

**Submission from ILPA to the Joint Committee on Human Rights:
Legislative Scrutiny Priorities for 2010**

*'Police suspects, prisoners and migrants are highly vulnerable and their human rights – the rights to a fair trial, or not to be subjected to inhuman treatment, for example – assume a greater importance as a result.'*¹

1. ILPA is a professional association with over 900 members, who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-government organisations and others working in this field are also members. ILPA exists to promote and improve the giving of advice on immigration and asylum through training, disseminating information and providing evidence-based research and opinion. ILPA is represented on numerous government and other stakeholder and advisory groups and has given both written and oral evidence to many parliamentary committees, including the Joint Committee on Human Rights.
2. ILPA's submissions, responding to the JCHR's call for Submissions on its legislative scrutiny priorities for 2010, fall under the heading 'Asylum Support and destitution'. ILPA strongly supports the Committee's suggestion that it should look at both the Draft Immigration Bill and the Consultation on Asylum Support as part of its programme of legislative scrutiny and hence provides information below on the potentially serious adverse impact on the human rights of asylum-seekers (and their children).

Introduction

3. In 2006, ILPA gave written and oral evidence to the JCHR's inquiry into the treatment of asylum-seekers. In its final report the committee raised grave concerns about human rights abuses caused by Government policy, particularly in relation to those asylum seekers whose applications had been refused. Having examined the impact of the existing, complex statutory regime the Committee concluded:

"Many witnesses have told us that they are convinced that destitution is a deliberate tool in the operation of immigration policy. We have been persuaded by the evidence that the Government has indeed been practising a deliberate policy of destitution of this highly vulnerable group. We believe that the deliberate use of inhumane treatment is unacceptable. We have seen instances in all cases where the Government's treatment of asylum seekers and refused

¹ The Work of the Committee in 2007 and the State of Human Rights in the UK
Sixth Report of Session 2007–08, JCHR, HL Paper 38 HC 270

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asylum seekers falls below the requirements of the common law of humanity and of international human rights law.”²

4. The JCHR found it extremely disappointing that in its response to their report, the Government failed to engage with vast swathes of the wide-ranging and compelling evidence that was provided to the Committee, which highlighted significant failings in the asylum support system. Since 2007, a series of research reports have continued to highlight the problem of destitution, in particular amongst refused asylum-seekers³.

General Concerns

Deliberate destitution

5. In its response to the JCHR report, the Government “*strongly refute[d] the Committee’s claim of a deliberate policy of destitution towards asylum seekers*”.⁴ However, ILPA believes that the proposals set out in the consultation paper reflect in many instances just such a policy. Both the Bill and the Consultation Paper contain examples of attempts to compel compliance with removal and “voluntary” return by removing entitlement to accommodation and support from those who fail to comply.
6. We consider that withdrawing or providing inadequate accommodation and support can lead to a violation of fundamental rights, particularly in the case of families with dependent children. To this is added ILPA’s experience that this approach does not work. Previous attempts to “encourage” compliance with immigration control through the use of destitution or other serious restriction on human rights (such as the use of prolonged detention) have not been successful.

Evidenced-based provision

7. This concerns links to ILPA’s second overarching concern, namely the lack of any real evidence base for the proposals in the consultation paper. In its response to the 2007 JCHR report on the Treatment of Asylum seekers, the Government accepted the Committee’s recommendation that asylum policy should be formulated on the basis of evidence. Yet the present consultation paper shows little evidence of this.

² Joint Committee on Human rights, 10th report of the Session 2006 – 2007, “The Treatment of Asylum Seekers”, HL Paper 81-I, HC 60-I, published 30 March 2007, paragraph 120.

³ *The Second Destitution Tally: an indication of the extent of destitution amongst asylum seekers, refused asylum-seekers and refugees in the UK*, Kate Smart, Asylum Support Partnership, May 2009; *Deserving Dignity: The Independent Asylum Commission’s Third Report on Conclusions and Recommendations*, July 2008; *Unreasonably Destitute?* Asylum Support Appeals Project (ASAP), July 2008; *Not moving on: Still destitute in Leeds*, David Brown, Joseph Rowntree Charitable Trust, July 2008 [www.jrct.org.uk].

⁴ Government response, published as Annex to JCHR, 17th report of the Session 2006 – 2007, “Government response to the 10th report of this session: the Treatment of Asylum Seekers”, HL Paper 134, HC 790, 5 July 2007.

The need for scrutiny

8. An additional reason for the Committee to scrutinise the Bill lies in the extent to which it would transfer power to the Secretary of State, by making only broad general provisions and leaving much to secondary legislation and policy. This is described in the consultation document as the use of “high level powers” to provide flexibility, but ILPA is concerned that the degree to which delegated legislation will control the availability of, and nature of asylum support, removes a crucial degree of democratic control and parliamentary scrutiny. There are no draft regulations and in a number of respects the effect of the proposals is unclear as a result.

Specific concerns

9. The JCHR inquiry report considered that s55 Nationality Immigration and Asylum Act 2002 should be repealed: the draft Immigration Bill proposes to re-enact it.
10. The proposal to set a fixed time limit for support such as three months for refused asylum-seekers on the basis that they are taking steps to leave, with no right of appeal (Clause 210(8)) gives rise to potential breaches of ECHR article 3, 6 and 8.
11. The proposal to end the current system of cash and accommodation for refused asylum-seekers with children, and instead move them into full-board accommodation such as a hostel or B and B where this could assist with removal or return (clause 212) is one of ILPA’s main concerns. It could mean the children of former asylum-seekers would spend months in unsuitable B and B accommodation, whereas mainstream homelessness rules prohibit local authorities from placing homeless families with children in bed and breakfast accommodation for more than six weeks⁵. These proposals do not appear to have taken into consideration the UN Convention on the Rights of the Child (CRC). The ‘safeguarding’ duty now provides that the Home Secretary must have regard to the need to safeguard and promote the welfare of children who are in the UK when carrying out any of his functions in relation to immigration, asylum or nationality⁶. Moving children out of the accommodation which they have lived in while their claims were being processed and away from their schools, friends and communities into full-board accommodation is unlikely to be in their best interests. ILPA accordingly believes that it would not be consistent with the UK Border Agency’s duty to safeguard and promote the welfare of children.
12. The JCHR has indicated that the detention of children for the purpose of immigration control breaches the UK’s international human rights obligations, and alternatives to detention should be considered. The Immigration Bill does not currently contain any proposals for ending the detention of children.

⁵ The Homelessness (Suitability of Accommodation) (England) Order 2003

⁶ The Borders, Citizenship and Immigration Act 2009, s55, in force from 2 November 2009

13. The proposals do not implement the JCHR's suggestion that former asylum-seekers could be given the right to work. This is despite the fact that the Court of Appeal has now decided that a refused asylum-seeker whose further submissions have been outstanding for 12 months or more should be granted permission to work, applying Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers⁷.

Conclusion

As the JCHR observed in its 2007 report:

“All asylum seekers – including those whose claims have been refused and the Home Office intends to remove from the UK – are still ‘within the jurisdiction’ and therefore beneficiaries of the rights set out in the panoply of international human rights treaties that the UK has adopted...All are owed the human rights obligations successive Governments have assumed.”

14. It is now three years since the JCHR made a number of criticisms of, and proposals for improvements in, the treatment of asylum-seekers. Regrettably, that learning is not reflected in the government's asylum support proposals. ILPA hopes that the Committee will follow up its earlier concerns and seek to ensure that the needs of one of the poorest and most vulnerable groups in our society are respected, by reviewing the proposed legislation.

Post script

15. As the Committee will be aware, the UK Border Agency is currently consulting on proposals on asylum support. That consultation will close on 4 February 2010. ILPA will be responding, and we will send a copy of our response to the Committee.

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on behalf of the Executive Committee of ILPA
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⁷ R (ZO) (Somalia) and MM (Burma) v Secretary of State for the Home Department and R (DT) (Eritrea) v - Secretary of State for the Home Department [2009] EWCA 442, 3 CMLR 27, Times, May 28, 2009