The Immigration Law Practitioners' Association's Evidence to the Joint Committee on Human Rights Inquiry into Treatment of Asylum Seekers

Introduction

1. The Immigration Law Practitioners' Association (ILPA) is a professional association with some 1200 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 aims to promote and improve the giving of advice on immigration and asylum, through teaching, provision of high quality resources and information. ILPA is represented on numerous government and appellate authority stakeholder and advisory groups and has provided oral and written evidence to the Joint Committee on Human Rights on many occasions.

2. ILPA welcomes this enquiry. Rights under human rights instruments, and most notably the ECHR, are guaranteed to all within the jurisdiction. The failure to respect the rights of people seeking asylum is as much a breach of the UK's international obligations as a failure to respect the rights of nationals would be. We have, of necessity, been selective in the points we have highlighted in this response. We are happy to provide further information where this would be helpful. ILPA has had sight of the submission of the Housing and Immigration Group (HIG) to this inquiry and we concur with all the points made in their submission. HIG includes ILPA members

Access to accommodation and financial support

3. The rules about welfare benefits and immigration status are complex. For the purpose of this submission we focus only on the benefits available to or denied asylum seekers or failed claimants. The support system is designed so that some people, especially those at the end of the process, have no entitlement to any support whatsoever, save insofar as they can make out a case on human rights grounds. Since 8.1.03, rules have been in force excluding certain groups from the National Assistance Act and certain provisions of the Children Act 1989 (along with a number of other forms of state support including asylum support). These groups are:

   - A person granted refugee status by an EEA state other than the UK,
   - An EEA national (other than a UK national)
   - A person who has ceased to be an asylum seeker and who fails to co-operate with removal directions issued in respect of him/her
   - A person who is in the UK 'in breach of the immigration laws' (broadly this means someone who requires leave to be in the UK, but does not have it) and who is not an asylum seeker
   - A person who is the dependant of someone who falls into the first three of these groups.

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- A failed asylum seeker with family (newly inserted para 7A of Sch 3, Nationality, Immigration and Asylum Act 2002) if a certificate has been validly issued by the SSHD

4. In addition asylum support can be denied to asylum seekers who do not claim asylum as soon as practicable after their arrival in the UK. (s.55 of the Nationality, Immigration and Asylum Act 2002) The House of Lords in *R v Secretary of State for the Home Department ex parte Limbuela et Ors* [2005] UK HL 56 EWCA Civ 540 - found that denial of support to such claimants could breach rights under Article 3 ECHR – "*that threshold may be crossed if a late applicant with no means and no alternative sources of support, unable to support himself, is by deliberate action of the state, denied shelter, food or the most basic necessities of life*"'. (Baroness Hale at para 79). The Lord Hope stated:

   > *"Where the inhuman or degrading treatment or punishment result from acts or omission for which the state is directly responsible there is no escape from the negative obligation on states to refrain from such conduct, which is absolute".*

   Despite the *Limbuela* judgment, s.55 has not been abandoned – the HIG submission to this enquiry details Home Office efforts to revive it. Certainly the requirement to have made a timely asylum application is utilised to deny assistance to failed asylum seekers who remain in the UK.

5. Enforced destitution has become an immigration control policy. It is the stick to inculcate timely asylum applications (as in *Limbuela*) and to force failed asylum seekers to return to their homes. Failed asylum seekers with families must decide whether to secure Children Act support for their children and live apart from them in destitution.

The use of detention and conditions of detention and methods of removal of failed asylum seekers.

6. Enforced destitution has produced great hardship and has not had the desired effect of motivating claimants to leave the UK. The government has utilised this policy against families, the sick and elderly as well as against single claimants. (see: s.9 of the Asylum and Immigration (Treatment of Claimants) Act 2004, by which families who do not cooperate in efforts to remove them can be denied support) The policy is known to produce privation and cause great suffering. The policy takes no account of the personal circumstances of claimants.

7. Numbers of failed asylum seekers will have lost their asylum claims through inadequate representation or missed appeal hearings following NASS dispersal. Such failures are common in the asylum system. Many asylum applicants who were disbelieved retain their palpable fear of return to their home countries. The policy does not have regard to this fear and that it is their fear which often keeps claimants here in such privation. Others cannot return home as their countries are generally unsafe; or they have no travel documentation and little prospect of obtaining it.

8. The distress, poverty, illness and trauma produced by destitution policies are being documented by government and non-government agencies. Their data makes shameful reading. It is even more distressing when one realises that some of those suffering enforced destitution almost certainly have meritorious claims to remain in the UK.

9. Over many years the Home Office has developed internal policies under which they undertook to grant temporary or indefinite leave to remain to the nationals of certain war-torn and unsafe countries. These policies were rarely published and not widely circulated. In the case of *Rashid, R (on the application of) v Secretary of State for the Home Department* [2005] EWCA Civ 744 (16 June 2005) the Court of Appeal held that Iraqi claimants who would have been granted refugee status and indefinite leave to remain under the terms of a policy applicable at the time their cases were decided should get indefinite leave to remain, notwithstanding that the policy was now redundant. The Court noted in respect of the Home Office secrecy concerning and their inconsistent application of this general policy to all Iraqis from outside the Kurdish Zone, that it amounted to 'flagrant and prolonged incompetence'

> "*It is difficult to understand how the failure to apply the correct policy to the claimant can have been persisted in for such a long period. Understanding is more difficult when we are told by Mr Tam that Iraq was at the material time a "top asylum country" in that there were many applicants from there. The situation there was of great public concern and I am unable to understand why a fundamental element in the asylum policy, the question of internal re-location to the KAZ, was unknown to all those who dealt with the claimant's case. …*
> *the degree of unfairness was such as to amount to an abuse of power requiring the intervention of the court. The persistence of the conduct, and lack of explanation for it, contributes to that conclusion. This was far from a single error in an obscure field. A state of affairs was permitted to continue for a long time and in relation to a country which at the time would have been expected to be in the forefront of the respondent's deliberations*." (at paras 33,36 and 53 per Pill and Dyson LJJ)

10. The Home Office has belatedly published a description of the Iraqi claimants who stand to benefit from the policies exposed in *Rashid.* They have yet to publish the terms of policies which would provide similar benefits to certain Somalis, Kosovans, Rwandans Sierra Leoneans, Angolans. (to name but a sample of the relevant nationalities for which there were beneficial leave policies). It is within this context that the destitution policy should be considered. The destitution policy is not simply directed towards persons who have 'chosen' to remain here unlawfully. This prescriptive policy has also affected persons who should have been granted leave to remain, who are almost certainly unaware of the hidden Home Office policies applicable to their case and who have been denied the benefit of such policy concession because of Home Office secrecy, incompetence and inattention.

11. ILPA is also concerned at the arrangements for asylum support for those claimants seeking asylum. The provisions dealing with their entitlements to accommodation and financial support are complex and applicant must negotiate an elaborate bureaucracy. There is no publicly funded legal representation before the Asylum Support Adjudicators. The Asylum Support Appeals Project (ASAP), which provides free legal advice and representation on a pro bono basis and with very limited resources has recorded that 62% of the people who were represented by ASAP at their hearings have had their cases allowed or remitted to NASS to make the decision again. Only 20% of people appealing who had no representation won or had their case remitted[1]. Those who are successful can encounter payment delays. The National Asylum Support Service (NASS) may take time to implement the decisions of asylum support adjudicators and those found to be entitled to support, including on human rights grounds, may not get that support for days or even weeks although the obligation to

[1] ASAP newsletter July 2006 available from www.asaproject.org.uk

provide support arises as soon as the appeal is won, and a condition of winning is that the person is destitute.

12. Human rights applications are frequently the only defence against destitution. This makes it imperative that people have access to high quality legal advice and representation so that they can assert their rights. This is not always on offer:

    > The DCA and the Legal Services Commission are consulting on a new funding structure for legal aid in, *inter alia,* immigration and asylum[2]. The proposal is that only 30 minutes work on asylum support would be included in the proposed (very low) fixed fee. Other work would have to be done under welfare or housing contracts. The fixed fee scheme, whereby fees are set at a level that will make it difficult to provide representation in the asylum case itself, will make it difficult for immigration specialists to work alongside their welfare or housing counterparts to supply the necessary information[3].

13. It has long been ILPA's contention that the relationship of the support and asylum determination systems is marred. We see evidence of this continuing in the New Asylum Model (NAM). For example, we are told that while the asylum support system can cope with early refusals of asylum, it cannot currently cope with early recognition of a person at a refugee, because the appropriate accommodation arrangements cannot be met. Since this was raised at stakeholder meetings, we understand that discussions aimed at resolving this problem are to take place to ensure that NAM can deliver on its objective of "front-loading" all claims.

14. ILPA is working with organisations, namely Refugee Action and Amnesty International, currently undertaking research into the destitution of failed asylum seekers. This research is set to be published on the 10th November 2006 and we commend the research reports of Amnesty International and Refugee Action to the Committee.

Provision of healthcare

15. There has been considerable UK litigation on the human rights implications of removal of people with terminal illnesses or suicide risk. In the case of *N v Secretary of State for the Home Department* [2005] UKHL 31 the House of Lords held that a person with AIDS, on antiretroviral treatment but facing extreme suffering and early death if returned to country of origin, was not entitled to protection under Article 3. ECHR. In *ZT v SSHD* [2005] EWCA Civ 1421 (CA)) Sedley LJ noted concerning the setting of the bar in both Article 3 and Article 8 cases unusually high for removal cases:

    > "*When in N v Home Secretary, Lord Nicholls described these questions as "not capable of satisfactory humanitarian answers" he might have added "or jurisprudential ones". If HIV were a rare affliction, readily treatable in the UK but not treatable except for the fortunate few in many other countries, the courts would have little hesitation in holding removal of sufferers to such countries to be inhuman treatment contrary to Article 3. It is the sheer volume of suffering now reaching these shores that has driven the Home Office, the Immigration Appellate Authority and the courts to find jurisprudential reasons for holding that neither Article 3 nor Article 8 can*

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[2] *Legal Aid: A sustainable future* CP 13/06, DCA and Legal Services Commission

[3] See ILPA's submissions to the Constitutional Affairs Committee *Inquiry into Implementation of the Carter Review*; and response to the LSC/DCA consultation *Legal Aid: A sustainable future* both available on www.ilpa.org.uk

ordinarily avail HIV sufferers who face removal. Only cases which markedly exceed even the known level of suffering - an example is the expectant mother in CA v Home Secretary [2004] EWCA Civ 1165 – now qualify for protection."

Although Sedley LJ seemed disposed to reserve the high barrier to HIV cases, the effects of the *N* judgment can be felt in other areas, for example in cases where the act of expulsion is likely to provoke a suicide attempt (see e.g. *KK v SSHD* [2005] EWCA Civ 1083). Almost all medical refusal cases are now treated under the *N* doctrine. This approach is of real concern to ILPA and arguably represents a diminution of the State's Article 3 responsibilities.

16. Those medical cases who are not in practice removed from the UK, but who are not given status here, are denied access to other than primary health care under the NHS Charges to Overseas Visitors Regulations 1989 (SI 1989/306) and the NHS (Charges to Overseas Visitors) (Amendment) Regulation 2004 (SI 2004/614). We refer to the Refugee Council's June 2006 Briefing paper *First do no harm: denying healthcare to people whose asylum claims have failed*[4] for an examination of the effect of the regulations.

Treatment of children

17. ILPA has published two documents on children subject to immigration control: *Working with children and young people subject to immigration control: Guidelines for Best Practice* [5] and *Child first, migrant second: Ensuring that every child matters*[5]. ILPA has asked the Immigration and Nationality Directorate (IND) to adopt the recommendations set out in the latter report to ensure that the DfES Every Child Matters[6] framework applies to all children in the UK; IND has not yet done so, but equally has not yet said that it will not.

Age disputes

18. Until such time as an age dispute is resolved in a child's favour, the Home Office continues to treat the child as an adult: determining their claim for asylum through adult procedures and using against them the powers it has available to use against adults under immigration control.[7]. Although the Oakington Fast Track detention criteria were modified following litigation in the High Court (*D (2) Z (R on the application of) v Secretary of State for the Home Department* (2005) (Application) Case No: CO/988/2005, CO/2920/2005 Date: 23/11/2005) our members continue to report cases of detained children and Home Office failures to consider and follow their own procedures concerning disputed age cases.

19. ILPA is currently funded by the Nuffield Foundation to conduct research on the experiences of children seeking asylum whose age is disputed. There is evidence of an increase in age disputes over recent years. Since 2004 when the Home Office started to publish figures on the number of age disputed cases, there is statistical

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[4] Kelley, N. & J. Stevenson Refugee Council & Oxfam June 2006, available from http://www.medact.org/content/refugees/Health%20access%20report.pdf#search=%22first%20do%20no%20harm%20refugee%20council%22

[5] *Working with children and young people subject to immigration control: Guidelines for best practice* Crawley, H., for ILPA, November 2005

[5] Crawley , H., for ILPA, February 2006

[6] Green Paper 2002 and see DfES 2004 *Every Child Matters: Next Steps*

[7] See Child First, Migrant Second, op.cit, Chapter 4 pages 26-27

evidence on the scale of the problem. In 2005 nearly half (45%) of all applications made by those presenting as separated children seeking asylum were age disputed and treated as adults. Many of these disputes remain unresolved.

20. ILPA's research has been undertaken with the assistance of the Home Office and 14 local authorities and examines existing policy and practice in relation to age assessment by IND, local authorities and others and the implications of age dispute issues and of a child being treated as an adult. The early findings of the research suggest that there is currently an over-reliance upon physical appearance as a proxy indicator for chronological age, even though this is notoriously unreliable given the varied ethnic and social backgrounds of those who seek asylum. This leads to children being placed in adult processes with the consequences that this brings, including a failure to consider child specific protection needs, detention, inappropriate accommodation provision by local authorities and NASS, and lack of access to existing child protection mechanisms.

21. There is also increasing evidence that asylum applicants whose age is disputed are often unaware of their rights to challenge that decision or of the mechanisms for doing so. This is because they often do not have access to the specialist legal advice and representation needed to request a formal age assessment by social services or commission expert evidence. The Legal Services Commission and DCA proposals for a fixed-fee funding regime envisage exempting unaccompanied children from the fixed fee scheme and contracting with specialists to represent them. In our response to the Consultation, among the many questions we have about the proposal, we have asked the LSC and DCA to clarify whether their proposals are intended to cover age-disputed cases. It is important that the LSC tendering process for child representation work should focus on recruiting specialist, conscientious practitioners and is not simply driven by cost considerations.

22. ILPA's research will be completed early in 2007 and will provide concrete and practical policy recommendations on an appropriate process for agreeing age in the asylum context, and on the relationship between the process of age assessment, the asylum determination process and support and leaving care arrangements. Ultimately, if put into practice, this could lead to improved outcomes for children and young people and more efficient – and better quality – initial decision making and service provision. An added benefit will be the reduction of the cost currently associated with age disputes and a major source of potential and actual conflict between different service providers who should be working together.

23. An effective procedure for age assessment would ensure respect for the rights of children seeking asylum in accordance with the UN Convention on the Rights of the Child and in particular Articles 2, 3,4,19,20,22, 27, 28, 34, 37 and 39 and the provisions of paragraphs 213 to 219 of the UNHCR Handbook. It would also ensure that the UK could give effect to its obligations under the EU Reception Directive[8] which requires that "The best interests of the child shall be a primary consideration for Member States when implementing the provisions of the Directive that involve minors."

24. Although we are not yet in a position to make our own detailed recommendations to the Committee, we strongly support the recommendations made by the Office of the Children's Commissioner in its submission to this Inquiry: that the processing of the asylum claim itself should be delayed until the age dispute is resolved; that the

[8] Council Directive 2003/9/EC of 27 January 2003, laying down minimum standards for the reception of asylum seekers

government urgently launches a review of the current arrangements for determining age; that those whose age is disputed should be made aware of the mechanisms for challenging such a decision; and that further work should be conducted on the annual asylum statistics to allow the reasons for the resolution of the age dispute to be disaggregated.

Other matters

25. The UK's reservation to the UN Convention on the Rights of Child (UN CRC), condemned by the Committee on the Rights of the Child as "contrary to the objects and purposes of the convention[9]" – i.e. an illegal reservation under the Vienna Convention on the Law of Treaties, - remains in place. Despite government claims that it does not affect the treatment of children while they are in the UK, in practice it has been interpreted to limit the application of the UN CRC to other aspects of a child's life[10]. The Refugee Qualification Directive's[11] adoption of the 'best interests' principle for all matters dealing with refugee children[12], makes the reservation to the CRC even less defensible. The government has committed itself under the Directive to operate the core CRC principle when dealing with refugee children. The Convention itself should become a part of general immigration operations.

26. As we explained in our submission to this Committee's Inquiry into Trafficking, the current immigration control regime militates against protection of children under immigration control at risk of exploitation and abuse. We refer you to that submission[13]. In particular we highlight that the current situation, whereby unaccompanied children are all too often "accommodated" rather than "taken into care" by local authorities. No one in the UK has parental responsibility for such children and their welfare and needs may not be met. The lack of guardians in children's cases is a desperate lacuna, affecting support entitlements as well as the child's ability to pursue the claim to asylum[14].

27. Members of the Committee will be familiar, from our briefings on what became the Immigration Asylum and Nationality Act 2006, as well as previous submissions to the Committee, with our views on many aspects of immigration control as they affect children. We pause to note the failures to pick up matters highlighted during those debates, notably:

28. The evaluation of s.9 of the Asylum and Immigration (Treatment of claimants, etc.) Act 2004[15], repeatedly promised during debates and culminating in the enactment of s.44 of the 2006 Act, which provides for repeal of the section by order, has never been published. Nor, despite the promulgation of two commencement orders (SI 2006/1497 (C.50) and SI 2006/2226 (C.75), has s.44, which is no more than a power to repeal by order, been commenced. Section 9 gives rise to risks of breaches the rights of children under the UN CRC Articles 2-6, 9, 18, 22,24, 26-27, 31, and 39; Article 8 (and in some cases Article 3) of the ECHR. We endorse the submissions of the Office of the Children's Commissioner.

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[9] UN Committee on the Rights of the Child, *Concluding observations on the United Kingdom of Great Britain and Northern Ireland* para. 47ff. Discussed in the JCHR's 17th Report of 2005

[10] See the discussion in *Child First; Migrant Second, op. cit.* , Chapter 2 pages 7 to 8

[11] Council Directive 2004/83/EC of 29 April 2004

[12] *Ibid*. Article 20 (5)

[13] See also *Child First, Migrant Second* , *op cit.* Chapter 6.

[14] See *Child First, Migrant Second, Op. cit.* Chapter 4, and in particular the section on Guardianship at page 32.

[15] See *Child First, Migrant Second, Op.cit.* Chapter 5

29. Despite fulsome promises made to the Earl of Listowel during debates in the House of Lords[16], there has been no response from the government to the overwhelming case for including the immigration service in the safeguarding powers under s.11 of the Children Act 2004, made first by the Earl Howe in debates on the 2004 Act and then by the Earl of Listowel in debates on the 2006 Act[17]. This lacuna gives rise to risks of breaches of Articles 8 and 3 of the ECHR and Articles 2,3, 19, 22, 37 and 39 of the UN CRC. We endorse the submissions of the Office of the Children's Commissioner.

30. The government issued a consultation on use of private contractors under s.40 and 41 of the 2006 Act[18] which made no reference to safeguarding children, a matter debated at length during the passage of that Act, and envisaged timescales that could not possibly allow for the training and vetting envisaged in government promises made during debates[19] (get ref). The provisions as enacted give rise to risks of breaches of Articles 8 and 3 ECHR, and Articles 2, 3, 19, 22, 37 36, and 39 of the UN CRC.

Use of detention for administrative reasons only – i.e. to "fast-track" the processing of asylum claims.

31. The ECHR recently held in the case of *Saadi* [13229/03] that detention for this reason was compatible with Article 5 but only by a majority of 4 to 3. A reference has been made to the Grand Chamber. The British judge said that the detention in this case was only in compliance with Article 5 because it was for no longer than 7 days. The Court was considering the "Oakington regime" at a time when detention to process an asylum claim was limited to 7 days - since then the Government has changed its policy so that some persons are detained in Oakington for up to 14 days. They have also introduced the "super fast track" in Harmondsworth and Yarlswood where most cases are decided in 7 days but some are not; cases that are appealed are detained for in excess of seven days. The "super fast track" also involves the hearing of any appeal within an extremely short period of time (commonly within 5 days of a decision) and only 1% of appeals were allowed in Yarlswood fast track and 3 % in Harmondsworth fast track - compared with an allowed appeal rate ranging from 14% to 28% in non fast track appeals[20]. The divergence in success rate on appeal raises concerns that those detained in super fast track are being denied equal access to justice .Legal Aid for an appeal is not "as of right" available in fast track asylum appeals despite the short time limits: the same merits tests have to be applied as for the standard appeal timetable leaving many unrepresented. The recent BID report on unethical practices by some lawyers funded by the LSC in the fast track process

[16] *Hansard* HL Report 14 March 2006, col. 1206

[17] *Hansard* HL Report 14 March 2006 col. 1202ff

[18] *Private Freight Searching and fingerprinting at Juxtaposed controls* Home Office Consultation Document of May 2006, available at http://www.homeoffice.gov.uk/documents/private-freight-juxt-controls/

[19] See *Hansard* HL Report 17 January 2006, cols. GC 230ff; 7 February 2006, cols. 577ff, 14 March 2006, cols. 1187ff

[20] See Quarterly Asylum Statistics, 2006. During the first three months of 2006, 410 new asylum applications went into Harmondsworth, of which 81% (330 people) received an initial decision. 99% were refused asylum with less than five people recognized as refugees. See: Table 19, http://www.homeoffice.gov.uk/rds/pdfs06/asylumq106.pdf

exposes the vulnerability of these applicants and the need for the LSC to give priority to competent ethical firms when choosing suppliers for fast track contracts.

The "fast-track" system is, at best, on the borderline of human rights compliant. Article 13 of the International Covenant on Civil and Political Rights requires that an appellant facing expulsion be allowed to be represented on an appeal. International human rights law requires that any tribunal must ensure respect for the principle of procedural equality and there should be a reasonable opportunity to present ones case under conditions that do not place the individual concerned at a substantial disadvantage vis a vis his opponent and to be represented by counsel for that purpose . In the case of the fast track, to comply with these international obligations, impecunious detainees should have a right to free legal aid without a merits test. It should be remembered that fast-track detainees are cases that are considered straightforward, not cases considered frivolous, vexatious or clearly unfounded. If they were any of the latter the Home Office has the power to certify them and thus deny an in-country appeal. The fact that there is going to be an appeal in-country should lead to these cases being granted public funding.

32. . ILPA would therefore wish to see all those detained in fast-track guaranteed legal representation (through Legal Aid in the form of Legal Help and Controlled Legal Representation) up to and including the appeal hearing.

Failure to respect the rights of detainees.

33. In a number of recent cases the Immigration Service has been found to have acted unlawfully by;

    (i) Failing to give detainees written reasons for their detention so that they can know why they are detained and what arguments they need to meet to secure release (found to be in breach of Article 5 in the case of *Saadi v UK* ECHR 11 July 2006 where a delay of 78 hours in giving written reasons for detention was not prompt enough to comply; and in the case of *Faulkner* [2005] EWHC 2567 by detaining a foreign prisoner on completion of his sentence for two months under the Immigration Act without him being given written reasons for his detention)

    (ii) Failing to allow detainees enough time to consider decisions and mount challenges to prevent removal (found to have occurred and rendered the detention unlawful in the case of *Karas* [2006] EWHC 747 where the Judge held that it was oppressive, unreasonable and unnecessary to detain the claimant for removal on the next day when the application had been outstanding for three years and was only decided 4 hours prior to detention. The Judge reached the view that the claimants detention was deliberately planned with a collateral and improper purpose - the spiriting away of the claimants from the jurisdiction before there was likely to be time for them to obtain and act upon legal advice or apply to the court)

    (iii) Failing to act on High Court injunctions ordering a stay on removal (leading to contempt proceedings against IND and the immigration officers concerned)[21]

[21] Fadile Parmaksiz v SSHD [2006] EWHC 2235 (Admin) Ms Parmaksiz was removed from the UK despite a court order prohibiting this. Mr Justice Collins was highly critical of the Home Office failure to follow its own procedures.

(iv) Failing to carry out medical examinations on asylum seekers within 24 hours of arrival at a detention centre in breach of Detention Centre Rules, such examinations required in particular to identify those unsuitable for detention such as torture survivors (this failure rendered detention unlawful in the cases of *D & K [*2006] EWHC 980).

34. The EU Reception Directive[22] requires that *"reception of group with special needs should be specially designed to meet those needs"*[23] and that member states *"take into account the specific situation of vulnerable persons such as minors, unaccompanied minors.."*[24]. Article 18 requires that "*The best interests of the child shall be a primary consideration for Member States when implementing the provisions of the Directive that involve minors"*. Article 17 requires special access to rehabilitation services for minors who have been victims of abuse[25]. The detention of children in families cannot be squared with these obligations.

Treatment by the media.

35. An aspect of the treatment of people seeking asylum in the media that ILPA wishes to highlight is the criticism levelled at judges determining rights and obligations, including human rights in immigration cases, culminating in the Sun's campaign to get the UK to withdraw from the ECHR. The willingness of government Ministers to criticise individual judges in the media has fed, and in some cases contributed to, this media coverage. Human rights cannot be respected in a system that is not subject to the rule of law, and attempts by the Executive to put pressure on the Judiciary constitute attempts to interfere with the rule of law.

36. In the case of *Limbuela*, cited above, the then Home Secretary David Blunkett MP and the Prime Minister were quick to criticise judges in the lower courts. The Prime Minister condemned as an "abuse of common sense" the decision of Mr Justice Sullivan in the long running Afghan case of *R (GG et ors) v SSHD* CO/4987, 4991-8/2005, where he found that the Home Office actions constituted an abuse of power. The case was on its way to the Court of Appeal at the time and that Court upheld the decision of Mr Justice Sullivan. Giving judgement, Lord Justice Brooke said: "*We commend the judge for an impeccable judgment.*"

37. We suggest that the questions of the rule of law and respect for the independence of the Judiciary may be matters to which the Committee could usefully turn its attention.

ILPA
October 2006

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[22] Council Directive 2003/9/EC of 27 January 2003, laying down minimum standards for the reception of asylum seekers
[23] Preamble
[24] Article 17
[25] Article 17