

Rejected but remaining

Analysis of the protection challenges that confront rejected asylum seekers remaining in Europe

Introduction

Following the 2015 peak in arrivals of refugees and other migrants to Europe, the number of overall asylum applications doubled. While the number of positive decisions gradually increased in line with the rise in applications, the increase in the number of negative decisions was significant. Although the total number of people returned did increase substantially in 2016, a large number of rejected asylum seekers remain in Europe.

Less attention is paid to what happens to asylum seekers once rejected, despite the fact that these individuals face similar vulnerabilities to those still claiming asylum. The objective of this briefing paper is to draw attention to the protection challenges that rejected asylum seekers are confronted with. It will also provide an indication of the number of rejected asylum seekers who remain in Europe by looking at Eurostat data, whilst also highlighting the limitations and discrepancies within this data.

The paper is structured into three sections. The first section will outline the rate of rejection and return. The specific data analysed with regards to return concerns all those individuals who are registered as having left Europe via one form or another: this may be by means of forced return, assisted return, or departing spontaneously without assistance. The objective here is not to analyse the way in which return happens, but rather to gain an understanding of the discrepancies between rejected asylum seekers who have left and those that remain. This section will also explain the delays in implementing voluntary and forced return. The second section analyses the different situations faced by three broad categories of rejected asylum seekers: those who await a final return decision; those who cannot be returned; and those who likely remain in Europe but who have disappeared and are unaccounted for.¹ It will draw attention to the human rights deprivations and humanitarian needs that rejected asylum seekers are confronted with. The paper concludes by providing policy recommendations and ideas for further research.

¹ This paper does not cover those that return, although those that do have specific humanitarian needs before, during and after their return process. For more information on returnees see MMP's analysis: *Turning Back: Policy and data analysis of Iraqis moving back from Europe*, January 2017. MMP will also soon be publishing a report of the findings of an assessment conducted on returnees to Afghanistan.

Methodology

The information presented in the paper is the result of a secondary data review. This includes analysis of humanitarian and policy reports, academic papers and media reports, as well as an analysis of Eurostat data on asylum and return decisions and return orders enforced. In some cases semi-structured interviews with representatives from INGOs and think tanks took place in order to validate certain findings.

It is not within the scope of this paper to provide detail on the varying ways different member states operate in response to refugee and migrant arrivals and specifically how they manage rejected asylum seekers or shape their returns policy. The intention is more to provide an overview of the situation for individuals once they have received a negative decision on their asylum case.

The statistics on rejection and return are limited in that they do not provide an overall number of asylum seekers who have been rejected each year; rather, they show the number rejected at first instance and the number rejected following an appeal. The data sets that show rejection rate in a given year and return rate in a given year do not align with each other, as a person may be rejected but not returned for some time after. Therefore, direct comparisons cannot be drawn. This represents a blind spot in data collection and protection concerns of those who are left waiting risk being overlooked. Furthermore, beyond vague estimates, data on the numbers and whereabouts of rejected asylum seekers that disappear is limited. It is also impossible to know the total number of rejected asylum seekers who have departed Europe spontaneously by choice, as their movement is not always registered.

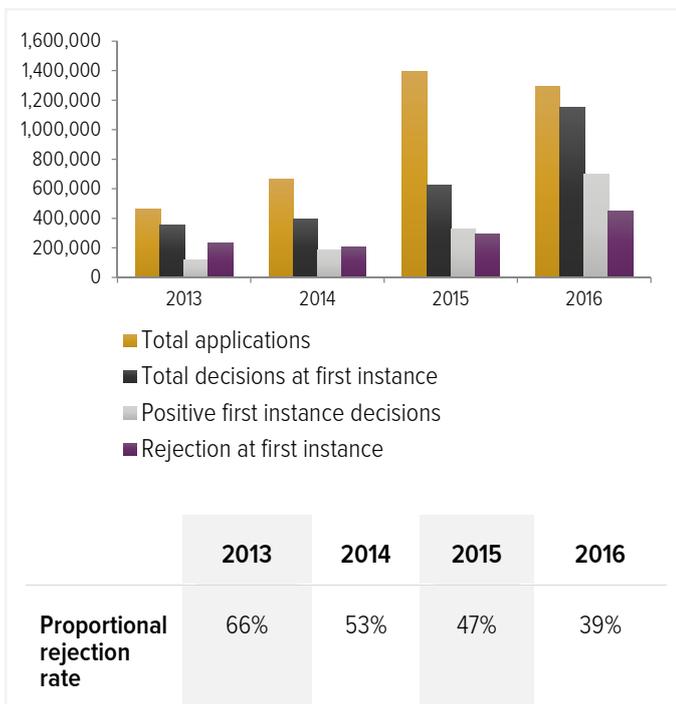
Looking at the rejection statistics

The Common European Asylum System (CEAS) aims to ensure that all EU member states protect the rights of asylum seekers and refugees. However, the likelihood of an asylum seeker being granted residency status varies across the European Union and wider Schengen area due to differences in member states' implementation of the CEAS.² For example, the recognition rate of Afghans and Iraqis in 2015 was

² Open Society Foundation (2016). *Understanding Migration and Asylum in the European Union*.

significantly lower in Denmark than in Norway, Germany and Sweden – all countries that have traditionally had relatively high standards on case management for asylum seekers: in 2015, 29% of Iraqis were granted protection status in Denmark compared to between 60-100% in the neighbouring countries. Similarly, 35% of Afghans were granted protection status, compared to between 68-84% in neighbouring countries.³ The way in which rejected asylum seekers are then treated also varies across the EU: return decision are issued and enforced at different times, and the level to which rejected asylum seekers receive support also varies.⁴

Fig 1: Number of total applications in EU28+⁵ and type of decision made at first instance.⁶



As shown in the table above, when taken as a proportion of the total number of decisions made, the rejection rate across EU28+ countries has decreased since 2013. This is due to the increased number of Syrian arrivals after 2014 with a proven refugee case. In terms of absolute numbers, the amount of rejected asylum seekers decreased between 2013 and 2014, but it then increased by 42% in 2015 and then by a further 52% in 2016. This spike in negative decisions followed the peak in applications in the second half of 2015: of the 1,148,680 decisions made in 2016, 449,920 (39%) were negative.⁷

³ Refugees.DK (2015). Afghans are Iraqis are more often rejected in Denmark, 13 November 2015.

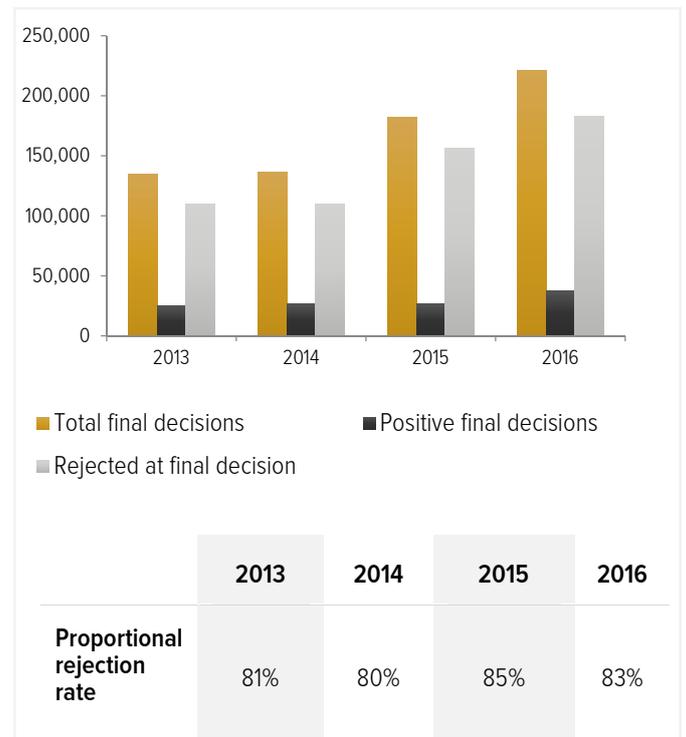
⁴ European Migration Network (2017). Returning Rejected Asylum Seekers: challenges and good practice, 23 March 2017.

⁵ EU28+ refers to the 28 Member States of the European Union together with Switzerland, Norway, Iceland and Liechtenstein who are all part of the border-free Schengen zone.

⁶ Eurostat (2013/14/15/16). First instance decisions on applications by citizenship, age and sex Quarterly data (rounded) (migr_asydcfstq).

⁷ Ibid.

Fig 2: Types of final decisions made following an appeal of a negative decision at first instance.⁸



The majority of asylum seekers tend to appeal a negative decision. In a given year, the total number of final decisions following an appeal and the total number of decisions made at first instance do not correspond. This is because the appeal process can take months during which rejected applicants face myriad protection challenges; this is covered in a later section of this paper. It therefore makes more sense to look at these two sets of data separately. The table above shows that of the total final decisions made following an appeal, the rejection rate following this step has remained consistently high at around 80% over the past four years.

⁸ Eurostat (2013/14/15/16). Final decisions on applications by citizenship, age and sex Annual data (rounded) (migr_asydcfina).

Fig 3: First instance decisions concerning population groups travelling from the Middle East

	2013			2014			2015			2016		
	Decisions made	Rejections	%									
Afghans	24,490	11,600	47	21,960	7,210	33	21,665	7,330	34	109,920	48,610	44
Iranians	11,640	5,375	46	9,350	3,630	39	8,605	3,010	35	20,990	9,915	47
Iraqis	10,330	5,005	48	11,275	3,320	29	26,545	3,935	15	103,190	38,560	37
Jordanians	320	290	90	240	145	60	285	185	65	420	300	71
Lebanese	1,095	915	84	885	730	82	950	725	76	4,205	3,655	87
Pakistanis	18,610	15,285	82	16,160	11,850	73	19,140	14,120	74	32,845	27,135	83
Palestinians	660	265	40	775	265	34	1,375	460	33	1,785	640	36
Syrians	38,175	4,130	11	77,335	3,780	5	172,185	5,145	3	416,225	8,440	2

Figure 3⁹ shows the breakdown of negative decisions according to population group. The proportion of asylum seekers who were granted a protection status differs significantly between nationalities ranging from 98% of Syrian applicants to only 30% of Jordanians applying in 2016. The rejection rates also differ over time. As the total number of applicants has increased, the absolute number of people facing a rejection has also significantly increased in the last two years. While Syrian applicants experienced a slight improvement in success rates, there was a proportional increase in the number of negative decisions issued to asylum seekers from other population groups. Following the peak in arrivals to Europe in 2015, it became more difficult for non-Syrians to be granted asylum: between 2014 and 2015 around 30% of Afghans received negative decisions, whereas this increased to 44% in 2016.¹⁰ Similarly, the overall rejection rate increased between 2015 and 2016 by over 10% for all other listed nationalities, apart from Iraqis where it more than doubled.¹¹ The notable increase in the number of rejected Afghans and Iraqis is concerning because it is becoming increasingly likely that asylum seekers are being rejected on the basis of their nationality rather than assessing each claim on its merits. Indeed, there are case studies of rejected Afghans and Iraqis reporting not to have had a thorough opportunity to present their case before receiving a negative decision.¹²

Returns Policy

The increase in the number of rejected asylum seekers in 2016 has placed additional pressure on EU member states to be seen in the eyes of the public as managing migration.

⁹ Eurostat (2013/14/15/1/6). First instance decisions on applications by citizenship, age and sex Quarterly data (rounded) (migr_asydcfstq).

¹⁰ The increase in the number of rejected Afghans is likely linked to the fact that in October 2016 the EU signed an agreement with Afghanistan on migration cooperation: the agreement stipulates that in exchange for commitment from the EU to provide aid money, Afghanistan will facilitate the return of rejected asylum seekers. See more: HRW (2016). EU Policies Put Refugees At Risk.

¹¹ Eurostat (2013/14/15/1/6). First instance decisions on applications by citizenship, age and sex Quarterly data (rounded) (migr_asydcfstq).

¹² IRIN (2016). Afghans in Germany face rejection and deportation. 25 October 2016.

Member states have therefore been emphasising the need to accelerate return procedures, and return policy is stated as an essential element to the integrity of any asylum system.¹³ Despite this focus on return, implementation of the EU *Returns Directive 2008/115/EC*¹⁴ remains slow and intensely bureaucratic.

An asylum seeker may receive a negative decision, but will not necessarily receive an immediate return order. After having been issued with a return order, there may be further time lag before that return order is actually enforced – if ever enforced.¹⁵ Hence, there is a wide discrepancy between the number of return decisions issued in a given year and the number of actual returns.¹⁶

An explanation for this is partially because any rejected asylum seeker has the right to appeal the decision and, in the majority of member states, a return decision cannot be issued before all asylum procedures are exhausted. Once issued, a return decision can also be appealed and in most cases this has a suspensive effect. The appeal process can take months. Only in some member states and even then, only in some cases, is a return decision enforced during an appeal process.¹⁷ ¹⁸ Although it is not commonly reported that return orders are enforced prior to the exhaustion of all legal avenues of appeal, this highlights discrepancies in the

¹³ Eurostat (2017). International Centre for Migration and Policy Development (ICMPD) (2015). Returning rejected asylum seekers will be the next big challenge.

¹⁴ EUR-Lex: Access to European Union Law (2017). Directive 2008/115/EC of the European Parliament and of the Council, 16 December 2008.

¹⁵ A proportion of rejected asylum seekers cannot be returned. This is mostly due to bureaucratic issues. This will be discussed later in the paper.

¹⁶ Frontex, the European Border and Coastguard Agency (2017). Returns.

¹⁷ In a minority of cases an appeal may not have a suspensive effect for the following reasons: the asylum claim is found to be manifestly unfounded; the asylum seeker may be guilty of a crime and is from a safe country of origin; the asylum seeker may have been granted international protection in another EU member state; the asylum seeker is considered a security threat; the appeal is with reference to a subsequent application that does not provide new grounds for protection; the asylum seeker may be from a safe country of origin and their application is assessed under an accelerated procedure. See: European Commission (2016). The Return of Rejected Asylum Seekers: Challenges and Good Practices.

¹⁸ European Commission (2016). The Return of Rejected Asylum Seekers: Challenges and Good Practices.

system and variations in implementation between member states.¹⁹

If a rejected asylum seeker chooses not to appeal the return decision s/he has three options:

1. the individual can apply for a voluntary return scheme,²⁰ whereby assistance is provided during return procedures. Frontex data shows that just under half of those eligible for return select this option²¹
2. the person can return voluntarily but unassisted
3. the person can be subject to deportation

Forced deportation, however, should in theory only occur if international law is respected and all the necessary safeguard mechanisms for return are in place, in order not to breach *non-refoulement* principles.^{22 23} According to EU asylum law, there must be a bilateral agreement for readmission with the country of origin of the rejected applicant. There must also be an embassy in the receiving country, or in a neighbouring country, that is willing to process the return. In 2016, the EU and the Afghan government signed an agreement that stipulates that in exchange for guaranteed aid money, the Afghan government will cooperate in facilitating returns.²⁴ A receiving country can refuse to cooperate with returns procedures and this is one of the key reasons return is difficult to implement: a case in point is that the Iraqi government has refused to accept returns from Finland in the absence of a finalised agreement, and on the grounds that to return a failed asylum seeker to Iraq is to breach the principle of *non-refoulement*.²⁵

Even if all the legal requirements are in place, there are other factors that can cause lengthy delays in the process. A volatile security situation in the home country can prevent enforcement of a return order. In some cases, return is delayed as the person is unfit to travel on medical grounds. Additionally, delays occur when the person issued with a return decision is unwilling to cooperate.^{26 27} Rejected asylum seekers are often required to check in with the authorities regularly after being issued a return decision, yet it is reportedly the case these appointments are often missed.²⁸

¹⁹ *Ibid.*

²⁰ There is extensive debate as to the use of the word 'voluntary' with regards to return procedures. Arguably voluntary return is not truly voluntary if the alternative is deportation. Furthermore, incentives used to motivate rejected asylum seekers to opt for assisted return can be interpreted as a form of coercion. See: IRIN (2017). EXCLUSIVE: UK "voluntary" returns – refugee coercion and NGO complicity, 21 February 2017.

²¹ Frontex, the European Border and Coastguard Agency (2017). Returns.

²² The principle of *non-refoulement* is enshrined under the 1951 Refugee Convention: it is the practice of not returning someone to a country if they will then be at risk of persecution. See: UNHCR (1997). Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

²³ The EU-Turkey deal is arguably a violation of these rules as it does not comply with international and human rights law in ensuring that all the necessary mechanisms for return are in place. In some cases people have been returned to Turkey before their asylum claim has even been properly considered. See more: HRW (2017). Greece: A Year of Suffering for Asylum Seekers, 15 March, 2017.

²⁴ European External Action Service (2016). Joint Way Forward on migration issues between Afghanistan and the EU.

²⁵ Uutist (2017). Iraq refuses to accept forced returns from Finland. 16 January, 2017.

²⁶ Noll, Gregor (1999). UNHCR. Rejected Asylum Seekers: The Problem of Return.

²⁷ European Commission (2016). The Return of Rejected Asylum Seekers: Challenges and Good Practices.

²⁸ IRIN (2017). Why deportations are hard to do. 22 February 2016.

Looking at the impact

Analysis of Eurostat data provides an indication of the scale of the backlog of rejected asylum seekers remaining in Europe. There are three different data sets that can be looked at:

1. the number of asylum seekers rejected in a given year
2. the number of rejected asylum seekers issued with a return decision in a given year
3. the number of rejected asylum seekers returned in a given year

The data sets are limited because a rejection or a return decision does not necessarily lead to a return during the same year, therefore these three variables do not directly align with one another. As a result, it is not possible to extrapolate the exact number of people awaiting return following a rejection. Rather these variables are proxy indicators that demonstrate a significant time lag and a large discrepancy between a negative asylum decision and a person leaving the country. This creates a legal limbo for the persons involved which entails numerous protection challenges, as will be highlighted later in this paper.

Eurostat data from 2013 to 2016 shows that the number of rejected asylum seekers returned has increased alongside the rise in the number of refugee and other migrant arrivals. In 2016, the number returned was half the size of the total number issued with a return decision, whereas in 2014 and 2015, the number returned was closer to 40% of the number of people issued with a return decision. Across the EU and wider Schengen area, the discrepancies between the number of rejected asylum seekers issued with a return order and the number actually returned varied hugely. In 2016, the number of returns from Germany was more than 100% of the number of people issued with a return order. In Italy and France, however, the number of returns equates to less than 20%, despite being amongst those countries with the highest number of issued return orders.^{29 30} The fact that in Germany the number of returns outnumbers the number of return orders issued highlights the backlog and shortcomings in its asylum system, since many of those returned in 2016 will likely have received their return decision in previous years.

As pointed out by the International Center for Migration Policy Development (ICMPD), comparing the number of return decisions with the number of actual returns only tells one part of the story. For example, whilst in Germany the number of people actually returned as a proportion of the total number of people issued with a return decision in 2016 was over 100%, if we examine the number of returns in comparison to the number of failed asylum seekers in the same year, the number returned amounts to less than half the total number rejected.³¹ Such a large discrepancy is

²⁹ The International Centre for Migration Policy Development (ICMPD) (2017). EU's Return Policy: Mission Accomplished in 2016? Reading between the lines of the latest EUROSTAT return statistics.

³⁰ ICMPD conducted more detailed analysis of the Eurostat data in May 2017.

³¹ The International Center for Migration Policy Development (ICMPD) (2017). EU's Return Policy: Mission Accomplished in 2016? Reading between the lines of the latest EUROSTAT return statistics.

probably due to the high volume of applications in 2015 and 2016, and the capacity of the country's processing system was insufficient.

Fig 4: Total number of returns according to MENA population group

	2013			2014			2015			2016		
	Return orders issued	Total returns	%	Return orders issued	Total returns	%	Return orders issued	Total returns	%	Return orders issued	Total returns	%
Afghans	15,240	4,420	29	23,445	3,360	14	38,890	3,290	8	30,325	9,460	31
Iranians	6,110	2,210	36	5,585	1,620	29	11,000	2,000	18	10,985	5,820	53
Iraqis	6,535	3,395	52	6,330	2,115	33	30,230	7,270	24	33,360	18,485	55
Jordanians	340	350	102	325	280	86	310	275	89	320	275	86
Lebanese	1,130	425	38	1,085	410	38	1,445	480	33	1,755	1,240	71
Pakistanis	25,360	13,705	54	21,210	11,440	54	23,290	8,755	38	25,745	7,105	28
Palestinians	1,860	330	18	1,870	390	21	2,830	340	12	1,075	200	19
Syrians	15,335	3,625	24	44,470	3,495	8	53,985	6,835	13	13,380	2,110	16

Fig 5: Returns to third countries as a proportion of total returns according to MENA population group.

	2013			2014			2015			2016		
	Total returns	Returned to TC	%	Total returns	Returned to TC	%	Total returns	Returned to TC	%	Total returns	Returned to TC	%
Afghans	4,420	3,195	72	3,360	2,385	71	3,290	1,520	46	9,460	8,325	88
Iranians	2,210	1,615	73	1,620	1,320	81	2,000	1,280	64	5,820	5,315	91
Iraqis	3,395	2,935	86	2,115	1,920	91	7,270	4,950	68	18,485	17,065	92
Jordanians	350	295	84	280	270	96	275	250	91	275	250	90
Lebanese	425	310	73	410	365	89	480	415	86	1,240	1,200	97
Pakistanis	13,705	12,805	93	11,440	10,645	93	8,755	7,690	88	7,105	6,260	88
Palestinians	330	255	77	390	305	78	340	295	87	200	130	65
Syrians	3,625	1,285	35	3,495	2,390	68	6,835	4,035	59	2,110	1,270	60

Fig. 4.^{32 33} shows the total number of return decisions issued across Europe, and total returned during a given year. The data provides a breakdown that shows the total number of people returned as well as those returned to third countries (as shown in Fig. 5³⁴). Those returned to third countries

³² Eurostat (2013/14/15/16). Third country nationals ordered to leave - annual data (rounded) (migr_eiord); Third country nationals returned following an order to leave - annual data (rounded) (migr_eirtn).

³³ This data also includes those people who were issued with a return decision but chose to leave voluntarily and without support before their return was enforced. In most cases these people represent a small proportion of the total number of returns. To understand more about interpreting Eurostat data see: Eurostat (2014). Technical guidelines for the data collection under Art 5 and 7 of regulation 862/2007 – enforcement of immigration legislation.

³⁴ Eurostat (2013/14/15/16). Third country nationals returned following an order to leave - annual data (rounded) (migr_eirtn).

refers to those individuals returned in direct response to a return order. Total returns also includes those who chose to spontaneously depart on their own accord, but were still recorded by the authorities as having left Europe. The 2016 data shows that for most of the above named population groups the overwhelming majority of the returns that took place were to third countries – and therefore in response to an order issued by the state.

This breakdown is useful in terms of understanding the discrepancies between return orders issued and returns enforced by the state, but it is also necessary to look at the *total* number of people returned in order to provide an indication of the discrepancy between those rejected asylum seekers that remain, and those no longer on European

territory. However, this is merely an indication as in reality it is difficult to assess how many failed asylum seekers return of their own accord, as they are not always processed through a system.³⁵

The data above shows that between 2015 and 2016 there has been a significant increase in the total number of people returned who are of Afghani, Iranian, Iraqi and Lebanese origin – this does not include those returned under the Dublin Agreement.³⁶ Pakistanis are the only population group where the absolute number of return orders issued has remained consistently high, at over 20,000 people over the past four years, yet for which there has been a decrease in the number of actual returns.

Despite the overall increase in returns, the spike in the number of arrivals since 2014 means that the population of rejected asylum seekers remaining in Europe has continued to grow. Indeed the data shown in *Fig. 4* shows that there are tens of thousands of people issued with a return order that have not been returned: while over 30,000 Afghans were issued a return order in 2016, only 9,460 people were actually returned. In the same year nearly 11,000 Iranians were also issued a return order, but only half were returned. Over 33,000 Iraqis were issued a return order in 2016, but just 18,485 were returned. Although the statistics suggest that the system of return has become more efficient, it remains slow, due to bureaucratic and logistical constraints.³⁷ Such long delays during the process of return may cause severe frustration amongst rejected asylum seekers and could be considered a factor that motivates more people to abscond.

What happens to asylum seekers once they have been rejected?

Those who have had their asylum claim rejected and are still residing in Europe can be broadly categorised into three groups:

1. those who await a final decision on an appeal, or who have been rejected and are waiting for their return to be arranged
2. those who cannot be returned, nor are eligible to stay, and so remain in limbo
3. those who fall into one of the two above groups but who choose to remain in Europe irregularly

Rejected and awaiting appeal or return

The large discrepancy between the number of return orders issued and the number of returns actualised means that there are hundreds of thousands of people issued with a return decision but left waiting for months, and in some cases years, until its eventual enforcement. Across the EU

³⁵ Eurostat (2014). Technical guidelines for the data collection under Art 5 and 7 of regulation 862/2007 – enforcement of immigration legislation; IRIN (2017). Why deportations are hard to do. 22 February 2016.

³⁶ The Dublin Agreement stipulates that an asylum seeker should be returned to first EU country of entry and it is this country that is then responsible for processing the asylum claim. The objective is to stop people from submitting multiple claims in different countries.

³⁷ IRIN (2017). Why deportations are hard to do. 22 February 2016.

there is a distinct lack of uniform practice as to when a return decision is enforced.³⁸

The extent to which rejected asylum seekers in this situation have rights and access to support services varies across member states. In some countries, access to support can depend on cooperating with the returns procedure. Once the time period for voluntary departure has passed, welfare support and accommodation provision may be reduced, but in some member states it may be terminated entirely.³⁹

Overall, the rights granted to rejected asylum seekers are minimal and generally consist of accommodation, food, emergency healthcare and basic education for children, though specific rules vary between countries. In most cases, however, once the return order is enforced, the person has up to one month to voluntarily depart.⁴⁰ After this deadline, the person is usually no longer eligible for assistance beyond emergency healthcare and basic education for children, unless there are evident legal or practical obstacles that prevent them from being able to leave.⁴¹

EU member states want to be perceived as implementing an effective returns policy; as a result, countries apply different measures to incentivise return. In the early stages that follow a person being issued with a return decision, member states will generally encourage people to opt for an Assisted Voluntary Return and Reintegration (AVRR) package. Incentives include financial support, counselling, continued stay in reception centres and support with reintegration upon return.^{42 43} For example, a factor to explain the increase in the number of Afghans and Iraqis returning in 2016, is that certain EU countries targeted these groups for return by offering higher premiums if they selected AVRR.⁴⁴

If it becomes apparent that a person is not cooperating – for example, scheduled appointments are missed – the approach changes. Rather than incentivise people to opt for voluntary return, emphasis is placed on deincincentivising stay, therefore rights to accommodation and any additional social benefits may be removed.⁴⁵ The objective is to push people into facilitating their own return before facing forced deportation.

While all states implement practices that both incentivise return as well as disincentivise stay, different states have placed stronger emphasis on one method over the other. Since the high influx of refugees and other migrants in 2015, states have increasingly focused on deincincentivising stay and enforcing measures that motivate people to leave as soon as possible. This includes countries such as Sweden and Germany, who have begun to reverse their typical

³⁸ European Commission (2016). The Return of Rejected Asylum Seekers: Challenges and Good Practices.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² For more detailed analysis on Assisted Voluntary Return and Reintegration see MMP's analysis: Turning Back: Policy and data analysis of Iraqis moving back from Europe, January 2017.

⁴³ European Commission (2016). The Return of Rejected Asylum Seekers: Challenges and Good Practices; *The Independent* (2017). Germany offers asylum seekers up to 1,200 euros each to voluntarily return to their home countries. 3 February, 2017.

⁴⁴ European Migration Network (2016). Returning Rejected Asylum Seekers: Challenges and Good Practices in Belgium.

⁴⁵ European Commission (2016). The Return of Rejected Asylum Seekers: Challenges and Good Practices.

comprehensive service provision to refugees and other migrants. Germany, for instance, is permitting fewer people to remain in standard accommodation than previously allowed, and is instead placing people in more controlled settings, with electronic tagging of rejected asylum seekers becoming more commonplace. In Sweden, it used to be the case that rejected asylum seekers would remain in reception centres or designated apartment buildings and would receive a daily allowance until return was feasible – in June 2016, policy changes meant these rights were no longer protected beyond the period of voluntary departure, resulting in more rejected asylum seekers being forced into homelessness.^{46 47} Greece is another case study where recent policy change has emphasised de-incentivising stay: asylum seekers are now denied access to a voluntary return scheme if they chose to appeal a negative decision.⁴⁸

Detention, as another method of de-incentivising stay, is becoming more common across Europe, including in Greece, Germany, Sweden, Italy and France.⁴⁹ This represents a major protection concern and an abuse of human rights. As governments implement stricter policies to crack down on irregular migration, detention is an increasing possibility for rejected asylum seekers. The frequency of detention also varies across states; in the UK, to take one example, people can be held indefinitely.⁵⁰ A new European Commission proposal includes encouraging states to detain rejected asylum seekers in order to prevent people from absconding. The plan includes the detention of minors, which violates the Convention on the Rights of the Child.^{51 52} Both the threat and the reality of detention are used with the intention of motivating people to facilitate their own return.⁵³

In some countries, people may be moved away from reception centres to so-called deportation centres. While not as restrictive as detention centres, people are still confined to a set radius. These are often in isolated areas, which limits potential for social integration. There are also reports that people may be moved without warning from one centre to another, again arguably an attempt to limit ties to a particular area.⁵⁴ In some instances rejected asylum seekers are placed in a deportation centre together with people excluded from receiving refugee status due to a criminal offence. This may create a false sense of criminality.⁵⁵ Within the centres,

people are often forced to live in close proximity to others from different cultural backgrounds, potentially adding to the discomfort of the living situation.^{56 57} Member states are also implementing stricter surveillance measures including electronic monitoring of rejected asylum seekers.⁵⁸ Rather than motivating people to ensure a quick return, creating an uncomfortable living situation through deprivation of liberty and denial of basic rights, risks encouraging a greater number of people to abscond.⁵⁹

Non-returnable and caught in legal limbo

As mentioned above, in some cases rejected asylum seekers may be issued with a return decision, but in practice they cannot be returned. This is mostly due to administrative failures within the system. An asylum seeker may lack the correct identification documents meaning that their nationality cannot be determined. It is often the case that the authority in the country of origin will refuse to provide the necessary travel documentation for return if the person lacks a valid passport.⁶⁰ People in this situation are therefore neither granted a residency permit nor able to be returned.⁶¹ It is not known how many people cannot be returned because of issues concerning documentation.⁶²

The Returns Directive stipulates that states are required to eventually issue a return decision, but it does not include an obligation to grant asylum seekers temporary residence when return proves impossible.⁶³ Less than half of EU member states grant temporary status to people who cannot be returned, and even then, this is only when the person is judged to have done everything in their power to facilitate their own return.⁶⁴ It is often the case that the authorities suspect that the rejected asylum seeker is concealing their nationality to prevent return.⁶⁵ This can be used to justify the withholding of additional support.⁶⁶ Many people in this situation submit an application to become stateless, but again, the applicant must provide evidence that they are not considered a national of any state.⁶⁷

Although individuals who cannot be returned face some similar issues to other rejected asylum seekers, their situation differs because, through no fault of their own, they are forced to live in an irregular state indefinitely: people become trapped within a system that criminalises their status as an irregular migrant, while offering no solution.⁶⁸ The

⁴⁶ European Commission (2016). *The Return of Rejected Asylum Seekers: Challenges and Good Practices*; *The Financial Times* (2017). Angela Merkel toughens plans to remove failed asylum seekers, 9 February 2017; *Refugees DK* (2016). Sweden has done a U-turn, 23 September 2016; *The Economist* (2017). Removing unauthorised immigrants is difficult and expensive, 2 March 2017.

⁴⁷ European Commission (2016). *The Return of Rejected Asylum Seekers: Challenges and Good Practices*.

⁴⁸ European Council on Refugees and Exiles (ECRE) (2017). Greece denies voluntary return incentives to asylum seekers appealing negative decisions, 12 May 2017.

⁴⁹ European Council on Refugees and Exiles (ECRE) (2017). From host country to deportation country – latest reform in Germany, 26 May 2017; J. Angela Merkel toughens plans to remove failed asylum seekers, 9 February 2017.

⁵⁰ *Detention Action* (2014). *The State of Detention: Immigration detention in the UK in 2014*.

⁵¹ The UK Border Agency refuses to publish data regarding the number of rejected asylum seekers who are released from detention and later abscond. Research, however, shows that the vast majority do not abscond as people have outstanding claims and hope to be granted residency. See more: *Detention Action*, 2017.

⁵² European Commission (2017). *European Agenda on Migration: Commission presents new measures for an efficient and credible EU return policy*, 2 March 2017.

⁵³ *Personal Communication*, Brussels 3 May 2017.

⁵⁴ *European Network on Statelessness* (2017). *Protecting Stateless Persons from Arbitrary Detention*.

⁵⁵ *Personal Communication*, Brussels 3 May 2017.

⁵⁶ *Global Migration Center* (2016). *Asylum Application Dismissed – What Now?*

⁵⁷ *Personal Communication*, Brussels 3 May 2017.

⁵⁸ European Council on Refugees and Exiles (ECRE) (2017). *From host country to deportation country – latest reform in Germany*, 26 May 2017.

⁵⁹ Weissbrodt, David (2008). *The Human Rights of Non-citizens*. Oxford: Oxford University Press.

⁶⁰ *British Red Cross* (2017). *A life in limbo: the people forgotten by our asylum system*, 5 March, 2017.

⁶¹ *Ibid.*

⁶² *BBC* (2015). *What happens to failed asylum seekers?* 13 August, 2015.

⁶³ *Point Of No Return* (2013). *Factsheet: Unreturnable Migrants in Detention*, in EU Law and Policy.

⁶⁴ European Commission (2016). *The Return of Rejected Asylum Seekers: Challenges and Good Practices*.

⁶⁵ *European Migration Network* (2016). *Returning Rejected Asylum Seekers: Challenges and Good Practices in Belgium*.

⁶⁶ *British Red Cross* (2017). *Can't stay. Can't go: Refused asylum seekers who cannot be returned*.

⁶⁷ *Ibid.*

⁶⁸ *European Network on Statelessness* (2017). *Protecting Stateless Persons from Arbitrary Detention*.

concept of being ‘unreturnable’⁶⁹ is not recognised in all member states. State authorities can therefore argue that the asylum seeker is deliberately preventing their own return. The state places the onus on the asylum seeker, despite the individual often being a victim of state policies. These rejected asylum seekers can be repeatedly detained for a return procedure that may never happen.⁷⁰ As rejected asylum seekers that remain in the country illegally, they have limited access to healthcare, education and housing. Often without the right to work and with no end in sight to their circumstances, they are at high risk of becoming homeless and trapped in poverty.⁷¹

Mental health disorders amongst rejected asylum seekers are profound. People caught in limbo commonly report dealing with feelings of humiliation and fear, and suffering from insomnia, paranoia, and drug and alcohol abuse.⁷² A recent study in the UK revealed that almost half of refused asylum seekers unable to leave the country have considered suicide.⁷³

Living in hiding

A proportion of rejected asylum seekers choose to abscond and live in hiding.⁷⁴ It is almost impossible to determine how many rejected asylum seekers who disappear from the watch of the authorities remain in Europe. Those who do join the population of undocumented migrants, which also includes people who entered the country illegally but chose never to enter the asylum system to begin with. Estimates suggest that between five and eight million migrants remain in Europe undocumented.⁷⁵

When a rejected asylum seeker absconds, their case is usually handed over to the police. In Sweden, over 11,000 cases were referred to the police in 2015. While some of these cases will have moved on to other European countries in an attempt to reapply for asylum, the majority disappear, leaving the authorities with no record of where they are.⁷⁶ The Swedish Migration Agency estimates that around half of those issued with a return order in Sweden abscond.⁷⁷ Similarly, in Germany it is estimated that around 50% of asylum seekers that entered the country in 2015 have gone into hiding, either because their claim has already been rejected or they fear that it will be.⁷⁸ In 2016, Europol, the EU criminal intelligence agency, estimated that around 10,000 unaccompanied and separated children had disappeared

since registering in Europe, although the actual figure is expected to be much higher.^{79 80}

Following the influx of refugees and other migrants in 2015, an increasing number of people set to be deported under the Dublin Agreement have chosen to disappear. The possible reasons for doing this include the intention to submit a new request for asylum after 18 months in hiding.⁸¹ Under the Dublin Agreement, asylum seekers are returned to the country of first entry, but if the person is yet to be removed 18 months after the deportation order was issued, the country currently hosting the person becomes responsible for the case. This arguably provides incentive for people to abscond and to be more selective about the country within which they apply for asylum (this is sometimes known as ‘asylum shopping’⁸²).⁸³

Rules regarding whether or not social services departments are obliged to inform the police if they identify a migrant with an irregular status vary across Europe. For example, in Germany a school director is obliged to inform the authorities if there is an irregular migrant in the school. However in states where there are stronger firewalls⁸⁴ there is not necessarily the obligation to notify. Firewalls help to protect individuals with irregular status by creating barriers between social services and authorities.⁸⁵ Even if being detected is not a frequent occurrence, the increasingly anti-migrant social climate,⁸⁶ creates the perception that this is a high risk. The fear of being exposed and detected and then detained or deported leads to a situation where people may choose to spend years without their most basic needs being met, including housing, education and healthcare.^{87 88}

Rejected asylum seekers who remain in Europe are highly vulnerable to human rights violations. People living in hiding are easily exploitable, as they are unable to find regular work and are therefore forced to work informally. Perpetrators know that individuals with an irregular status are reluctant to report incidents of abuse or exploitation for fear of being exposed and then detained or deported, and they therefore operate with impunity. Children in particular, are highly vulnerable to exploitation by criminal gangs, traffickers, and smugglers. Reports have emerged of children suffering

⁷⁹ The Guardian (2016). 10,000 refugee children are missing says Europol, 30 January, 2016.

⁸⁰ See MMP research report: Separated Families: who stays, who goes and why?, April 2017.

⁸¹ Radio Sweden (2015). More rejected asylum seekers going underground, 3 May 2015.

⁸² Politico.eu (2016). EU aims to stop ‘asylum shopping’, 4 June 2016.

⁸³ *Ibid.*

⁸⁴ The concept of firewalls is intended to ensure anyone in a country with irregular status can be guaranteed access to basic services of which everyone is entitled to under international law. Firewalls ensure the immigration enforcement authorities are not able to access information concerning the status of individuals who seek support from social services including medical facilities, schools and other providers of social support. See more: Crépeau, François and Hastie, Bethany (2015). The Case for Firewall Protections for Irregular Migrants: Safeguarding fundamental Rights, *European Journal of Migration and Law* 17 (2-3): 157-183.

⁸⁵ Personal Communication, Brussels 3 May 2017.

⁸⁶ Human Rights Watch (2016). European Union: Events of 2016.

⁸⁷ Personal Communication, Brussels 3 May 2017.

⁸⁸ Crépeau, François and Hastie, Bethany (2015). The Case for Firewall Protections for Irregular Migrants: Safeguarding fundamental Rights, *European Journal of Migration and Law* 17 (2-3): 157-183.

⁶⁹ Point Of No Return (2014). The futile detention of returnable migrants.

⁷⁰ *Ibid.*

⁷¹ Point Of No Return (2014). The futile detention of returnable migrants.

⁷² Global Migration Center (2016). Asylum Application Dismissed – What Now?; Point Of No Return (2014). The futile detention of returnable migrants.

⁷³ The Guardian (2017). Stranded refugees denied UK asylum face ‘life in limbo’, 5 March 2017.

⁷⁴ European Commission (2016). The Return of Rejected Asylum Seekers: Challenges and Good Practices.

⁷⁵ Platform for International Cooperation on Undocumented Migrants (PICUM) (2017). Who are Undocumented Migrants?

⁷⁶ IBM Times (2016). Failed asylum seekers hunted down and deported as Swedish border police crack down, 11 July 2016.

⁷⁷ Aljazeera America (2016). Life in hiding: Refugees in Europe evade deportation, 6 February 2016.

⁷⁸ Gatestone Institute (2016). Germany’s Migrant Deportation Plan: “Political Charade”, 1 February, 2016.

physical abuse and being pushed into slavery and prostitution.⁸⁹

Women with an irregular status also to face specific concerns : one example being that support during and after pregnancy is often inaccessible, or it is not sought after, for fear of being exposed.⁹⁰ Women in this situation are also particularly vulnerable to domestic abuse, again this vulnerability is enhanced because of their particular fear of being exposed to immigration authorities.⁹¹

Often, rejected asylum seekers who have absconded rely entirely on the support of family and friends, and their housing conditions are very low quality.⁹² When they cannot access housing, many become homeless.⁹³

Conclusion and recommendations

Whether a rejected asylum seeker awaits a return order under the watch of the authorities, is caught in legal limbo unable to be returned, or is living in hiding, the fact that they remain in Europe irregularly means they are left on the edges of society. The failure of member states to adhere to international laws that guarantee human rights through unimpeded access to basic services has led to a situation whereby the rights of hundreds of thousands of people are not respected. The denial of basic rights and the deprivation of liberty for an undefined period of time has created a huge 'hidden' protection crisis in Europe and basic humanitarian needs are not met - including access to healthcare, education and decent shelter conditions. At a time when populist anti-immigrant rhetoric is gaining strength, member states will continue to implement policies that focus on deterring and returning refugees and other migrants to the detriment of their human rights. Within this context it is likely that the situation for rejected asylum seekers will continue to deteriorate.

Summary of top humanitarian concerns for rejected asylum seekers

Protection: Detention, including detention of minors; lack of freedom and agency; removal of access to basic rights; high vulnerability to exploitation and abuse

Health: limited access to healthcare means symptoms are left untreated for too long and could become more chronic health conditions; mental health disorders are profound; reluctance to seek support for fear of exposure

Shelter: conditions inside centres are often dire and overcrowded; isolated locations; homelessness

Education: limited access to education means children's development is hampered; reluctance to pursue education for fear of exposure to authorities

Policy recommendations

- All EU+ member states need to adapt and extend the provision of services beyond very basic needs, so that they reflect the fact that people are often not removed immediately after receiving a negative asylum decision. It cannot be assumed that a negative decision will result in an imminent departure from the country.
- All EU+ member states should do more to provide psychosocial support for rejected asylum seekers. Without the provision of healthcare beyond that which constitutes an emergency, mental health disorders will be persistently overlooked.
- All EU+ member states should allow rejected asylum seekers to maintain their liberty whilst awaiting a return order to be enforced. It is essential that rejected asylum seekers be provided with stronger agency to mitigate the sense of being a victim.
- All EU+ member states need to recognise the concept of being non-returnable, and temporary status should be provided to individuals caught in this situation.
- All EU+ member states should implement and adhere to policies that ensure stricter firewalls between social services and legal authorities so that people do not fear seeking vital support. Without firewalls people will continue not to have their most basic needs met and human rights violations will not be reported.
- Limiting the use of detention should be understood as a way to prevent people from absconding.
- All EU+ member states should ensure better, and more widely disseminated information about AVRR options and conditions in country of origin, as well as information on the consequences of forced return. If individuals are better informed about their available options, fewer might abscond.
- All EU+ member states need to ensure that returns procedures are conducted in a humane way whilst also ensuring the sustainability of return. The process of return must be approached from a long-term holistic perspective, and this should result in support for returnees being provided once back in their country of origin.

Further research

- More empirical evidence is needed in order to better understand the time lag between an asylum seeker receiving a negative decision and an eventual

⁸⁹ BBC (2016). Why are 10,000 migrant children missing in Europe?, 12 October 2016.

⁹⁰ Kvamme, E and Ytrehus, S (2015). Barriers to health care access among undocumented migrant women in Norway. *Society, Health and Vulnerability*, 6:1; *The Guardian* (2017). Pregnant women without legal status 'too afraid to seek NHS care'. 20 March 2017.

⁹¹ Human Rights Watch (2014). Dispatches: Immigration Status no Excuse for Making Women Vulnerable. 3 February 2014.

⁹² Platform for International Cooperation on Undocumented Migrants (PICUM) (2017). Who are Undocumented Migrants.

⁹³ British Red Cross (2017). A life in limbo: the people forgotten by our asylum system. 5 March 2017.

return order being enforced. Further research could focus on the process of appealing a return decision and how this differs between states.

- Analysis of the situation for rejected asylum seekers should be further refined by considering specific protection concerns according to gender.
- As stated throughout this paper, asylum procedures differ across member states. In order to go in to greater detail on the circumstances facing rejected asylum seekers, this should be examined at a country level.
- More research is needed in order to understand the number of rejected asylum seekers who abscond and then either remain in Europe, or have left without being registered. Research should also focus on the factors across states that may be more likely to motivate people to abscond.

The Mixed Migration Platform (MMP) is a joint-NGO initiative providing quality mixed migration-related information for policy, programming and advocacy work, as well as critical information for people on the move. The platform was established by seven partners—ACAPS, Danish Refugee Council (DRC), Ground Truth Solutions, Internews, INTERSOS, REACH & Translators without Borders—and acts as a hub for the Middle East Region. For more information visit: mixedmigrationplatform.org