



**REFUGEE RIGHTS  
EUROPE**

# TIME FOR CHANGE

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On the need for safe and legal pathways to the UK





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Photo credit: Chris Barrett

# Overview

For too long, the UK's border control policies restricting access to safe and legal routes, and to the UK asylum system, have contributed directly to a humanitarian crisis in northern France, and increased reliance on dangerous and irregular journeys to reach UK soil. This has come at great financial, human and moral cost. Vulnerable individuals trapped in northern France face violence, abuse, inhumane conditions and regular evictions, while tragic and inexcusable deaths on the Channel are becoming more common.<sup>1</sup>

Through the juxtaposed border arrangements of the 1991 Sangatte Protocol, the 2003 Le Touquet Treaty, and later bilateral agreements, the UK Government has effectively extended its border onto French and Belgian soil, granting itself extraterritorial power to deny leave to enter.<sup>2</sup> This has allowed the UK to manage its border controls and restrict immigration from abroad, leading to an inhumane and degrading bottle-neck scenario for displaced people making the journey to the UK. As a consequence of wielding sovereign legal powers on French territory, the UK by extension holds high levels of responsibility for resulting human rights infringements, as well as for seeking sustainable solutions in collaboration with France.

Within the context of the UK's negotiations regarding its future relationship with the European Union, a new approach is not only possible, it is urgently needed. The Home Secretary herself has admitted that, 'we owe it to everyone, including those individuals who are being trafficked, those who are vulnerable and those who are being exploited, to ensure that there are safe legal routes.'<sup>3</sup> Civil society actors and experts by experience, who hold in-depth knowledge of the complexities of human mobility at the UK border, have elaborated a range of potential solutions to ensure safe and legal routes to the UK. These offer an alternative to the UK Home Office's current approach seeking to further militarise the sea and land border and enforce expedited returns,<sup>4</sup> which further blocks safe access to protection and to reaching friends and family in the UK.

In carefully reconsidering its ineffective and costly strategy at the border with France, by seeking constructive avenues for collaboration and for assuming its responsibilities, the UK Government could more effectively achieve its stated goals of reducing reliance on irregular migration pathways, such as dangerous small boat crossings,<sup>5</sup> and disrupting trafficking and smuggling networks,<sup>6</sup> whilst still upholding international<sup>7</sup> and European law<sup>8</sup> and its moral responsibility vis-à-vis prospective asylum seekers. It would also allow the UK to take a more humane and organised approach to asylum claims and protection responsibilities.



1. See e.g. <https://www.nytimes.com/2020/10/27/world/europe/migrant-boat-english-channel.html> and <https://www.theguardian.com/world/2020/aug/19/sudanese-teenager-found-dead-on-beach-near-calais-sangatte>  
2. These agreements were given effect in Britain through The Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003 <https://www.legislation.gov.uk/uksi/2003/2818/part/3/made>  
3. House of Commons debate (2020) <https://www.theyworkforyou.com/debates/?id=2020-09-28b17&s=france#g110>  
4. Priti Patel, Home Affairs Select Committee (2020) <https://committees.parliament.uk/oralevidence/312/default>  
5. UK-France Joint Action Plan (2019) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/773403/UK\\_France\\_declaration\\_24\\_Jan\\_13.00.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/773403/UK_France_declaration_24_Jan_13.00.pdf)  
6. Home Office, 'How the Government is tackling modern slavery' (2019) <https://homeofficemedia.blog.gov.uk/2019/05/22/how-the-government-is-tackling-modern-slavery>  
7. UNHCR, Convention Relating to the Status of Refugees (1951) <https://www.unhcr.org/3b66c2aa10>  
8. European Union, Charter of Fundamental Rights of the European Union (26 October 2012) Art. 18; Council of the European Union Regulation No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (29 June 2013).



## Why is change necessary now?

The situation in northern France is inhumane and degrading and following the global Covid-19 outbreak, the situation is now worse than ever.<sup>9</sup> People are at breaking-point. The UK government has the power to help to resolve it and yet continues instead to propose reinforced border security measures and to restrict safe routes to claim asylum, even though evidence shows that increased security measures and hostile treatment of vulnerable people only push people to take more dangerous routes.<sup>10</sup>

The worsening situation for displaced people in northern France has been considered a source of political embarrassment for many years. As the UK works out its new relationship with the European Union and its member states, and in the context of new immigration legislation, civil society has an opportunity to advocate for a situation that has deteriorated rapidly over recent years.

As of September 2020, there were around 2,000 people living in informal camps in the area.<sup>11</sup> Currently, these individuals for the most part live without access to dignified shelter, clean water and sanitation, let alone legal information or protection from violence and exploitation. These harsh living conditions have been ruled to constitute inhuman and degrading treatment multiple times by French courts.<sup>12</sup> During winter in particular the situation is deadly and has cost lives, including that of a 24-year old man who died from intoxication of smoke fumes after having to light a fire next to his tent for warmth in the winter of 2019.<sup>13</sup>



Photo credit: Rowan Farrel



9. Refugee Rights Europe et al. (2020) <https://refugee-rights.eu/wp-content/uploads/2020/08/facing-multiple-crises-report.pdf>

10. House of Commons Foreign Affairs Committee (2019) <https://publications.parliament.uk/pa/cm201919/cmselect/cmfaff/107/107.pdf>

11. Home Affairs Select Committee. Oral Evidence (2020) <https://committees.parliament.uk/oralevidence/874/default/>

12. Tribunal administratif de Lille 1508747 (2015) <http://lille.tribunal-administratif.fr/content/download/50062/438918/version/1/file/1508747%20V3%20anonymis%C3%A9.pdf>; Tribunal administratif de Lille 1702397 (2017) <http://lille.tribunal-administratif.fr/content/download/94432/%20908817/version/1/file/1702397.pdf>; Conseil d'Etat 431115 (2019) [https://www.gisti.org/IMG/pdf/jur\\_ce\\_2019-06-21.pdf](https://www.gisti.org/IMG/pdf/jur_ce_2019-06-21.pdf)

13. The Guardian (2019) <https://www.theguardian.com/world/2019/nov/03/outrage-in-calais-over-death-of-nigerian-man-in-tent>





Photo credit: Human Rights Observers (HRO)

A heavy-handed French police presence, with the tacit political support of the UK,<sup>14</sup> carries out daily living site evictions around Calais in an attempt to dissuade people from settling in the area. The UN Special Rapporteur on the right to housing has condemned this,<sup>15</sup> but evictions and confiscation of property have only increased at the exorbitant estimated cost of EUR 9,000 a day.<sup>16</sup>

Extremely vulnerable groups, including unaccompanied minors, single women, people with disabilities and victims of trafficking and exploitation are among those forced to live rough without any protections. The number of victims of trafficking and modern slavery is only expected to rise following the introduction of the government's new 'Points-Based' Immigration System.<sup>17</sup>

Currently, even those picked up by UK or French border authorities are rarely afforded adequate protections.<sup>18</sup> However, the vast majority of those attempting to cross the Channel are fleeing persecution, generalised violence, conflict or other forms of protracted crises in their home countries and many are likely to be accepted as refugees in the UK, according to evidence presented by senior Home Office officials.<sup>19</sup>

The violent crackdown on displaced people in the UK-France border region has had much the same failures as the UK's domestic 'Hostile Environment', with routine violence, detention and deportations marking attempts to dissuade people from seeking entry to and asylum in the UK. These harsh measures, funded by the UK, are intended to make living as a displaced person in northern France near to impossible, but in fact serve to contradict the UK's own stated interests. They make France unappealing as a country in which to seek protection from, thus acting as a push factor away from a place many displaced people associate with police violence, lack of accommodation and anti-migrant sentiment.<sup>20</sup>

This is inhumane, and yet could be resolved by providing accessible routes for people to seek safety; the number of people in northern France hoping to reach the UK is a fraction of the 65,000 claims for international protection made in Europe in January 2020 alone<sup>21</sup> and could be easily provided for by a more coherent and proactive international protection system.

Time and again, the tried and failed approach of investing in security infrastructure and trying to strengthen extraterritorial border controls has proven futile, and highlights the need to adequately address this situation in a constructive manner.

14. InfoMigrants (2019) <https://www.infomigrants.net/fr/post/20205/traversees-de-la-manche-des-gendarmes-reservistes-francais-payes-par-londres-deployes-sur-le-littoral>  
 15. OHCHR (2019) <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24475&LangID=E>  
 16. Slate (2020) <https://www.slate.fr/story/186017/migrants-calais-jungle-camps-jour-sans-fin-photoreportage>  
 17. The Joint Council for the Welfare of Immigrants, 'Immigration Bill 2020: Second Reading Briefing' <https://www.jcwi.org.uk/immigration-bill-2020-second-reading-briefing>  
 18. HMIP Calais inspection 2016 <https://www.justiceinspectors.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2016/12/Coquelles-Calais-Web-2016-2.pdf>  
 19. Home Office Affairs Select Committee, Oral Evidence (2020) <https://committees.parliament.uk/oralevidence/793/default/>  
 20. The Human Trafficking Foundation, 'Nobody deserves to live this way' (2017) <https://www.antislaverycommissioner.co.uk/media/1262/nobody-deserves-to-live-this-way.pdf>  
 21. EASO, Latest Asylum Trends: January 2020 <https://www.easo.europa.eu/latest-asylum-trends>



## Why should the UK take action?

In addressing the lack of access to safe legal routes into the UK for those at its borders, the UK Government has a unique opportunity to begin to fix its broken asylum system. This would in turn ensure that its legal obligations are successfully met, that taxpayers' money is spent wisely, and that the UK's credibility on the international scene is upheld by honouring its commitment to fundamental human rights and justice.



Photo credit: Refugee Women's Centre

### Enabling the UK to meet its international legal obligations.

The juxtaposed controls agreements, whereby the UK has externalised its border controls onto French soil and thus prevents prospective asylum seekers from entering its territory and being able to present an asylum claim, constitute a *non-entrée* policy.<sup>22</sup> The juxtaposed controls are explicitly intended to 'detect and deter potential clandestine illegal immigrants before they are able to set foot on UK soil, fundamentally altering the way the UK operates at its border.'<sup>23</sup> Such a policy arguably breaches the UK's international legal obligations by circumventing the right to asylum and as a result also the protection against *non-refoulement*.<sup>24</sup>

In addition, the agreements create UK 'Control Zones' in northern France and as far as Paris and Brussels, where hundreds of UK Border Force guards operate,<sup>25</sup> UK detention facilities (Short-Term Holding Facilities) are based<sup>26</sup> and UK criminal law powers apply. The extraterritorial control and law enforcement powers wielded by the UK engages its human rights responsibilities towards those in the Control Zones and in the UK detention sites. However, the border agreements remove UK legal accountability in these Control Zones and fail to uphold individuals' right to present an asylum claim or access legal advice.<sup>27</sup> This means that refugees at the border are finding themselves in a legal 'grey zone' where they are under UK control, but without the equivalent human rights protections.

Importantly, any measures to be undertaken by the UK Government must go hand in hand with the provision of adequate and humane reception conditions, legal aid and guidance for prospective asylum seekers on French soil, along with genuine efforts by the French Government to ensure access to the asylum procedures and effective status determination in France itself.

<sup>22</sup> J.C. Hathaway, T. Gammeltoft-Hansen, 'Non-Refoulement in a World of Cooperative Deterrence' (2014) [https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1216&context=law\\_econ\\_current](https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1216&context=law_econ_current)

<sup>23</sup> UK Cabinet Office (2007) <https://www.statewatch.org/news/2007/nov/uk-border-review-report.pdf>

<sup>24</sup> Amnesty International, 'The Human Rights Risks of External Migration Policies' (2017) <https://www.amnesty.org/download/Documents/POL3062002017ENGLISH.PDF>

<sup>25</sup> Care4Calais (2019) p. 16 <http://www.stopwapenhandel.org/sites/stopwapenhandel.org/files/hunted-detained-deported.pdf>

<sup>26</sup> An inspection from HM Inspectorate, accompanied by the Contrôleur Général des Lieux de Privation de Liberté, of these short-term holding facilities (STHFs) on 25-27 November 2019 found serious concerns about some aspects of the detainees' experience. While detention staff were generally caring and helpful, the inspection found serious concerns around safeguarding and legality of detention. See more: <https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2020/03/France-web-2019.pdf>

<sup>27</sup> HMIP Calais inspection (2016) <https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2016/12/Coquelles-Calais-Web-2016-2.pdf>



## Ensuring efficient spending of UK tax money.

The UK Government's tactics at the UK-France border have led to a lamentable waste of resources. Between 2010 and 2016 alone, £315.9 million of tax payers' money was spent by UK Border Force ('UKBF') on 'detering irregular migration' in and around Calais.<sup>28</sup> In 2018 a further £44.5 million was committed as part of the Sandhurst Agreement,<sup>29</sup> followed by another £5.5 million a year later.<sup>30</sup> The spending figure is rapidly increasing, as new walls and barbed wire fences are erected every month. New high-security detection equipment, CCTV, and drones have been installed in the area as well as a Joint Command and Control Centre.

Despite this considerable financial outlay and stated policies to the contrary, irregular crossings and loss of life have continued.<sup>31</sup> 2020 has seen a large increase in boat crossings, suggesting that the hike in security spending only serves to increase the desperation felt by displaced people in the area and push them into ever more lethal routes.<sup>32</sup> This is evidenced by the fact that there were six reported deaths in 2019 around Calais alone, including that of a 17-year old child, directly resulting from dangerous crossing routes on rubber dinghies, refrigerated lorries and even by trying to swim to the UK.<sup>33</sup>

The human and financial cost of increased border security is a lamentable waste. The 2,000 people currently living between Calais and Grande-Synthe remains an extremely low number compared to the overall 35,500 people who sought asylum in the UK in 2019.<sup>34</sup> The cost of housing and feeding these individuals as part of an asylum procedure would amount to £13.3 million a year,<sup>35</sup> which is just over ten percent of the sum spent in 2016 alone on preventing them from entering the UK.<sup>36</sup>

Denying people safe ways to reunite with friends and family in the UK simply forces individuals to live in squalid conditions whilst waiting, incurs further costs to the UK taxpayer, and pours money into hands of smugglers and traffickers. The matter is not going away, irrespective of how much more of UK tax payers' money is spent on border security. Undoubtedly, opening up procedures by which prospective asylum seekers could reach the UK safely, would free up statutory funds currently allocated to futile and harmful securitisation measures.



Photo credit: Andreas Beissel

28. Freedom of Information request (2017) [https://fullfact.org/media/uploads/foi\\_response\\_41250\\_-\\_r.pdf](https://fullfact.org/media/uploads/foi_response_41250_-_r.pdf)

29. UK Government, 'Joint UK-France centre opens in Calais to tackle criminality at border' (2018) <https://www.gov.uk/government/news/joint-uk-france-centre-opens-in-calais-to-tackle-criminality-at-border>

30. Minister of State for the Home Department (2020) <https://www.theyworkforyou.com/wrans/?id=2020-09-18.HL8269.h&s=calais#gHL8269.r0>

31. Home Office, Addendum to Small Boats Action Plan (2019) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/839500/Small\\_Boats\\_Action\\_Plan\\_Addendum\\_-\\_26th\\_September\\_consolidated\\_text\\_2019.10.01\\_002\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/839500/Small_Boats_Action_Plan_Addendum_-_26th_September_consolidated_text_2019.10.01_002_.pdf)

32. Foreign Affairs Committee, Responding to irregular migration: A diplomatic route (2019), p. 9 <https://publications.parliament.uk/pa/cm201919/cmselect/cm/aff/107/107.pdf>

33. Calais Migrant Solidarity (2020) <https://calaismigrantsolidarity.wordpress.com/deaths-at-the-calais-border/>

34. Home Office (2020) 'How many people do we grant asylum or protection to?' <https://www.gov.uk/government/publications/immigration-statistics-year-ending-december-2019/how-many-people-do-we-grant-asylum-or-protection-to>

35. Asylum seekers in the UK receive an allowance of £36.95 a week, or £1,921 a year, whilst City AM estimates that housing an asylum seeker costs £6,937 a year: <https://www.cityam.com/how-much-would-it-cost-uk-accept-all-asylum-seekers/>

36. Freedom of Information request ref. 41250 (2017) [https://fullfact.org/media/uploads/foi\\_response\\_41250\\_-\\_r.pdf](https://fullfact.org/media/uploads/foi_response_41250_-_r.pdf)

## What could be done?

The evidence is clear – there is an urgent need for a new approach. In light of this, what are some viable ways forward for the UK Government?

Several proposals have been put forward to the Government in terms of safe and legal routes to the UK. These have included, but are not limited to:

- The introduction of Humanitarian Visas, expanding the Family Reunification Rules, and adequately funding and extending the Vulnerable Persons Resettlement Scheme.<sup>37</sup>
- An immediate guarantee of adequate entry routes for every individual who is eligible to enter the UK under the family reunification provisions of the European Union Dublin Regulation (and who may lose that right on 31 December 2020).<sup>38</sup>
- A renewed commitment to the ‘Dubs scheme’ or similar arrangements, to enable children subject to acutely vulnerable circumstances in Europe to swiftly reach safety in the UK.<sup>39</sup>

In addition, close and constructive collaboration between the UK and French governments is urgently needed, to find long-term solutions for those arriving at their own initiative in northern France with the aim of reaching the UK or finding sanctuary elsewhere, who do *not* fit the tight criteria inherent in the above-listed proposals. The two governments must explore new avenues for assuming shared responsibility for the ongoing human rights crisis in northern France. To this end, an enhanced dialogue around concrete solutions, and a strong alignment of advocacy demands, are urgently needed. Ideally, such work ought to be elaborated through a collaborative effort between UK and French civil society groups, who are well-placed to collectively formulate constructive policy proposals anchored in the principles of universal human rights and human dignity. The support from members of national and European parliaments, as well as media outlets and influential figures, in advancing humane solutions will also be invaluable.

Collaborative efforts are needed now more than ever, at a time when the conditions for people in displacement in northern France are possibly worse than ever before: where women, men and children are trapped in an abysmal bottle-neck scenario, deterred from considering seeking protection in France, whilst seeing their prospects for safe and legal routes to the UK further diminished.



<sup>37</sup> See proposal presented to the UK Home Office in August 2020 by the Joint Council for the Welfare of Immigrants (JCWI) and 100 signatories: <https://www.jcwi.org.uk/joint-letter-on-channel-crossings>

<sup>38</sup> Ibid

<sup>39</sup> The ‘Dubs scheme’ is the common name for section 67 of the Immigration Act 2016. This gathered cross-party support for the UK to welcome a ‘specified number’ of unaccompanied children from France, Greece and Italy. See Home Office (2018) Dubs Process Document: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/767397/DUBS\\_DETAILED\\_PROCESS\\_DOCUMENT\\_France\\_FINAL\\_Updated\\_December\\_2018\\_SG\\_003\\_002.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767397/DUBS_DETAILED_PROCESS_DOCUMENT_France_FINAL_Updated_December_2018_SG_003_002.pdf)



## Spotlight on the humans at the border



### Mohammed\*

Mohammed, 16, left conflict-torn Darfur in Sudan to find a life in safety. However, trapped at the British border, he was faced with new forms of violence and a lack of recourse to security. “I was on the road in the evening. There were many police and they verbally abused us, hit us with batons and sprayed tear gas. It was just me and a single friend.” Mohammed is still in Calais, sleeping rough and looking for a solution to his predicament.

### Abdallah\*

Abdallah quickly left Sudan after having been released from jail where he was tortured and ill-treated by government officials for his social justice work. He spent nine months in the Calais jungle before arriving irregularly in the UK, on the back of a refrigerated lorry. He was granted asylum six months after arriving in the UK.

### Senait\*

Senait is a young woman from the Horn of Africa, who left her home country as an underage girl. After an unfathomable journey across the Sahara and Mediterranean, she was trapped in northern France trying to reach the UK where she has a social support network. She was raped and faced other forms of sexual abuse, and eventually sold her body to a smuggler to cross the UK border. She arrived pregnant in the UK where she applied for asylum.

*\*All names have been changed in order to protect the individuals' identities.*

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