found that the transfer of the applicants to Libya was "carried out without any form of examination of each applicant's individual situation." The applicants were not subjected to any identification procedure by the Italian authorities, which simply transferred all the intercepted migrants onto military ships and

"French police were governed by profitability objectives and were subject to considerable pressure when preparing such flights."

disembarked them on Libyan soil. There were no interpreters or legal advisers among the personnel on board. The applicants recounted that they were given no information by the military personnel, who led them to believe they were being taken to Italy. Moreover, the court noted that the personnel aboard the military ships were "not trained to conduct individual interviews and were not assisted by interpreters or legal advisers." This was sufficient for the court to rule out the existence of "sufficient guarantees ensuring that the individual circumstances of each of those concerned were actually the subject of a detailed examination." It therefore ruled, unanimously, that the removal of the applicants was of a collective nature, in breach of Article 4 of Protocol 4, as well as a violation of Article 3 of the ECHR.

The latter was due to the fact that the 'push-back operation', in the court's view, "exposed the applicants to the risk of arbitrary repatriation." In plain English, the court observed, firstly, that Libya had not ratified the Geneva Convention and, secondly, that there was no form of asylum and protection procedure for refugees in the country. The court did not subscribe to the Italian government's argument that the activities of the UNHCR in Libya represented a guarantee against arbitrary repatriation. Indeed, Libya has frequently conducted collective expulsions of refugees and asylum seekers to their countries of origin, where they could be subjected to torture and other ill-treatment. In other words, there was "a very high risk of 'chain refoulements'." The court therefore found that Italy was "not exempt from complying with its obligations under Article 3 of the Convention because the applicants failed to ask for asylum or to describe the risks faced as a result of the lack of an asylum system in Libya... the Italian authorities should have ascertained how the Libyan authorities fulfilled their international obligations in relation to the protection of refugees."

It is worth noting in this regard that the Italian Minister of the Interior stated, at a press conference held on 7 May 2009, that the operation to intercept the vessels on the high seas and to



push the migrants back to Libya was the consequence of bilateral agreements with Libya, which came into force on 4 February 2009, and represented “an important turning point in the fight against clandestine immigration.” In a speech to the Italian Senate on 25 May 2009, the Minister said that, between 6 and 10 May 2009, more than 471 irregular migrants had been intercepted on the high seas and transferred to Libya in accordance with those bilateral agreements.<sup>26</sup>

The court also considered whether there were *territorial restrictions* to Article 4 of Protocol 4. It noted that the provision contained in the article “has no territorial limitation.” The provision, it said, “refers very broadly to aliens, and not to residents, nor even to migrants. The purpose of the provision is to guarantee the right to lodge a claim for asylum which will be individually evaluated, regardless of how the asylum seeker reached the country concerned, be it by land, sea or air, be it legally or illegally. Thus, the spirit of the provision requires a similarly broad interpretation of the notion of collective expulsion which includes any collective operation of extradition, removal, informal transfer, ‘rendition’, rejection, refusal of admission and any other collective measure which would have the effect of compelling an asylum seeker to remain in the country of origin, wherever that operation takes place.”<sup>27</sup>

Finally, the court reiterated “the importance of guaranteeing anyone subject to a removal measure, the consequences of which are potentially irreversible, the right to obtain sufficient information to enable them to gain effective access to the relevant procedures and to substantiate their complaints.” Given the circumstances of this case, the court considered that the applicants were “deprived of any remedy which would have enabled them to lodge their complaints under Article 3 of the Convention and Article 4 of Protocol No. 4 with a competent authority and to obtain a thorough and rigorous assessment of their requests before the removal measure was enforced.” This, the court ruled, was a breach of the requirements of Article 13 of the ECHR in so far as it did not satisfy the criterion of suspensive effect enshrined in the above-cited *Conka* judgment (the exhaustion of domestic remedies is discussed in more detail below).

Since the *Hirsi Jamaa* case, there have been a few other applications to the ECtHR based on Protocol 4 but none has been successful yet (one is ongoing).<sup>28</sup> In July 2013, however, the ECtHR issued an interim order blocking the Maltese government from returning around 45 Somali migrants to Libya until their asylum applications have been fully and individually considered.<sup>29</sup>

## CHAIN REFOULEMENT

As the ECtHR cases cited above have demonstrated, mass deportation cases may also give rise to issues related to Articles 2 and 3 of the ECHR and the non-refoulement principle contained in Article 33 of the 1951 Geneva Convention. In this type of cases, the human rights situation in the receiving country – be it the deportee’s country of origin or a third country – should be assessed so as to establish whether there is a real risk that the person or persons being deported may face death or ill-treatment. This is standard in most asylum cases. The only exception is when there are reasonable grounds for regarding the person “a danger to the security of the country” or “a danger to the community of that country.”<sup>30</sup>

Significantly, in such cases where there is a third country involved, the liability falls on the original expelling state. The ECtHR took this view in *Saadi v. Italy*, among other cases, arguing that the expelling state’s action “has a direct consequence [leading to] the exposure of an individual to the risk of proscribed ill-treatment.”<sup>31</sup> As mentioned above, the court in *Hirsi Jamaa and Others v. Italy* did not accept the Italian government’s attempt to shift the responsibility onto the Libyan authorities as this would have led, in the court’s view, to “a very high risk of ‘chain refoulements’ of persons in need of protection.”<sup>32</sup>

"The provision of non-refoulement constitutes one of the basic Articles of the 1951 Convention, to which no reservations are permitted."

In a 1977 ‘Note on Non-Refoulement’, the UN High Commissioner for Refugees explained that the provision of non-refoulement constituted one of the basic articles of the 1951 Convention, to which no reservations were permitted, and that, unlike various other provisions in the convention, its application was not dependent on the lawful residence of a refugee in the territory of a contracting state.<sup>33</sup>

As to the wording “where his life or freedom would be threatened” used in Article 33, which has been the subject of some discussion, it appears from the convention’s *travaux préparatoires* that it was not intended to lay down a stricter criterion than the definition of a refugee as someone having a “well-founded fear of persecution” contained in Article 1 of the convention. The different wording was introduced to make it clear that the principle of non-refoulement applies not only to the refugee’s country of origin but to any other country where the person has a reason to fear persecution.<sup>34</sup> As the High Commissioner puts it, “In evaluating the practice of States in regard to the principle of non-refoulement, it should be emphasized that the principle applies irrespective of whether or not the person concerned has been formally recognized as a refugee.”<sup>35</sup>

Finally, it is worth pointing out that the exception contained in the second paragraph of Article 33 regarding national security and serious crimes was introduced following objections by the UK government concerning “an alien [who] despite warning, persists in conduct prejudicial to good order and government and the ordinary sanctions of the law.”<sup>36</sup> However, “in view of the serious consequences to a refugee being returned to a country where he is in danger of persecution,” in the words the High Commissioner, “the exception provided for in Article 33(2) should be applied with the greatest caution.”<sup>37</sup> Yet this exception has been institutionalised in the UK to some extent with the 2007 Borders Act, which allowed the *automatic* deportation of migrants and refugees convicted of specific offences or sentenced to 12 months’ imprisonment, even

though possible breaches of Articles 2 and 3 and other fundamental human rights are supposed to be considered before taking such an action.<sup>38</sup>

## PROCEDURAL SAFEGUARDS AND EFFECTIVE REMEDIES

Article 32 of the Geneva Convention provides that "The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order." Paragraph 2 of the same article states that "The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority."<sup>39</sup> In other words, refugees should be allowed, with adequate legal representation and enough time, to legally challenge their deportation before a competent authority.

Similarly, Article 1 of Protocol 7 to the ECHR provides that "An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed: (a) to submit reasons against his expulsion, (b) to have his case reviewed, and (c) to be represented for these purposes before the competent authority or a person or persons designated by that authority."<sup>40</sup> Article 2 of the same protocol makes an exception "when such expulsion is necessary in the interests of public order or is grounded on reasons of national security," in which case the person may be expelled before he or she can exercise their rights under these safeguards. It should be noted, however, that the UK has not signed or ratified Protocol 7. So, like Protocol 4, it is not legally binding in the UK. However, the protocol's provisions are substantially similar to those of Article 32 of the 1951 Convention, to which the UK is signatory, as well as Article 13 of the United Nations Covenant on Civil and Political Rights, so the argument still holds.

One problem is that both Article 32 of the Geneva Convention and Article 1 of Protocol 7 to the ECHR do not apply to refused asylum seekers who have not been granted refugee status following an individualised legal process of their asylum claim (whether by a Home Office case worker or an immigration judge); they only apply to refugees or foreign nationals "lawfully resident in the territory." In other words, the provisions apply only to foreign nationals who have entered lawfully or have entered unlawfully but whose status has subsequently been regularised. A person whose admission and stay were subject to certain conditions – for example a limited leave to remain – but who no longer meets these conditions "cannot be regarded as being still 'lawfully' present."<sup>41</sup>

Lawful residence has been defined more clearly in other instruments of international law. For instance, Article 11 of the European Convention on Social and Medical Assistance states that "Residence by an alien in the territory of any of the Contracting Parties shall be considered lawful within the meaning of this Convention so long as there is in force in his case a permit or such other permission as is required by the laws and regulations of the country concerned to reside therein."<sup>42</sup> The article adds that "failure to renew any such permit, if due solely to the inadvertence of the person concerned, shall not cause him to cease to be entitled to assistance."

There is case law establishing that refused asylum seekers and illegal entrants are not considered lawful residents. Nonetheless, it may be possible to argue that many foreign national offenders who are subject to automatic deportation orders, and at least some visa overstayers, do not – or should not – fall under the unlawfully resident category, certainly not before their refugee status or residence permit has been reviewed and revoked through an individualised process of law that carefully considers their human

"The Convention is intended to guarantee rights that are not theoretical or illusory, but practical and effective."

and asylum rights. Yet people from both categories are routinely deported on mass deportation charter flights and there appears to be some evidence that a rigorous review process is not always in place.

The exceptions contained in Article 32 of the Geneva Convention, Article 13 of the UN Covenant on Civil and Political Rights and Protocol 7 to the ECHR, namely national security and public order, should not apply to such cases either, because their application should take into account the "principle of proportionality" as defined by the ECtHR case law. States relying on public order or national security arguments to expel foreigners before the exercise of the aforementioned safeguards "must be able to show that this exceptional measure was necessary in the particular case or category of cases."<sup>43</sup> In fact Article 14(4) of the EU Qualification Directive states that people whose refugee status is refused or revoked for reasons to do with national security or committing "a particularly serious crime", making them "a danger to the community", should still be entitled to "rights set out in or similar to those set out in Articles 3, 4, 16, 22, 31 and 32 and 33 of the Geneva Convention in so far as they are present in the Member State."<sup>44</sup>

The important thing to bear in mind is that, without such safeguards, it can be argued – as ECtHR judges have done in a number of cases – that the expelling state did not provide those facing deportation with an effective remedy to deal with claims that their forcible removal may be in breach of their human rights provided for under European and international law, particularly under Articles 2 and 3 of the ECHR and Article 33 of the Geneva Convention (non-refoulement), which apply to both lawful and unlawful residents.

Article 13 of the ECHR provides that "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."<sup>45</sup> In other words, national authorities are required to

provide a domestic remedy to deal with any arguable complaints under the convention and to grant appropriate relief. Significantly, the remedy required by Article 13 must be *effective*, in practice as well as in law, and the effectiveness of the remedy should not depend on the certainty of a favourable outcome for the applicant. Nor should the authority referred to in this article necessarily be a judicial authority. The ECtHR judgement in *Conka v. Belgium* established that the remedies must be "sufficiently certain, not only in theory but in practice." Failing this, they would "lack the requisite accessibility and effectiveness."<sup>46</sup> Even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so.<sup>47</sup>

As mentioned above, Article 13 has not been incorporated into UK domestic law through the Human Rights Act 1998 (HRA). However, Section 6 of the HRA makes it unlawful for public authorities to act "in a way which is incompatible with a Convention right" except when this is "the result of one or more provisions of primary legislation" or when the authority "could not have acted differently."<sup>48</sup> The question of whether the special arrangements surrounding deportation charter flights are a result of primary (domestic) legislation and whether the authority could act differently will be discussed shortly. For now, it is important to note that the ECtHR case law has established that an applicant's complaint alleging that his or her removal to another country would expose him or her to death or ill-treatment, contrary to Articles 2 and 3 of the ECHR respectively, "must imperatively be subject to close scrutiny by a national authority."<sup>49</sup> This principle has led the court to rule that the notion of effective remedy, within the meaning of Article 13 taken together with Article 2 or 3, requires, firstly, "independent and rigorous scrutiny" of any complaint made by a person in such a situation, where "there exist substantial grounds for fearing a real risk of treatment contrary to Article 3" and, secondly, "the possibility of suspending the implementation of the measure impugned."<sup>50</sup>

The judgement in *Conka v. Belgium* found that, in relation to Article 13 taken together with Article 4 of Protocol 4, the remedy available to the appellants did not meet the requirements of the former article if it did not have a *suspensive effect*. It pointed out that the notion of effective remedy under Article 13 requires that the remedy "may prevent the execution of measures that are contrary to the Convention and whose effects are potentially irreversible."<sup>51</sup> Consequently, it is inconsistent with Article 13 for deportation measures to be executed before the national authorities have examined whether they are compatible with the convention, although the authorities are afforded "some discretion as to the manner in which they conform to their obligations under this provision." In light of the importance attached to Articles 2 and 3 and the irreversible nature of the damage that may result if the risk of death or torture materialises, the court ruled that the "suspensive effect should also apply to cases in which a State Party decides to remove an alien to a country where there are substantial grounds for believing that he or she faces a risk of that nature."<sup>52</sup>

The court identified a number of factors which "undoubtedly affected the accessibility of the remedy", such as those detailed below:

*"the fact that the information on the available remedies handed to the applicants on their arrival at the police station was printed in tiny characters and in a language they did not understand; only one interpreter was available to assist the large number of Roma families who attended the police station in understanding the verbal and written communications addressed to them and, although he was present at the police station, he did not stay with them at the closed centre. In those circumstances, the applicants undoubtedly had little prospect of being able to contact a lawyer from the police station with the help of the interpreter and, although they could have contacted a lawyer by telephone from the closed transit centre, they*

"Everyone shall have an effective remedy before a national authority."

*would no longer have been able to call upon the interpreter's services; despite those difficulties, the authorities did not offer any form of legal assistance at either the police station or the centre."*

Indeed, the applicants' lawyer explained at the hearing that he was only informed of his clients' situation at 10.30pm on Friday 1 October 1999, so any appeal to the Belgian "committals division" would have been pointless because the case could not have been heard until 6 October, a day after the applicants' planned expulsion.<sup>53</sup>

To sum up, the accessibility of a domestic remedy within the meaning of Article 13 of the ECHR implies that the deportation arrangements created by the national authorities must afford those facing deportation a *realistic* possibility of using the remedy. The 'special arrangements' used to implement the UK's mass deportation flights, and the obstacles that these place on accessing adequate legal representation and exercising the right to appeal or judicial review, clearly do not meet this criterion, as will be discussed in more detail shortly.

## UK CASE LAW

There is not much UK case law on charter flights *per se*. Solicitors have succeeded in stopping the removal or deportation of many individuals to DR Congo, Afghanistan, Iraq, Sri Lanka and other frequent charter flight destinations where they could prove that these particular individuals faced a risk of death or torture on return. But many procedural aspects of the programme are yet to be challenged more systematically.

One such aspect is the period of notice charter flight deportees and their legal representatives are given before the date of the flight. Public pressure and legal challenges have previously forced the UKBA to amend the content and manner in which it issues Removal Directions.<sup>54</sup> Currently, the minimum period of notice

required for deportations on scheduled flights is 72 hours for normal cases and five working days for third country cases and non-suspensive appeal cases (i.e. those certified as “manifestly unfounded”).<sup>55</sup> In both cases, most legal practitioners would argue that these time scales are often insufficient to challenge a deportation.

Furthermore, there are now many exceptions to these minimum time requirements, including port refusal cases, where removal occurs within seven days of arrival, and second-attempt removals following a failed attempt the first time round. The latter category includes not only people who ‘frustrate’ their removal through a form of physical resistance, but also people whose removal had been deferred following a judicial review application where the judge handed down a ‘no merit’ finding. In such cases, the UKBA is not required to issue new removal directions if the new removal date is set within 10 calendar days.

For charter flight deportees, the notice period is a minimum of five working days. The reason for this is that charter deportees who wish to legally challenge their removal now have to seek an injunction, because judicial review applications no longer result in an automatic deferral of removal (more on this below). According to the UKBA, the purpose of this ‘extended’ period of notice in charter flight cases is “to minimise the number of last-minute applications for injunctive relief to the High Court... and to encourage people to inform UKBA at the earliest opportunity of any further submissions they want to make.”<sup>56</sup> In practice, charter removal notices do not specify the exact date; they often state “no sooner than five working days, no later than 21 days.” A refusal to provide the exact date of removal, which leaves deportees and their legal representatives with unnecessary uncertainty and an inability to act swiftly, is justified by the Home Office on the grounds of ‘security’: “To protect the safety of those on board a chartered aircraft to particular destinations, it may be necessary, for security reasons, to withhold the exact details of departure and or the destination.”<sup>57</sup>

The issue of when a removal or deportation order is issued is crucial, particularly in cases where procedural safeguards depending on the lawful residence status of the deportee discussed above are invoked. Article 11 of the European Convention on Social and Medical Assistance states that “Lawful residence shall become unlawful from the date of any deportation order made out against the person concerned, unless a stay of execution is granted.”<sup>58</sup> A relevant point here is whether and when the order is received by the deportee. It is established in UK case law that a decision has no legal effect until it has been received by the person concerned. As Lord Steyn puts it in the 2005 House of Lords judgment in *Anufrijeva v. SSHD*, “Notice of a decision is required before it can have the character of a determination with legal effect because the individual concerned must be in a position to challenge the decision in the courts if he or she wishes to do so. This is not a technical rule. It is simply an application of the right of access to justice.”<sup>59</sup>

Yet recent reports by legal practitioners suggest that the UKBA has been faxing its decisions on fresh claims made in good time by people facing deportation to the Administrative Court first, and then to the claimant and/or their legal representative. This means judges would often make a decision on their removal without the original decision having been seen by the claimant or their legal representative.<sup>60</sup> As one solicitor explains, “I can understand this where the claim may have been made very last minute but there is absolutely no justification for it when the fresh claim had been made before removal directions have even been set.”<sup>61</sup> Furthermore, some of the Factual Immigration Summaries prepared by the Home Office case owners, which usually accompany removal directions, seem to ‘omit’ references to current or previous fresh claims and give the Administrative Court judges an impression that nothing is pending in the case.<sup>62</sup>

These two points may seem like minor procedural issues but they could be crucial in mass deportation cases as they “may

"Collective expulsion should be understood as the collective implementation of expulsion measures."

reinforce the doubt that an expulsion might be collective,” to quote the judgement in *Conka v. Belgium*.<sup>63</sup> This is because the first issue (when a notice is received) may make it “very difficult for the aliens to contact a lawyer,” while the second (omitting or disregarding fresh claims and other outstanding legal processes) means “the asylum procedure had not been completed.” Indeed, the ruling in *Conka* has established that, even though removals that are based on “a reasonable and objective examination of the particular case of each individual” should not be regarded as collective expulsion within the meaning of Protocol 4, this “does not mean, however, that where the latter condition is satisfied, the background to the execution of the expulsion orders plays no further role in determining whether there has been compliance with Article 4 of Protocol No. 4.”<sup>64</sup> In other words, the way in which mass deportation operations are conducted are as important as the legal process for each individual deportee in determining whether or not their removal amounts to an unlawful collective expulsion. Collective expulsion should be understood as the collective implementation of expulsion measures.

## ARE THE UK'S MASS DEPORTATION FLIGHTS LAWFUL?

Section 6.1 of Chapter 60 of the UKBA's *Enforcement Instructions and Guidance* manual states that “Some chartered flights may be subject to special arrangements” due to “the complexity, practicality and cost of arranging an operation.”<sup>65</sup> This is similar to the “practical considerations” argument used by the French authorities (see, for example, the *Sullani v. France* case discussed above), which the ECtHR did not buy into. In theory, details concerning these “special arrangements” should be communicated in advance to both the High Court and the person being removed. In practice, all that is communicated in the Home Office letters is a reiteration of the above sentence: “Because of the complexities, practicalities and costs involved in arranging charter flights, it is essential that these removals are not disrupted or delayed by large numbers of last minute claims for permission to seek judicial review.”<sup>66</sup> It can be argued that the ambiguity of this statement is not a sufficient basis for eroding the fundamental right of access to justice. As Lord Hoffmann put it once, “Fundamental rights cannot be overridden

by general or ambiguous words. This is because there is too great a risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process.<sup>67</sup>

The fact that judicial review (JR) applications no longer lead to an automatic deferral of removal because of the “special arrangements” surrounding charter flights, i.e. they do not have a suspensive effect, means charter flight deportees are not provided with an effective remedy within the meaning of Article 13 of the ECHR, given how *practically difficult* it is now to find a solicitor and apply for an injunction. The right of appeal was legislated in 1993, when the European Commission on Human Rights – a body that examined applications before they went to the ECtHR – decided that the lack of a right of appeal in deportation cases, particularly where a risk of death or torture on return is claimed, breached Article 13. So the UK government at the time introduced legislation allowing for appeals against asylum refusal decisions. In the 1989 case of *Soering v. the UK* and the 1991 case of *Vilvarajah and Others v. the UK*, the ECtHR ruled that a judicial review of a refusal or removal decision was sufficient to satisfy the effective remedy requirement contained in Article 13.<sup>68</sup>

As indicated above, Article 13 of the ECHR was not incorporated into the Human Rights Act 1998. However, Section 6 of this act makes it unlawful for public authorities to act “in a way which is incompatible with a Convention [ECHR] right,” except when this is “the result of one or more provisions of primary legislation” or when the authority “could not have acted differently.”<sup>69</sup> The source of the “special arrangements” policy is a guidance manual issued by the UK Border Agency, an executive body, and does not result from primary legislation (parliament). As one practitioner puts it, “This is a policy that has dropped out of the air and has received no parliamentary scrutiny. But the effect of the policy is to close the door of the High Court to many immigration and asylum claimants.”<sup>70</sup> And needless to say, the UKBA *can* act differently, as it indeed does in removals on scheduled flights. It follows that the UK’s charter flights “special arrangements” policy is arguably in breach of Article 13 of the ECHR, and therefore of Section 6 of the HRA.

Furthermore, as mentioned above, Section 2(1) of the HRA requires the UK courts to “take into account” the decisions of the ECtHR when determining a question that has arisen in connection with a ECHR right,<sup>71</sup> especially when the ECtHR has “clear and constant jurisprudence.”<sup>72</sup> It should be evident from the discussion above that the ECtHR case law on this matter is “clear and constant” enough for UK courts to take it into account and for the UKBA to be challenged in court on this basis.

If we add to this the recent cuts to legal aid introduced with the LASPO Act 2012,<sup>73</sup> it is now “practically impossible” for most people facing removal from the UK to seek a judicial review of their removal decision. Applicants may be able to access ‘exceptional case funding’ under Section 10 of LASPO but the application process is so complicated and lengthy that it is effectively of no use to people facing imminent deportation, particularly via charter flights.<sup>74</sup> In some parts of the country, there are virtually no legal aid immigration solicitors left. To quote the judge in the 2010 case brought by the charity Medical Justice, which successfully challenged ‘zero notice removals’, “it is frequently almost impossible that somebody served with removal directions will be able to find a lawyer who would be ready, willing and able to provide legal advice within the time available prior to removal, let alone in an appropriate case to challenge those removal directions.”<sup>75</sup> As discussed above, a remedy has to be effective in practice as well as in law. Many legal practitioners have therefore been talking about legal challenges to these cuts and revisiting *Maaoui v. France*, in which the ECtHR ruled that Article 6(1) of the ECHR (the right to a fair trial and access to a court) was not applicable to decisions on entry, stay and deportation of aliens.<sup>76</sup>

The restrictions on deportees’ access to justice are compounded by the volume of people which can be removed by charter flight

"Because of the complexities, practicalities and costs involved in arranging charter flights, it is essential that these removals are not disrupted or delayed..."

and the speed with which they are conducted, which appear to be overwhelming both solicitors and judges. To quote one barrister, “Given the flood of applications that accompanies many charter flights, it seems quite possible that a daytime duty judge will simply not be able to deal with every application before take off. [An] apparently absolute bar on approaching the out of hours judge [which has recently been put in place by the Administrative Court] could conceivably lead to cases simply not being dealt with in time.”<sup>77</sup>

This is quite important given that the Administrative Court plays an increasing role in deciding the substantive merits of claims in stay applications (people wishing to challenge their removal now have to obtain a Court Office reference and obtain a stay on their removal as a result of the non-suspensive policy on judicial review in charter cases). The main reason for this new role assumed by the Administrative Court is that Home Office case owners are often too overwhelmed themselves or simply ‘cannot be bothered’ about making proper decisions, which is in turn a result of the policies and arrangements surrounding deportation charter flights. So given that the Administrative Court now acts “as a filter,” to quote another practitioner, “screening out the weak cases and granting a stay to the good ones,”<sup>78</sup> many charter flight deportees are effectively deprived of their fundamental rights of access to justice, effective remedy and a reasonable and objective examination of their case before their deportation.

And it is not just UK judges that appear to be overwhelmed by charters; the ECtHR appears to be suffering from the same problem. According to one ECtHR judge, who notes that the claimant he was dealing with was one of 20 or so refused asylum seekers due to be removed on the same flight to Sri Lanka who were asking for a stay on their removal,

“Although some of the applications could be considered by other judges when they became available, it was plain by about 14.00 that I would not be able to consider all the remaining applications

by 15.00... In those circumstances, I was informed by UKBA's Operational Support and Certification Unit which of the remaining applicants were on the main manifest, and which were on a reserve list and therefore liable to be included on the main manifest only if someone on the main manifest was removed from the flight. Although my priority was to deal with the applications of those on the main manifest, I had not reached the claimant's case by 15.28 when I was told that the [plane] doors were about to close. I was informed yesterday [29/9/2011] that the claimant had been on the flight.<sup>79</sup>

In addition to the questions of access to justice and effective remedy, if it can be shown that the individuals being deported on a given charter flight, or even some of them, found it "very difficult" to contact a lawyer, did not have "sufficient time" to lodge last-minute representations or did not "complete" their asylum procedure due to the way in which charter flight operations are carried out in the UK, then this may "reinforce the doubt" that their expulsion might be collective and unlawful within the meaning Protocol 4 to the ECHR, as the ruling in *Conka v. Belgium* has established.

We will turn very shortly to the issue of Protocol 4 and why it has not been ratified by the UK. For now, suffice to say that there is plenty of evidence that each of the five factors identified in *Conka* are arguably present in the case of the use of charter flights in the UK.

First, the UK government or politicians have occasionally made statements announcing a charter flight or scheme to a certain country. Iraq and Sri Lanka are good examples. Secret bilateral agreements could also be seen as part of such plans or intentions, as do the operational names given to country-specific charter deportation programmes ('Operation Ravel' for Afghanistan, 'Operation Majestic' for Nigeria, etc.).

Second, migrants and refugees from a certain nationality are often detained roughly around the same time in preparation for a charter flight to that country. A cursory look at monthly detention statistics may demonstrate this more clearly. A 2012/13 inspection report by the CPT\* indicates that "a tentative list" of persons to be deported, comprising some 120 "possible candidates," is drawn up by the UKBA "some six weeks before the removal date" of charter flights. "At that stage," the report adds, "the list (or 'flight manifest') usually includes both persons detained in IRCs, as well as persons staying on UK territory." We do not (yet) have concrete evidence that immigration reporting centres and enforcement teams are sent instructions to detain a certain number of people from a certain nationality, but it is not difficult to imagine that this is the case.

Another important point in this regard is the manner in which people are detained. If someone is asked to attend a reporting centre and given the impression that this is to do with their asylum or immigration process, then this may amount to them being misled by the authorities with the sole intention of facilitating a pre-planned mass deportation operation, in breach of Article 5 of the ECHR, which applies to asylum seekers, refugees and overstayers.

Third, removal directions served on charter deportees seem to be sufficiently identical, especially if it is true that some factual summaries accompanying them have been omitting crucial aspects of the deportee's claim. In some cases this could also mean that the due legal process has not been completed because of the operation. This would be most obvious, perhaps, with the use of so-called 'reserves', which is discussed in depth in a separate section below.<sup>80</sup>

Finally, the special arrangements surrounding charter flights, together with the legal aid cuts, are making it increasingly difficult for deportees to access adequate legal representation and allow them sufficient time to challenge the decision to deport them.

Of course to use any of these arguments, one would need good, concrete evidence. But even with such evidence, until the UK has ratified the protocol, it is difficult to see how any Protocol 4

argument can be persuasive in UK courts, perhaps save for the relation between the ECHR and the HRA as discussed above.

\*Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

## CASE STUDIES

Below are a few examples of people who were extremely unlikely to be deported, but were nonetheless booked on charter flights from the UK, only to have their tickets cancelled. Cases like these, typically encountered in the build up to any charter flight, put additional pressures on an already stretched legal process. A cynical explanation would be that the UKBA are deliberately attempting to overload the system to get as many people expelled as possible.

1- DANIEL from Ghana, booked on two charter flights despite serious spinal injuries. He was withdrawn from both flights and later released on Temporary Admission.

2- JULIET from Nigeria, booked on a charter flight despite being heavily pregnant. She was withdrawn from the flight and later released on Temporary Admission.

3- S, an elderly, bed-bound detainee, was scheduled to be removed on a charter flight despite previous sets of removal directions failing due to his medical problems. He was later released from detention and admitted to a care home.

4- A, an Afghan man who had serious injuries from a bomb blast, which meant he could not sit down without being in significant pain, was booked on a charter flight to Afghanistan. He obtained an injunction on the basis that he was not fit to fly and was later granted Leave to Remain.

5- JOHN from Nigeria was booked on a charter flight despite newspaper articles proving he was at risk of homophobic persecution on return. John was withdrawn from the flight but was later deported on a commercial flight and imprisoned on arrival in Nigeria, as he had publicly stated would happen.

6- F, a Nigerian woman who had been told by the Nigerian High Commission that they would not issue her with travel documents, was booked on a charter flight twice. Both times her removal directions were cancelled because she did not have travel documents to travel with.

## THE UK AND PROTOCOL 4

The ECtHR's Protocol 4-related cases are highly persuasive but are not binding in the UK courts. The reason is that the UK signed this protocol in 1963 but has *never ratified* it. By only signing a convention (or additional protocols), a state is not legally bound by it. A signature shows that the state intends to ratify the convention, which will make it binding. In the period between signature and ratification, states have the opportunity to amend their domestic laws so as to fulfil their obligations under the new convention. Protocol 4 has been ratified by 43 of the 47 Council of Europe member states. The only other country that has signed but not ratified it is Turkey. Greece and Switzerland have neither signed nor ratified it.<sup>85</sup>

The UK government set out its policy regarding the ratification of Protocol 4 and its incorporation into domestic law in a 1997 White Paper, entitled *Rights Brought Home*, as follows:

*"These are important rights, and we would like to see them given*

*formal recognition in our law. But we also believe that existing laws in relation to different categories of British nationals must be maintained. It will be possible to ratify Protocol 4 only if the potential conflicts with our domestic laws can be resolved. This remains under consideration but we do not propose to ratify Protocol 4 at present."*<sup>84</sup>

There was nothing about Article 4 of the protocol concerning the collective expulsion of aliens. Indeed, in its seventh report (Session 2004-5), the UK parliament's Joint Committee on Human Rights pointed out that the UK has refused to ratify Protocol 4 on account of the protocol's Articles 2 and 3, noting "continuing concerns over Articles 2 and 3 of Protocol 4 which could be taken, respectively, to confer rights in relation to passports and a right of abode on categories of British nationals who do not currently have that right"<sup>85</sup> Article 2 protects the right of everyone lawfully within the territory of a state to liberty of movement and freedom to choose their residence, while Article 3 protects the right not to be expelled from, or to be refused entry to, the country of one's nationality. If

## Case Studies

**M**igrants and refugees held in immigration detention centres can only access legal representation from three solicitors' firms contracted by the UKBA for each centre. Some of these firms cover more than one centre. Detention centres run a 'rota', where one firm is on duty each week. To access free legal advice, detainees must present their often complex asylum cases to lawyers from these firms in a 30-minute drop-in session. The detainee will only be taken on as a client if the lawyer believes that their case has a reasonable chance, more than 50%, of succeeding.

The high number of removal directions issued for charter flights (an average of 117 per week) puts considerable pressure on these handful of legal aid firms to provide adequate representation in detention. Detainees on charter flights also tend to be moved to centres near London airports in the week leading up to a charter flight, causing further disruption to the legal process and adding further burden on a small number of lawyers.

In February 2012, volunteers from the SOAS Detainee Support Group visited a Pakistani Christian detainee, who they felt had "a very strong case." According to the group, the man had "piles of evidence of how he was being persecuted in Pakistan because of the blasphemy laws." His case was nonetheless dealt with under the Detained Fast Track system. In detention, he was given a solicitor from the firm Duncan Lewis, who the group said "did a shoddy job," so the man was left unrepresented at the appeal stage.

The volunteers saw him a week before he was scheduled to be deported on a charter flight to Pakistan. It was Friday. They rang up many solicitors' firms trying to get him a solicitor, but the responses were clear: although they sympathised with the case, they could not take it on. According to the group, two of the firms explicitly mentioned the fact that it was a charter flight as a reason for their refusal. Cancelling a charter removal was "difficult"

Over the weekend, the group obtained translations of transcripts from the two Pakistani blasphemy court cases against the man concerned, and an expert certified them as valid. With this evidence, the detainee tried to convince a duty solicitor on the Monday to help him stop his removal the

following day. "The solicitor did not even look at the evidence," the man told his visitors. "He said I am on a charter tomorrow so he could not help me."

The group tried to contact solicitors again but received similar responses. In the end, the detainee submitted the evidence himself with a Judicial Review application and sent it to the court. The court did not get back to him. The group attempted to call the court but could get no response. The man was deported.

A member of the detainee support group told the authors of this report: "It seems that the main reason why we could not get legal representation for a rather strong case was the fact that it involved a charter flight."

In an inspection report on Conbrook detention centre in January-February 2013,<sup>81</sup> HM Chief Inspector of Prisons revealed the following:

*"Detainees who were to be removed were moved to different accommodation for their last night, where they were locked up for longer than the rest of the population and had more limited access to communication facilities – this was particularly problematic for those seeking judicial review or for those without a mobile phone. During our inspection, emergency solicitors' telephone numbers were not available in this unit. In one case, centre staff mistook the identity of a Bangladeshi detainee and took him to the FNLNU [first night last night unit] to be removed on a Sri Lankan charter flight, causing unnecessary distress."*

Another inspection report on the escorts and removals to Sri Lanka in December 2012,<sup>82</sup> found the following:

*"most detainees spoke little or no English and the lack of interpreters seriously hindered attempts to communicate at each stage of the removal. Detainees were all allocated numbers and there was an inappropriate tendency by some staff to refer to them as numbers rather than by name."*

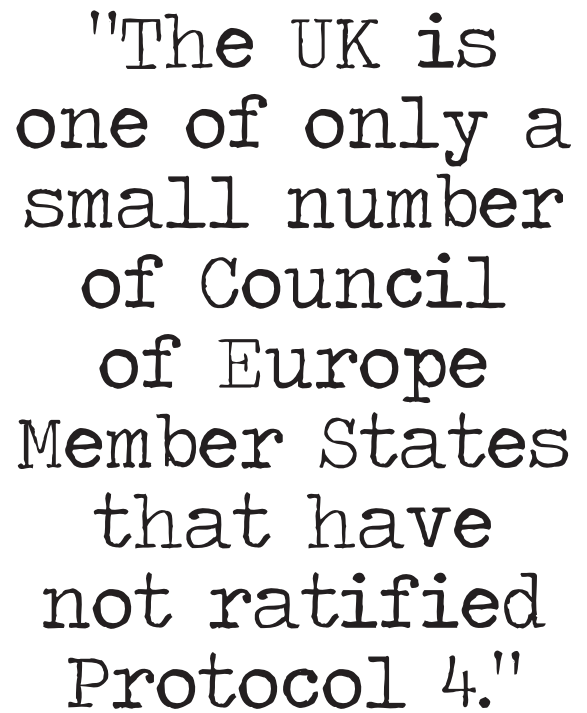
Similar examples can probably be found in most, if not all, other detention centres and charter flights.

Protocol 4 is ratified, the UK government is worried that nationals of so-called dependent territories (colonies that did not gain full independence from the British empire, also known as British Overseas Territories) would be able to enter and remain in the UK. Shameful as this is, it has nothing to do with mass deportations.

Similarly, a 1998 Commons research paper on the Human Rights Bill 1997-8 traced the government's refusal to ratify Protocol 4 to "concerns about the exact extent of the obligation regarding a right of entry."<sup>86</sup> In fact, the terms of Article 2 of the protocol are substantially similar to those of Article 12 of the International Covenant on Civil and Political Rights (ICCPR), which the UK has ratified subject to reservations regarding disciplinary procedures for members of the armed forces and regarding nationals of dependent territories (concerning their right to enter and remain in the UK and each of the dependent territories). Yet, despite noting that the UK is "one of only a small number of Council of Europe Member States that have not ratified Protocol 4," the parliamentary committee's review in 2004-5 concluded that the UK "should not ratify" the protocol but recommended that "at a minimum, consideration should be given to ratification with appropriate reservations to overcome the specific issues identified by the Government."<sup>87</sup>

On 18 March 2009, Lord Lester of Herne Hill asked the government in the House of Lords: "what are their reasons for not seeking to ratify the Fourth Protocol to the European Convention on Human Rights with reservations similar to those made by the United Kingdom when ratifying the United Nations International Covenant on Civil and Political Rights, in respect of nationality and immigration issues?" The Parliamentary Under-Secretary of State, Ministry of Justice, Lord Bach answered: "The Fourth Protocol to the European Convention on Human Rights has a much more specific focus than the UN International Covenant on Civil and Political Rights. Ratification of the Fourth Protocol would require significant reservations to two of its four substantive articles. The Government do not consider it appropriate to ratify the Fourth Protocol with such significant reservations to such a large proportion of its substantive provisions. However, the Government will continue to keep this position under review."<sup>88</sup> The "two substantive articles" referred to here are understood to be Articles 2 and 3 of the protocol. Again, nothing about Article 4.

Given that the UK government's objections to Protocol 4 appear to have nothing to do with collective expulsion, there is no reason why it cannot ratify the protocol with reservations concerning the articles it has problems with.<sup>89</sup> The same goes for Protocol 7, which the government stated its intention to sign in the aforementioned White Paper, a promise that did not subsequently materialise in the 1998 Human Rights Act.



"The UK is one of only a small number of Council of Europe Member States that have not ratified Protocol 4."



# Overbooking & the use of reserves

This section examines the logistics of charter flights, which pose ethical and legal issues. In January 2012, the House of Commons Home Affairs Select Committee called for an immediate halt to the UKBA's practice of taking additional deportees from detention centres to airports as 'reserves'. The UKBA did this in case some of those due to be deported were taken off a flight as a result of last-minute legal representations.<sup>1</sup>

The committee's chair, Keith Vaz, condemned the practice as "inhumane" and demanded that it should cease. "It is simply inhumane to uproot somebody on the expectation that they will be returned to their home country only to then return them at the end of the day to a detention centre in the UK," he said.<sup>2</sup>

Data obtained by the authors of this report under Freedom of Information legislation show that the UKBA used reserves for half of all deportation charter flights in the twelve months following the select committee's recommendation that the practice "should be discontinued."

Between January and December 2012, of the 42 deportation charter flights that left the UK, 21 made use of 'reserves'. Of these, nine were to Pakistan, six to Afghanistan, five to Nigeria, Ghana and DR Congo, and one to Sri Lanka.<sup>3</sup>

Figures for how many reserves were used are only available for some of these flights. For example, in February 2012, 11 reserves were used on a charter flight to Pakistan, representing 22% of the 50 people who were removed on that flight. In the same month, 14 reserves were used on a charter flight to Afghanistan, representing 23% of the 60 people removed.

According to HM Chief Inspector of Prisons Nick Hardwick, who first criticised the practice in May 2011, the UKBA has rejected his recommendation that the practice should cease "on grounds of efficiency."<sup>4</sup>

In his report, which observed that Afghan detainees held at Tinsley House detention centre at Gatwick airport were being taken to the airport as 'reserves', Mr Hardwick had described the practice as "objectionable, distressing and inhumane."<sup>5</sup>

## LETTERS

Instead of implementing the inspector's and the select committee's recommendations, the UKBA has now institutionalised the practice by issuing detainees with letters telling them they may or may not be deported.

The standard letter, introduced in June 2012 and seen by the authors of this report (see Appendix 2), informs its recipient that they are "one of a number of reserve travelers for this flight."

"You will be taken to the departure airport and you should be prepared to travel as specified on your removal directions," the letter adds. "However, if you do not travel, given your reserve status, you will be returned to an Immigration Removal Centre."

The letter, and the use of reserves more generally, may be in breach of the UKBA's own *Enforcement Instructions and Guidance*, which states that, for a person to be detained and issued with Removal Directions, there must be "a realistic prospect of removal within a reasonable period."<sup>6</sup>

The letter makes it clear that the removal of reserves is contingent on other passengers' removal being cancelled at the last minute – a highly unpredictable factor. "The reason for this is to ensure that any passengers who are unable to travel will be substituted by those on the reserve list," the letter states.

The letter does include a caveat informing reserves that, in case they did not fly on the designated flight, "arrangements would then be made for your return to [their destination country] at the earliest opportunity." However, it is unclear when the next charter flight would leave, because they are organised (by the UKBA's own admission) in accordance with the "business needs" of the agency. "Flight frequency and capacity is altered in response to changing demands of UKBA," another recent Freedom of Information response by the agency states.<sup>7</sup>

"The new letters do not change the inhumane nature of the reserves practice"

When the above-mentioned letters and the continued use of reserves were revealed by the authors of this report, in an exclusive article in the *Observer*, the chair of the Home Affairs Committee, Keith Vaz, was quoted in the article saying: "I am very disappointed that it is not only continuing, but has now been institutionalised. I will be writing to the chief executive of the Border Agency and asking him why the practice has not ceased."<sup>8</sup> We subsequently sent Mr Vaz additional evidence and clarifications to assist him in his inquiries, as he promised to "not let the matter go away until the practice is stopped."<sup>9</sup> He is yet to respond.

It is important to remember that the UKBA's response to the initial criticisms by HM Chief Inspector of Prisons and the Select Committee regarding the use of reserves was to simply disregard them, describing the practice "an unfortunate fact." Although the parliamentary committee's recommendation that the use of reserves should be discontinued was "accepted in principle," the agency did not believe it "offer[ed] good value for money in practice."<sup>10</sup>

The agency had used a similar line to defend its reserves policy when the news first came out: "preparing more foreign nationals for removal than there is space for makes best use of taxpayers' money. It means that if a last minute legal challenge is launched that stops us from removing someone on a particular flight, then another detainee is able to take their place."<sup>11</sup>

But as this report demonstrates, the UKBA's cost-efficiency claims are an unfounded myth, to say the least, not to mention the unashamed prioritisation of financial considerations over the due legal process and the psychological impact on those used as reserves. A comment left by an anonymous Home Office Presenting Officer on the popular immigration law blog Free Movement on 29 February 2012 shows what can at best be described as the cynical mentality behind the reserves policy. If the court cancelled ten people's removal on the day of the flight, the comment said, "the effect would have been that ten reserves (who were unable to stump up the cash [for an appeal]) would have flown instead."<sup>12</sup>

## CASE STUDY

Prior to a charter flight to Sri Lanka on 28 February 2012, 153 Tamil detainees were issued with removal directions, of which 15 people were allocated 'reserve' status for the flight. 44 men and eight women were eventually deported from the UK.

Campaigners from the Stop Deportation network spoke to one reserve, who said he was loaded onto a coach with dozens of others at 9.30am from one of Heathrow airport's two detention centres (Colnbrook or Harmondsworth). When they arrived at Stansted airport around 11am, everyone had to stay inside the coach, which was parked within site of the aircraft. The flight was not scheduled to leave until 3:30pm.

"He was so afraid of returning to Sri Lanka that he was vomiting," according to the campaigner who spoke to the man on the phone. "Along with six or seven others on the coach, he was not put on the flight. He was brought back from the airport to a different detention centre, Brook House at Gatwick airport."

According to the man, who preferred to stay anonymous, the returned reserves were kept on board the coach until 10pm, before being processed and put in cells around midnight. "Throughout this 15-hour ordeal, I was only given a sandwich to eat," he added.

### OVERBOOKED?

Earlier this year, the authors of this report asked the UKBA, under Freedom of Information legislation, to provide them with details of the passenger capacity of the aircraft chartered by the agency for mass deportation purposes to certain destination countries. The response came about six months late but the details were nonetheless provided.<sup>15</sup> We then contrasted this information with figures we had obtained, through separate FOI requests, for the number of removal directions (known as 'RDs') issued for these flights.<sup>14</sup>

If we consider that each deportee is typically accompanied by two private security guards (see 'Excessive contractor staff' in the 'Myth of costs-effectiveness' section above), not to mention all the immigration officers and medics on board, it would appear that the below flights to Nigeria, Pakistan and Afghanistan were overbooked, presumably in anticipation that the deportation of some of those due to be deported would be cancelled or withdrawn due to last-minute legal challenges. Reserves were only used on the Pakistan and Afghanistan flights in this sample.

If it is true that mass deportation charter flights are being overbooked, the practice would be placing an unnecessary burden on immigration solicitors and judges to the point that the due legal process is compromised. More importantly, it may also amount to a collective expulsion of people on the basis of their nationality rather than the merits of their individual asylum or immigration claims, as discussed at length in the lawfulness section above. It would also mean that some detainees are being issued with removal directions with no realistic prospect of deporting them.

It is possible that the UKBA and its contractors were planning to use less escorts than usual. Or, alternatively, that the aircraft was booked after a number of removals were cancelled so the UKBA's Country Returns Operations and Strategy team (CROS) knew it had less people to remove. Thus, to determine whether flights are being overbooked, it would be crucial to know when exactly they are booked (through the UKBA's specialist contractor Carlson Wagonlit), whether before or after removal directions are issued.

The authors of this report have not (yet) been able to find this out.

A possible, and plausible, explanation for this worrying, and potentially unlawful, practice might be the UKBA's eagerness to avoid embarrassing revelations that its deportation charter flights are actually flying with less than full capacity, and are not therefore as cost-effective as the agency likes to claim. Last year, in response to a parliamentary question by Labour MP Keith Vaz, immigration minister Mark Harper admitted that almost half of all charter flights in 2011 flew half or 25% empty, with eight flying less than 75% full and one less than 50%.<sup>15</sup> This was a deterioration compared to the previous two years, and 2012 looked even worse (from the UKBA's perspective). In the same response, the minister boasted that the UK Border Agency "strives for 100% utilisation of its chartered return flights." Could overbooking and the use of reserves be the answer?

## CARLSON WAGONLIT

Carlson Wagonlit Travel is a business travel agents contracted by the UK Border Agency to book seats on scheduled and chartered flights for deportation purposes. The company, which specialises in business travel management, won the multi-million contract in 2004 and renewed it in April 2010. In the financial year 2004-5, the contract was worth almost £23 million.

In 2011, on contacting the company's executive vice president for the UK and Ireland, Andrew Waller confirmed to Corporate Watch that his company did hold such a contract but declined to discuss any further details, claiming he was "prohibited" from doing so and "not able to discuss the details of any client with a third party."<sup>16</sup>

Destination	Date	Aircraft capacity	RDs issued	No. removed
Nigeria	11/12/12	265	107	60
Sri Lanka	06/12/12	265	50	29
Pakistan	27/11/12	265	151	78
Afghanistan	19/11/12	272	117	66
Ghana	02/10/12	186	30	15

# Deportation Doctors and Monitors

This section examines the welfare of deportees while they are onboard the charter flights or travelling to the airport. In particular, the quality of medical care and the role human rights observers is discussed. However, the authors of this report do not feel that doctors or inspectors can redeem forcible deportations from their fundamentally abusive nature.

In May 2011, the UK Border Agency contracted a controversial security company to provide emergency medical staff on mass deportation charter flights. The lucrative, three- to five-year contract was awarded to Armatus Medical Services, part of Armatus Risks Ltd.<sup>1</sup>

Armatus Risks' directors<sup>2</sup> include an ex-bodyguard to the notorious US general Patreaus, and four of the five directors listed on the company's website boast experience as private military contractors.<sup>3</sup>

Armatus said its contract with the UKBA would see the company "develop into one of the UK's largest providers of medical support staff to UK government operations." However, a recent report by HM Inspector of Prisons (HMIP) on controversial charter flights to Sri Lanka highlighted how Armatus medical staff signed off on a rough-and-ready practice in which private security guards handcuffed deportees to "prevent self-harm."<sup>4</sup>

The HMIP report cites one case where a detainee, who "had previously self-harmed, apparently to stop his removal," had handcuffs on for 5.5 hours from Brook House detention centre to the airport (Stansted). "It was difficult to understand why the detainee needed to be restrained for so long given that he was under constant staff supervision," it adds. The man was "examined by medics after the handcuffs had been removed, and the paperwork was completed appropriately." The report confirms that healthcare staff on the flight were employed by Armatus. "They accompanied each coach and three were on the flight itself – one paramedic and two ambulance technicians."<sup>5</sup>

The same inspection report criticised the private security guards for having "no accredited training on use of force in the confined space of an aircraft." The remark came two years after the Prisons Inspector first noted that no such training existed.

The company now in charge is Tascor (formerly Reliance), which took over the role of providing deportation escorts from G4S in May 2011, following the death of Jimmy Mubenga on board a BA flight during his forcible deportation to Angola in October 2010. The UKBA claims that it has introduced "a professional code of conduct for all those staff working with detainees" and that Tascor has introduced "a training programme of cultural change for all escorting staff."<sup>6</sup> The inspection report seems to contradict these claims.

In October 2012, a delegation from the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) inspected, for the first time, the treatment of foreign nationals during a mass deportation operation to Sri Lanka. The delegation also held consultations with the Returns Director at the UK Border Agency, as well as with senior representatives of Reliance and HMIP. Incredibly, when we asked for the minutes of these meetings under Freedom of Information legislation, the UKBA denied having any record of them. However, the CPT later produced a report summarising its observations and findings, saying that "the level of cooperation received from the authorities of the United Kingdom and, in

particular, the UKBA staff, was exemplary".<sup>7</sup> The report noted that only two paramedics were provided on the plane, who had "very limited" medical supplies in their "emergency case". Resuscitation equipment was limited to a defibrillator and adrenaline, so the paramedics would have had to rely on the oxygen bottle available on the aircraft in the event an emergency. The CPT report recommended that healthcare staff accompanying deportation charter flights "should be systematically provided with a fully equipped emergency case" and that the presence of a medical doctor (instead of a paramedic or a nurse) on board "would be highly desirable".

The government responded that "the level of medical training of the 'medical escort' will be appropriate for the needs of the individual being removed, i.e. a paramedic may be more appropriate than a doctor, or a First Person on Scene qualification may be sufficient in other circumstances."<sup>8</sup>

In addition to medics, the UKBA has been piloting a new scheme whereby members of the Independent Monitoring Boards, which monitor prisons and immigration detention centres, accompany some chartered flights. In May 2012, the Commons Home Affairs Select Committee recommended, in its Effectiveness of the Committee report, that "members of the Independent Monitoring Boards for immigration removal centres – or a similar independent monitoring network – be given access to chartered removal flights."<sup>9</sup>

The UKBA responded by saying it had already been "piloting the presence of independent monitoring board members accompanying some chartered flights and intends to have discussions with the Ministry of Justice about this becoming a permanent fixture and broadening it to include all chartered flights."<sup>10</sup>

The Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT),<sup>11</sup> to which the UK is signatory, requires that all places of detention are visited regularly by independent bodies to monitor the treatment of detainees and their conditions. This is known as the National Preventive Mechanism (NPM). Immigration detainee escorts are included in this remit, which is particularly important for mass deportation charter flights, where there are no normal passengers to witness what happens on board.

In February 2013, HMIP published its inspection report on mass deportation flights to Sri Lanka, which summarised the findings of three HM Inspectors of Prisons who had travelled on one such flight in December 2012 and reviewed the records of three previous operations, found that deportees "were not given sufficient information about how to complain. There was no routine monitoring of the flight."<sup>12</sup>

The question is: would these proposed monitors provide the necessary checks and balances to prevent the routine abuse of deportees, or would they end up being a formality intended to silence critics, just like the formalities that the UKBA and its contractors already have in place, while offering a veil of legitimacy to mass deportations?

The same inspection report observed:

*"While a Reliance senior security officer and deputies were in overall charge of the operation, they sat near each other and had a number of responsibilities, which meant they were not monitoring what was happening in the aircraft. The CIO [chief immigration*

officer] performed no monitoring function and dealt with paperwork at the front of the aircraft for most of the flight.”

Similarly, an inspection report on a charter flight to Jamaica in April 2011 revealed the UKBA’s farcical implementation of safeguards:

“The UKBA monitor on board gave the opportunity for oral questions and complaints. However, it was not possible to make a confidential complaint during the flight and detainees were not told how they could make a formal complaint after removal... At one point an escorting officer came to the rear of the aircraft and said loudly to detainees: ‘Are they treating you well? Feel free to make allegations if you wish.’<sup>13</sup>

The CPT report cited above made similar observations about a flight to Sri Lanka in October 2012: while the UKBA Chief Immigration Officer (CIO) held a “surgery” during the flight, this was “hampered by the absence of an interpreter” and “the conditions under which the surgery was organised... in particular as regards the overwhelming security arrangements (the detainee was surrounded by some eight escort staff, at close distance), which created an oppressive atmosphere and was not really conducive to dialogue.”<sup>14</sup>

Moreover, the report notes that the UKBA “chartered removal events log” drawn up on arrival in Colombo, Sri Lanka, “only partially reflected the chronology of events,” as “no mention was made of the incident of self-harm at Brook House IRC, the interventions of paramedics during the flight, or the use of restraint during the journey.”<sup>15</sup>

It is difficult to see how a tokenistic presence of monitors would prevent the catalogue of abuse suffered by deportees, on both scheduled and chartered flights, unless “the main issue” of “better management and more confident behaviour by staff” is addressed, to quote the Home Affairs Committee.<sup>16</sup> Indeed, even on the few flights that have carried inspectors on board, escorts used racist language and abusive behaviour against deportees, according to the Inspector of Prisons reports cited below. This should raise deeper questions about the dehumanising discourse that surrounds deportations and the influence this has on the behaviour of escort staff.

## LAST WORD

In an inspection report on a charter flight to Jamaica in March 2011, HM Inspector of Prisons observed the following:<sup>17</sup>

“it was particularly concerning that some staff used unprofessional language, swearing freely, telling offensive jokes and indulging in sweeping generalisations about national characteristics.”

“unprofessional comments by some escort staff, including swearing and stereotyping of detainees according to nationality, undermined the good work of their colleagues.”

“There was a low proportion of staff from minority ethnic groups. Some staff indulged in inappropriate sweeping generalisations about different nationalities, thereby undermining the

objective of treating detainees as individuals.”

“Throughout the flight, some G4S staff at the rear of the aircraft, the area occupied by the detainees presenting the greatest risk, were telling each other jokes, laughing very loudly and having conversations within earshot of detainees. The subject matter of some of the talk and jokes concerned women and was overtly sexual. All could have been found offensive and were, at least, unprofessional. There was also a great deal of loud swearing, both profane and sexual... This was unprofessional and could have increased the discomfort and stress for detainees.”

Another inspection report, on a charter flight to Nigeria in April 2011,<sup>18</sup> made similar observations:

“Inspectors were very concerned at the highly offensive and sometime racist language they heard staff use between themselves. Quite apart from the offence this language may have caused to those who overheard it, it suggested a shamefully unprofessional and derogatory attitude that did not give confidence that had a more serious incident occurred, it would always have been effectively dealt with.”

“we observed one male DCO [detainee custody officer] addressing [female] detainees as ‘darling’, which was inappropriate... and some staff used highly offensive language in the hearing of detainees.”

Finally, in an HMIP inspection report on a charter flight to Afghanistan in June 2012, the inspectors “heard none of the inappropriate and abusive language that was previously evident.”<sup>19</sup> However, this may be due to the escorts being more cautious following the previous two, highly critical reports. It certainly does not mean the same and other shameful practices did not occur on other flights where inspectors were not present. The inspectors still found:

“evidence of some risk-averse and heavy-handed practices which served to escalate rather than calm tensions... Several detainees complained about unnecessary contact by escort staff... On boarding the aircraft, one detainee loudly objected to having been physically pulled and pushed.”

“It is a particular concern that more than a year after our first inspections, there remains no accredited training for use of force in the confined space of an aircraft. Indeed, some staff were clearly making up some untested techniques ad hoc.”

## Appendix 1

## Cost of UKBA deportation charter flights 2002-12\*

YEAR	DESTINATION	COST	FLIGHTS	AVE COST PER FLIGHT	NUMBER REMOVED	AVE COST PER PERSON
2011/12	AFG	£3,874,894			829	£4,674
	NGA/DRC/TZA	£1,909,154			456	£4,187
	LKA	£1,125,265			183	£6,149
	Other (incl PAK, IRQ and GHA)	£960,896			179	£5,368
	Annual sub total	£7,870,209	36	£218,617	1,647	£4,779
2010/11	AFG	£4,287,375			971	£4,415
	NGA/CMR/DRC	£1,857,194			441	£4,211
	KOS/ALB	£174,965			54	£3,240
	JAM	£809,164			187	£4,327
	IRQ	£741,040			173	£4,283
	Annual sub total	£7,869,738	53	£148,486	1,826	£4,310
2009/10	AFG	£3,428,146			887	£3,865
	KOS/ALB	£425,975			221	£1,927
	CMR/DRC	£541,775			36	£15,049
	IRQ	£1,008,095			241	£4,183
	JAM	£1,676,635			349	£4,804
	NGA	£1,785,550			410	£4,355
	Annual sub total	£8,866,176	67	£132,331	2,144	£4,135
2008/09	AFG	£3,313,520			379	£8,743
	JAM	£2,195,385			391	£5,615
	KOS/ALB	£869,355			449	£1,936
	NGA	£181,810			96	£1,894
	Other (PAK,GEO, LKA)	£252,690			31	£8,151
	IRQ	£905,510			310	£2,921
	Annual sub total	£7,718,270	67	£115,198	1,656	£4,661
2007/08	AFG	£1,979,740			522	£3,793
	KOS/ALB	£1,591,060			599	£2,656
	Other (incl CMR, COG, JAM, PAK, IRQ, EGY)	£1,107,360			142	£7,798
	Annual sub total	£4,678,160	68	£68,796	1,263	£3,704
2006/07	KOS/ALB	£1,984,305			1,119	£1,773
	ROM	£274,195			202	£1,357
	AFG [1]	£1,179,330			340	£3,469
	Other (incl VNM, IRQ and DRC) [2]	£712,705			246	£2,897
	Annual sub total	£4,150,535	N/A		1,907	£2,176
2005/06	KOS/ALB	£1,414,455			1,744	£811
	ROM	£494,910			721	£686
	AFG [3]	£317,157			108	£2,937
	Other (incl CHN, VNM, DEU, ITA, EGY, AGO and IRQ) [4]	£1,191,920			187	£6,374
	Annual sub total	£3,418,442	N/A		2,760	£1,239
2004/05	KOS/ALB	£1,232,495			1,862	£662
	ROM	£308,595			601	£513
	Other (incl NGA, AUT, CMR and GRC)	£68,198			13	£5,246
	Annual sub total	£1,609,288	N/A		2,476	£650
2003/04	KOS/ALB	£1,307,111			2,405	£543
	AFG	£1,239,661			343	£3,614
	CZE	£120,915			345	£350
	Other (incl POL, KGZ, DEU and ITA)	£128,820			249	£517
	Annual sub total	£2,796,507	N/A		3,342	£837
2002/03	KOS/ALB	£1,307,111			2,404	£544
	CZE	£184,760			448	£412
	AUT	£103,500			74	£1,399
	Other (incl POL, NGA, DEU and ITA)	£157,620			122	£1,292
	Annual sub total	£1,752,991	N/A		3,048	£575

## NOTES

\* The average costs and sub totals are worked out from comparing the UKBA's aggregate figures with other available data, such as the number of flights and people deported per year.

[1] Cost of 1 flight unavailable.

[2] [3] and [4] Cost of 2 flights unavailable.

Source: Corporate Watch, data obtained from the UKBA under FOIA 2000



Home Office

**UK Border  
Agency**

**Returns Directorate**

Country Returns, Operations &  
Strategy (Operations)

Date:

Dear (*name of returnee*)

**YOUR REMOVAL FROM THE UK ON UK BORDER AGENCY CHARTER FLIGHT  
TO (*destination country*) ON (*date*)**

You have been served with a notice notifying you of the directions for your removal from the UK on the above charter flight.

This letter is to inform you that you are one of a number of reserve travelers for this flight. The reason for this is to ensure that any passengers who are unable to travel will be substituted by those on the reserve list. This means that you will be taken to the departure airport and you should be prepared to travel as specified on your removal directions. However, if you do not travel, given your reserve status, you will be returned to an Immigration Removal Centre. Arrangements would then be made for your return to (*destination country*) at the earliest opportunity.

If you have any questions about these arrangements please ask the staff at the Immigration Removal Centre.

Yours sincerely

Country Returns, Operations & Strategy (Operations)

## NOTES AND REFERENCES

### Debunking the Home Office's arguments

1. UK Border Agency, various Freedom of Information responses, e.g. FOI 25614, 24 January 2013.

### The myth of cost-effectiveness

1. UKBA, various Freedom of Information responses, e.g. FOI 25479, 22 January 2013.
2. *Ibid.*
3. Email from the Home Office Press Office in response to an enquiry by Corporate Watch, 31 January 2013.
4. Hansard, 19 Oct 2012 : Column 415W, available: <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121019/text/121019w0001.htm#122512>.
5. Civil Aviation Authority, aviation statistics, available: <http://www.caa.co.uk/default.aspx?catid=80>.
6. See, for example, <http://www.skyscanner.net/flights-to/pk/airlines-that-fly-to-pakistan.html>.
7. See, for example, <http://www.skyscanner.net/flights-to/ng/airlines-that-fly-to-nigeria.html>.
8. UKBA, FOI 25479, 22 January 2013.
9. Hansard, 7 Sep 2012 : Column 484W, available: <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120907/text/120907w0001.htm#12090723000005>.
10. *Ibid.*
11. Home Affairs Committee, *Eighteenth Report: Rules Governing Enforced Removals from the UK*, 17 January 2012, available: <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/563/56303.htm#a6>.
12. *Ibid.*
15. HM Inspector of Prisons, *Detainees under Escort: Inspection of Escort and Removals to Sri Lanka*, February 2013, available: <https://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/detainee-escort-inspections/sri-lanka-2012.pdf>.
14. UKBA, FOI 25479, 22 January 2013.
15. Corporate Watch, *G4S guards accused of killing deportee*, 21 October 2010, available: <http://www.corporatewatch.org/?lid=3739>.
16. Corporate Watch, *Deportees get new escorts: Reliance*, 10 November 2010, available: <http://www.corporatewatch.org/?lid=3831>.
17. Tascor, 'We are delighted to announce that Tascor is the new name for Reliance Secure Task Management (RSTM) and Reliance Medical Services (RMS)', available: <http://www.tascor.co.uk/news/>.

### The myth of asylum intake

1. UKBA, various Freedom of Information responses, e.g. FOI 25614, 24 January 2013.
2. All the statistical analysis in this section is based on the Home Office's *Immigration and Asylum Statistics* publications, available at <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/>. The statistics on asylum applications and removals are published separately. All the aggregation and comparison here has been worked out by the authors of the report and cannot be found in the original publications.
3. For an annual breakdown, see <https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2013/immigration-statistics-january-to-march-2013#asylum-1> and <http://www.migrationobservatory.ox.ac.uk/briefings/migration-uk-asylum>.
4. See, for example, Home Office, *Immigration Statistics, January to March 2013*, available: <https://www.gov.uk/government/publications/immigration-statistics-january-to-march-2013/immigration-statistics-january-to-march-2013>.

## The myth of foreign national prisoners

1. See, for example, Patrick Hennessy, 'Theresa May: I'll bring in new law to end human rights farce', *The Telegraph*, 16 February 2013; James Slack, 'May lays down the law over foreign criminals' human rights: Judges will be forced to reject claims to a family life', *Daily Mail*, 18 February 2013.
2. Hansard, 19 Oct 2012 : Column 434W, available: <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121019/text/121019w0001.htm>.
3. Corporate Watch, *Beyond Abu Qatada: New research debunks mythical 'crisis' of foreign prisoners*, 25 April 2013, available: <http://www.corporatewatch.org/?lid=4871>
4. See, for example, Alan Travis and Owen Bowcott, 'Don't delay deportation flight, government warns judges', *The Guardian*, 8 June 2010.
5. UKBA, FOI 25483, 24 January 2013.
6. Sophie Warnes, 'Police arrest 11 after protest against forced deportations', *The Independent*, 16 February 2012.
7. Ministry of Justice, *Offender Management Statistics Quarterly 2011*, 'Table 1.6: Population in prison by nationality and sex', available: <https://www.justice.gov.uk/downloads/statistics/mojstats/omsq-2001/omsq-q4-2011-prison-population-tables.csv>.
8. Home Office, *The prison population in 2001: a statistical review*, available: <http://www.mywf.org.uk/uploads/projects/borderlines/Archive/2007/r195.pdf>.
9. See, for example, Theresa May, 'It's MY job to deport foreigners who commit serious crime - and I'll fight any judge who stands in my way, says Home Secretary', *Daily Mail*, 17 February 2013.
10. The analysis which follows is based on extensive aggregation of the MoJ's prison population publications, summarised in the annex of 'Corporate Watch April 2013' *idem*.

## Ulterior motives

1. Home Office, *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain*, February 2002, available: <http://www.archive2.official-documents.co.uk/document/cm53/5387/cm5387.pdf>.
2. Stephen Shaw CBE, *Report of the Inquiry into the Disturbance and Fire at Yarl's Wood Removal Centre*, October 2004, available: <http://www.ppo.gov.uk/docs/special-yarls-wood-fire-02.pdf>.
3. Home Office, *News Release*, 8 January 2001.
4. Stephen Shaw, *idem*.
5. House of Commons Home Affairs Committee, *Fourth Report: Asylum Removals*, May 2003, available: <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmhaff/1006/1006.pdf>.
6. *Ibid*.
7. Stephen Shaw, *idem*.
8. See, for example, this classic example from *The Sun*: '£9m con air con: Private flight bill to banish asylum seekers', 3 February 2013.
9. Alasdair Palmer, 'Asylum airlines - your one-way flight to deportation', *The Telegraph*, 23 May 2009.
10. See, for example, FOI 25479, 22 January 2013; FOI 25614, 24 January 2013.
11. Cited in Stop Deportation, *Chartered to Deport: The hidden reality of mass deportation flights*, March 2010.
12. Home Affairs Committee, *Effectiveness of the Committee in 2010-12*, available: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/144/14424.htm>.
13. Amnesty International UK, *Out Of Control: The case for a complete overhaul of enforced removals by private contractors*, 7 July 2011, available: [http://www.amnesty.org.uk/uploads/documents/doc\\_23283.pdf](http://www.amnesty.org.uk/uploads/documents/doc_23283.pdf).
14. See, for example, the *Detainees Under Escort* inspection reports, available: <http://www.justice.gov.uk/publications/inspectorate-reports/hmi-prisons/detainee-escort-inspections>.
15. Paul Lewis, Matthew Taylor and Owen Bowcott, 'Chaos over restraint rules for deportees', *The Guardian*, 27 October 2010.
16. Stephen Shaw, *idem*.
17. *Ibid*.
18. *Ibid*.
19. House of Commons, *The Nationality, Immigration and Asylum Bill: Immigration and Asylum*, Research Paper 02/26, 23 April 2002, available: <http://www.parliament.uk/briefing-papers/RP02-26.pdf>.



20. Hansard, 7 Feb 2012: Column 192W, available: <http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120207/text/120207w0002.htm>.
21. Hansard, 17 Sep 2012: Column 501W, available: <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120917/text/120917w0002.htm>.
22. Alan Travis, 'Government defends secrecy over 'high-risk' immigration blacklist', *The Guardian*, 26 September 2012.
23. Alan Travis, 'Home Office films Roma deportation', *The Guardian*, 21 September 2002.
24. Nic Fleming, '35 Afghans strapped in seats to be flown home', *The Telegraph*, 28 April 2003.
25. Philip Johnston, 'Afghan asylum seekers flown back to Kabul', *The Telegraph*, 30 April 2003.
26. WikiLeaks, 'Shadow Defense Minister Fox Pledges Close US-UK Cooperation If Tories Gain Power', available: <https://dazzlepod.com/cable/09LONDON2768/>.
27. British High Commission in Islamabad, *Press Release*, 26 October 2010, available: <http://ukinpakistan.fco.gov.uk/en/news/press-centre1/media-library/ministerial-visits/Home-Sec0-visit/meeting-with-prime-minister-president>.
28. British High Commission in Islamabad, *Press Release*, 23 February 2011, available: <http://ukinpakistan.fco.gov.uk/en/news/?view=News&id=555674782>.
29. Pakistani Ministry of Foreign Affairs, *Press Release*, 05 April 2011, available: [http://www.mofa.gov.pk/press\\_releases/Printer\\_Friendly/2011/April/PR\\_Print\\_129.htm](http://www.mofa.gov.pk/press_releases/Printer_Friendly/2011/April/PR_Print_129.htm).
30. 'Theresa May: UK and Pakistan ties 'stronger than ever'', BBC, 24 November 2011.
31. British High Commission in Abuja, *UK Minister for Immigration Visits Nigeria To Enhance Bilateral Relations*, 28 September 2011, available: <http://ukinnigeria.fco.gov.uk/en/news/?view=PressR&id=662568582>.
32. British High Commission in Abuja, *Press Release*, 19 July 2011, available: <http://ukinnigeria.fco.gov.uk/en/news/?view=PressR&id=632784582>.
33. British High Commission in Accra, 'UK Minister for Immigration, Damian Green visits Ghana', photos, 27 September 2011, available: <https://www.flickr.com/photos/ukinghana/sets/72157627736966435/with/6230074721/>.
34. See, for example, Diane Taylor, 'Britain sending refused Congo asylum seekers back to threat of torture', *The Guardian*, 27 May 2009.
35. The MP's letter is available at <http://www.congolesesupportgroup.org/MP%20Letter%20Kikaya%20Declaration.pdf>.
36. The speech is available at <http://www.kikayabinkarubi.net/index.php/activites-de-l-ambassadeur/117-statement-to-the-all-party-parliamentary-group-on-the-great-lakes-of-africa>. See also this press release: <http://www.prnewswire.com/news-releases/drc-ambassador-urges-british-parliamentarians-to-back-investment-in-congolese-mining-industry-160543325.html>.
37. Free Movement, 'Tamil returnee claims torture in Sri Lanka', 27 February 2012, available: <http://www.freemovement.org.uk/2012/02/27/tamil-returnee-claims-torture-in-sri-lanka/>.
38. House of Commons Foreign Affairs Committee, *The FCO's Human Rights Work in 2011*, September 2012, available: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmcaff/116/116.pdf>.
39. Phil Miller, 'Did Liam Fox plan deportations to hide Tamil genocide?', Stop Deportation, 5 July 2012, available: <http://stopdeportations.wordpress.com/2012/07/05/did-liam-fox-plan-deportations-to-hide-tamil-genocide/>. See also *The Guardian*, 13th October 2011.
40. *The Independent*, December 2011.
41. Phil Miller, 'Liam Fox's business interests in Sri Lanka drove his parallel immigration policy', Stop Deportations, 29 July 2012, available: <https://stopdeportations.wordpress.com/2012/07/29/liam-foxs-business-interests-in-sri-lanka-drove-his-parallel-immigration-policy/>.
42. Ian Cobain, 'UK not monitoring safety of Tamils deported to Sri Lanka', *The Guardian*, 29 September 2011.
43. UK High Commission in Sri Lanka, 'South Asia Regional Action on Migration', 14 December 2011, available: <http://ukinsrilanka.fco.gov.uk/en/news/?view=PressR&id=704679682>.
44. Phil Miller, 'Minister denies torture of Tamils deported from Britain', 7 February 2013, <http://newint.org/blog/2013/02/07/tamil-torture-deportation-evidence/>
45. Phil Miller, 'Deportation of Tamils helped the Sri Lankan state', 18 July 2013, <http://newint.org/blog/2013/07/18/tamil-deportation-britainsri-lanka/>

46. Judith Duffy, 'Revealed: how Scots police trained Sri Lankan cops linked to human rights abuse', *Sunday Herald*, 8 September 2013. See also <http://www.corporatewatch.org/?lid=5009>
47. Phil Miller, 'The British Oil Interest in Sri Lanka', 2 August 2013, <http://www.foiledvanta.org/articles/vedantas-oil-in-sri-lanka/>

### **Are the UK's mass deportation flights lawful?**

1. Available: <http://conventions.coe.int/Treaty/en/Treaties/Html/046.htm>.
2. Available: <http://conventions.coe.int/Treaty/en/Treaties/Html/117.htm>.
3. Available: [http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention_ENG.pdf).
4. Available: <http://www.unhcr.org/3b66c2aa10.pdf>.
5. Available: <http://eur-lex.europa.eu/en/treaties/dat/32007X1214/htm/C2007303EN.01000101.htm>.
6. *Human Rights Act 1998*, Section 2, available: <http://www.legislation.gov.uk/ukpga/1998/42/section/2>.
7. *UKHL, R (Alconbury Developments Ltd) v. Secretary of State for the Environment, Transport and the Regions*, 2001, available: <http://www.bailii.org/uk/cases/UKHL/2001/23.html>. See also *UKHL, Parochial Church Council of the Parish of Aston Cantlow and Wilmcote with Billesley, Warwickshire v. Wallbank & Anor*, 2003, available: <http://www.bailii.org/uk/cases/UKHL/2003/37.html>; and *Court of Appeal, Copsey v. WWB Devon Clays Ltd*, 2005, available: <http://www.bailii.org/ew/cases/EWCA/Civ/2005/932.html>.
8. Available: <http://www.echr.coe.int/library/colentravauxprep.html>.
9. Available: <http://conventions.coe.int/Treaty/EN/Reports/Html/046.htm>.
10. Article 4 of the Committee's final draft, p. 505, § 34.
11. ECtHR, *Becker v. Denmark*, application no. 7011/75, 03/10/1975, available: <http://www.unhcr.org/refworld/docid/3ae6b7058.html>.
12. ECtHR, *Andric v. Sweden*, app. no. 45917/99, 23/02/1999, available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-4520>.
13. *Ibid.*
14. ECtHR, *Alibaks and Others v. the Netherlands*, app. no. 14209/88, 16/12/1988, available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-351>.
15. ECtHR, *Čonka v. Belgium*, app. no. 51564/99, decision 05/02/2002, available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60026>.
16. 'Partly concurring and partly dissenting opinion of Judge Velaers', *ibid.*
17. 'Partly dissenting opinion of Judge Jungwiert joined by Judge Kūris', *ibid.*
18. ECtHR, *Čonka v. Belgium*, *idem*.
19. *Ibid.* See also *Bozano v. France*, app. no. 9990/82, 18/12/1986, available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57448>; and *Chahal v. The United Kingdom*, app. no. 22414/93, 15/11/1996, available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58004>.
20. ECtHR, *Čonka v. Belgium*, *idem*.
21. *Ibid.*
22. ECtHR, *Sultani v. France*, app. no. 45223/05, 20/09/07, available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-82358>; *Dritsas et autres v. Italie*, app. no. 2344/02, 01/02/11, available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-103688>; *Kane v. Cyprus*, app. no. 33455/06, 13/09/11, available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-106544>; *AN. C. v. France*, app. no. 55762/09, 13/12/11, available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108349>; *Kostadinovic v. Bulgaria*, app. no. 4512/02, 04/01/12, available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-108666>; *Ali v. Norway*, app. no. 22669/10, 14/02/12, available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109268>.
23. ECtHR, *Sultani v. France*, *ibid.*
24. 'Nicolas Sarkozy veut organiser des vols groupés d'expulsions avec la Grande-Bretagne', *Le Monde*, 6 December 2005.
25. ECtHR, *Hirsi Jamaa and Others v. Italy*, app. no. 27765/09, 23/02/12; available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109251>.

26. ECtHR, 'Returning migrants to Libya without examining their case exposed them to a risk of ill-treatment and amounted to a collective expulsion', 23 February 2012, available: [http://ec.europa.eu/dgs/home-affairs/what-is-new/news/pdf/grandchamberjudgmenthirsijamaaandothersvitaly2302121\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-is-new/news/pdf/grandchamberjudgmenthirsijamaaandothersvitaly2302121_en.pdf).
27. ECtHR, *Hirsi Jamaa and Others v. Italy*, *idem*.
28. ECtHR, *HA. T. v. France*, app. no. 56664/09, 27/03/12, available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-110348>; *Khlaifia et autres v. Italy*, [ongoing], app. no. 16483/12, 27/11/12, available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115507>; *Ahmad and others v. Germany*, app. no. 52390/09, available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115807>.
29. European Council on Refugees and Exiles, 'ECtHR blocks pushback of Somali migrants from Malta to Libya following outcry from civil society', *ECRE Weekly Bulletin*, 12 July 2013, available: <http://www.ecre.org/component/content/article/70-weekly-bulletin-articles/406-ecthr-blocks-pushback-of-somali-migrants-from-malta-to-libya-following-outcry-from-civil-society.html>.
30. Article 33, 1951 Convention, *idem*.
31. ECtHR, *Saadi v. Italy*, app. no. 37201/06, 28/02/2008, available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-85276>. See also *Mamatkulov and Askarov v. Turkey*, app. no. 46827/99 46951/99, 04/02/2005, available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-68183>.
32. ECtHR, *Hirsi Jamaa and Others v. Italy*, *idem*.
33. UN High Commissioner for Refugees, *Note on Non-Refoulement*, 23 August 1977, available: <http://www.refworld.org/docid/3ae68ccd10.html>.
34. UN, *The Refugee Convention, 1951: The Travaux Préparatoires analysed with a commentary by Dr Paul Weis*, available: <http://www.unhcr.org/4ca34be29.html>.
35. UN High Commissioner for Refugees, *idem*.
36. UN, *The Refugee Convention, 1951: The Travaux Préparatoires*, *idem*.
37. UN High Commissioner for Refugees, *idem*.
38. For more on this, see the 'Myth of foreign national prisoners' section in this report.
39. Available: <http://www.unhcr.org/3b66c2aa10.html>.
40. Available: [http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention_ENG.pdf).
41. Protocol 7, ECHR, available: <http://conventions.coe.int/Treaty/EN/Reports/Html/117.htm>.
42. European Convention on Social and Medical Assistance, available: <http://conventions.coe.int/Treaty/en/Treaties/Html/014.htm>.
43. Protocol 7, *idem*.
44. European Council, *Directive 2004/83/EC*, 29 April 2004, available: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>.
45. Available: [http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention\\_ENG.pdf](http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/Convention_ENG.pdf).
46. ECtHR, *Čonka v. Belgium*, *idem*. See also *Akdivar and Others v. Turkey*, *idem*.
47. See, among others, ECtHR, *Kudła v. Poland*, app. no. 30210/96, available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58920>.
48. Human Rights Act 1998, Section 6, available: <http://www.legislation.gov.uk/ukpga/1998/42/section/6>.
49. See, for example, ECtHR, *Shamayev and Others v. Georgia and Russia*, app. no. 36378/02, available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-68790>.
50. *Ibid.* See also ECtHR, *Jabari v. Turkey*, app. no. 40035/98, 11/07/2000, available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58900>.
51. ECtHR, *Čonka v. Belgium*, *idem*.
52. *Ibid.*
53. *Ibid.*
54. See, for example, this case brought by Medical Justice challenging the 'zero notice removals' policy: Administrative Court, *Medical Justice, R v. SSHD*, 2010, available: <http://www.bailii.org/ew/cases/EWHC/Admin/2010/1925.html>.

55. UKBA, *Enforcement Instructions and Guidance*, Chapter 60, available: [http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter60\\_11012010.pdf](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter60_11012010.pdf).
56. *Ibid.*
57. *Ibid.*
58. European Convention on Social and Medical Assistance, *idem.*
59. House of Lords, Anufrijeva, R v. Secretary of State for the Home Department & Anor, 2003, available: <http://www.bailii.org/uk/cases/UKHL/2003/36.html>.
60. Shivani Jegarajah, 'Charter Flights', *Free Movement*, 31 May 2013, available: <http://www.freemovement.org.uk/2013/05/31/charter-flights/>.
61. *Ibid.*
62. *Ibid.*
63. ECtHR, Čonka v. Belgium, *idem.*
64. *Ibid.*
65. UKBA, *Enforcement Instructions and Guidance*, Chapter 60, *idem.*
66. See, for example, Stop Deportation, 'Government solicitors tell High Court to facilitate Baghdad deportations', 8 June 2010, available: <http://ncadc.org.uk/blog/2010/06/government-solicitors-tell-high-court-to-facilitate-baghdad-deportations/>.
67. House of Lords, R v. Secretary of State for the Home Department, 2000, available: <http://www.bailii.org/uk/cases/UKHL/1999/33.html>.
68. Available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57619> and <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57713> respectively.
69. Human Rights Act 1998, Section 6, *idem.*
70. Shivani Jegarajah, *idem.*
71. Human Rights Act 1998, Section 2, *idem.*
72. UKHL, R v. Secretary of State for the Environment, Transport and the Regions, *idem.*
73. LASPO Act 2012, Section 19, available: <http://www.legislation.gov.uk/ukpga/2012/10/schedule/1/enacted>.
74. For more details on this, see The Public Law Project, *Exceptional Funding Project*, available: [http://www.publiclawproject.org.uk/exceptional\\_funding\\_project\\_page.html](http://www.publiclawproject.org.uk/exceptional_funding_project_page.html).
75. Medical Justice v. SSHD, *idem.*
76. See, for example, Frances Meyler and Sarah Woodhouse, 'What hope after LASPO: Time to re-visit Maaouia?', *Free Movement*, 26 April 2013, available: <http://www.freemovement.org.uk/2013/04/26/what-hope-after-laspo-time-to-re-visit-maaouia/>.
77. Free Movement, 'Further judicial warnings on urgent injunction applications', 23 May 2013, available: <http://www.freemovement.org.uk/2013/05/23/further-warnings-on-urgent-injunction-applications/>.
78. Shivani Jegarajah, *idem.*
79. ECtHR, Statement of Facts, *N. and Others v. the United Kingdom*, 2012, available: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112188>.
80. For more on the use of reserves on charter flights, see the 'Overbooking and the use of reserves' section in this report.
81. Available: <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/conbrook/colnbrook-irc-2013.pdf>.
82. Available: <https://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/detainee-escort-inspections/sri-lanka-2012.pdf>.
83. Signatories to Protocol No. 4 to ECHR, status as of 12/7/2013, available: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=046&CM=8&DF=&CL=ENG>.
84. Home Office, *Rights Brought Home: The Human Rights Bill*, October 1997, available: <http://www.official-documents.gov.uk/document/hoffice/rights/rights.htm>.
85. Joint Committee on Human Rights, 'Instruments and Protocols not yet ratified', *Seventh Report (Session 2004-5)*, available: <http://www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/99/9906.htm>.
86. Available: <http://www.parliament.uk/commons/lib/research/rp98/rp98-024.pdf>.

87. Joint Committee on Human Rights, Seventh Report, *idem*.
88. Hansard, 18 Mar 2009 : Column WA45, available: <http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90318w0002.htm#09031890000352>.
89. For examples of members states' reservations when signing or ratifying Protocol 4, see <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=046&CM=8&DF=&CL=ENG&VL=1>.
90. FCO, *Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report*, April 2012, available: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/35439/hrd-report-2011.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/35439/hrd-report-2011.pdf).

## Overbooking and the use of reserves

1. Commons Home Affairs Committee, 'MPs call for better monitoring of enforced removals contracts', 26 January 2012, available: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/news/120126/>.
2. *Ibid.*
3. UK Border Agency, FOI 25068, 22 January 2013.
4. Home Affairs Committee, *Eighteenth Report: Rules Governing Enforced Removals from the UK*, 'Minutes of Evidence', 1 November 2011, available: <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/563/11110102.htm>.
5. Available: <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/immigration-removal-centre-inspections/tinsley-house/tinsley-house-report2011.pdf>.
6. UK Border Agency, *Enforcement Instructions and Guidance*, Chapter 55, available: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremov als/chapter55.pdf?view=Binary>.
7. UKBA, FOI 25479, 22 January 2013.
8. Daniel Boffey, 'UK Border Agency defies MPs over deportation 'reserves'', *The Observer*, 16 February 2013.
9. *Ibid.*
10. Government's response to the Committee's recommendations, in Home Affairs Committee's *Eighteenth Report*, HC 563, 26 January 2012, available: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/144/14424.htm>.
11. Alan Travis, 'Inhumane act of taking deportation reserves to airport condemned', *The Guardian*, 26 July 2011.
12. 'Tamil returnee claims torture in Sri Lanka', *Free Movement*, 27 February 2012, available: <http://www.freemovement.org.uk/2012/02/27/tamil-returnee-claims-torture-in-sri-lanka/#comment-4165>.
13. UKBA, FOI 26153, 9 August 2013.
14. UKBA, FOI 25541, 17 January 2013.
15. Hansard, 17 Sep 2012 : Column 501W, available: <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120917/text/120917w0002.htm>.
16. For more details, see Shiar Youssef, 'Engagement with the deportation machine?', *The Corporate Watch Magazine*, no. 49, Summer 2011, available: <http://www.corporatewatch.org/?lid=4059>.

## Deportation doctors and monitors

1. Armatus, *Armatus Risks - Contract Award - Support to UKBA Repatriation Program*, available: <http://www.armatus-group.com/group-news/armatus-risks-contract-award-support-to-ukba-repatriation-program.html>.
2. See full list of directors at <http://www.armatus-group.com/about/directors.html>.
3. For more details on Armatus and its controversial contract with the UKBA, see Phil Miller, 'Deportation Doctors: Armatus providing medics for mass deportation flights', *Corporate Watch*, 25 April 2013, available: <http://www.corporatewatch.org/?lid=4872>.
4. HM Inspector of Prisons, *Detainees under Escort: Inspection of Escort and Removals to Sri Lanka*, December 2012, available: <https://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/detainee-escort-inspections/sri-lanka-2012.pdf>.
5. *Ibid.*
6. Commons Home Affairs Select Committee, available: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/144/14424.htm>.

7. CPT, *Report to the Government of the United Kingdom on the visit to the UK carried out by the CPT*, July 2013, available: <http://www.cpt.coe.int/documents/gbr/2013-14-inf-eng.htm>.
8. CPT, *Response of the Government of the United Kingdom on the visit to the UK carried out by the CPT*, July 2013, available: <http://www.cpt.coe.int/documents/gbr/2013-15-inf-eng.pdf>.
9. Commons Home Affairs Select Committee, *idem*.
10. *Ibid*.
11. Optional Protocol to the Convention against Torture (OPCAT), Subcommittee on Prevention of Torture available: <http://www2.ohchr.org/english/bodies/cat/opcat/>.
12. HMIP December 2012, *idem*
13. HM Inspector of Prisons, *Detainees under Escort: Inspection of Escort and Removals to Jamaica*, March 2011, available: <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/detainee-escort-inspections/jamaica.pdf>.
14. CPT, *idem*.
15. *Ibid*
16. Commons Home Affairs Select Committee, *idem*.
17. *HMIP March 2011, idem*.
18. HM Inspector of Prisons, *Detainees under Escort: Inspection of Escort and Removals to Nigeria*, April 2011, available: <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/detainee-escort-inspections/nigeria.pdf>.
19. HM Inspector of Prisons, *Detainees under Escort: Inspection of Escort and Removals to Afghanistan*, June 2012, available: <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/detainee-escort-inspections/afghanistan-escort-2012.pdf>.

