## Further Submission to the Joint Committee on Human Rights Inquiry Into Counter-Terrorism and Human Rights

1. ILPA has provided evidence to this inquiry. This further evidence comes in response to the JCHR's supplementary call for evidence, which requested, in particular, information on significant changes or additions to the Immigration, Asylum and Nationality Bill made after the publication of, and not covered in, the Third Report of Session 2005-6.

2. The significant changes relevant to the areas of counter-terrorism and human rights are:
   - Amendments to what is now (HL Bill 74) Clause 54 (Refugee Convention: Construction), and the insertion of a new clause, now Clause 55 (Refugee Convention: Certification);
   - Amendment to what is now Clause 58 (Acquisition of Nationality)

**Clause 54 (Refugee Convention Construction) and new Clause 55 (Refugee Convention: Certification)**

3. Introducing the amendments and new clause at Report stage in the House of Lords on 7 February 2006, the Baroness Ashton of Upholland explained them thus:

   *"we identified an overlap between the appeal provisions in Clause 52(2) and Section 33 of the Anti-terrorism, Crime and Security Act 2001 as regards appeals on Article 1F while these provisions have the same aim, there are procedural differences between them which mean that they cannot work together. The amendment is designed to address them. It removes the appeals provisions from Clause 52, repeals Section 33 of the 2001 Act and inserts into the Bill a new clause, refugee convention certification"* (col 613)

4. It will be clear from the above that the amendments were not designed to, and do not, address the concerns expressed by the JCHR in paragraph 179 of its Third Report, nor the concerns expressed by UNHCR, and by NGOs.

**How the new clause differs from the unamended clause in the Bill**

5. The new clause:
   - uses a certification procedure
   - covers the whole of Article 1F, not only 1F(c)
   - also covers Article 33(2) of the Convention, not only Article 1F. Article 33 prohibits the *refoulement* of a refugee to the frontiers of territories where his life or freedom would be threatened for one of the Convention reasons (race, religion, political opinion etc.). Article 33(2) states that a refugee shall not benefit from this protection where there are reasonable grounds for regarding as a danger to the security of the country where s/he is a refugee or who, following conviction for a particularly serious crime, constitutes a danger to the community of that country.

   Note also that it is explicit in the new clause that the certificate can be issued even if Secretary of State does not accept that the person would be a refugee save for exclusion – e.g. the primary case could be that the appellant is not telling the truth; in the alternative that Article 1F applies.

**How does the new clause differ from s.33 of ACTSA 2001, which it repeals?**

6. We note the following differences:
   - ACTSA 2001 s.33, applied only in national security cases, cases considered serious enough that they should be heard before the Special Immigration Appeals Commission. No public good test before issuing the certificate – an extra protection even for those in the SIAC cases under ACTSA
   - The new clause makes reference to the controversial s.72 (Serious Criminal) of the Nationality, Immigration and Asylum Act 2002, which, of course, had not been passed when s.33 was enacted.
   - ACTSA 2001 s.33 sought to exclude judicial review challenges to certification. The new clause does not replicate this provision, as the Baroness Ashton expressly identified in introducing it (col. 613). Unlike ACTSA s.33 the new clause does not make express provision for the Secretary of State to quash the certificate nor what happens when the AIT or SIAC do not agree with the certificate.

**Overall what has changed**

7. Changes can be summarised as follows:
   - The use of a certification procedure in national security cases before the AIT
   - Coverage of the whole of Article 1(F) in procedures before the AIT
   - Coverage of Article 33(2) in procedures before the AIT

## Analysis

8. As stated, the new clause does not address the concerns that were voiced about the original version of this clause in the Bill. It makes an improvement to the situation in SIAC cases by removing the ouster provisions of s.33 of ACTSA 2002. However, it worsens the position of those appearing before the Asylum and Immigration Tribunal (AIT). Procedures previously reserved for those cases to be heard before SIAC, because of the serious national security concerns they raise, will now be applied to cases that have been held not to meet that threshold of seriousness; those that remain with the AIT. Under s.97 of the Nationality, Immigration and Asylum Act 2002, cases are sent to SIAC if the Secretary of State acting in person certifies that the decision appealed against:
   - was taken wholly or partly on the basis that the person's exclusion or removal from the UK would bein the interests of national security, in the interests of the relationship between the United Kingdom and another country;
   - was taken on the basis of information that, in the opinion of the Secretary of State should not be made public, in the interests of national security, the relationship between the UK and another country, or otherwise in the public interest.

9. ILPA retains all its concerns about, and objections to, the clause. We are pleased to see the "ouster" provisions of s.33 of ACTSA 2001 gone. The new clause does however highlight the strength of the JCHR's comment that "The necessity for the new provisions may be questionable" (para. 174 of the *Third Report)* and their calls for a narrower definition of terrorism to be used and reference to inchoate offences to be removed. Cases which raise national security concerns will go to SIAC, yet countering terrorism is presented as the rationale for the clause.

**Clause 58 (Acquisition of nationality)**

10. The government amended this clause at Lords Report to remove the reference to s.4B of the British Nationality Act 1981, so that the good character test will not be applied to applications from British Overseas Citizens, British subjects and British Protected Persons with no other nationality. ILPA welcomes this amendment. We asked in our briefing for Grand Committee "Are these people so very different from the stateless, who are given protection under this clause? We are pleased that what the Rt. Hon David Blunkett MP described as *about righting an historic wrong…"*(Commons Consideration of Lords Amendments 05 11 02 Col 147) in 2002, when these people were given to the entitlement to register as British, has not been undermined.

11. The Lord Filkin said, in introducing the amendment to right this historic wrong at Lords Report on what became the Nationality, Immigration and Asylum Act 2002:

> *"My Lords, my right honourable friend the Home Secretary gave an undertaking in another place to reconsider the position of British overseas citizens who have no other nationality. As matters stand, those citizens have no right of abode, either in this country or elsewhere.*
> *The Home Secretary stated the Government's view that we have a moral obligation to them of long standing and that the present unsatisfactory situation represented unfinished business. We have since concluded that a similar obligation is owed to British subjects and to British protected persons without other nationalities."* Nationality, Immigration and Asylum, Bill 9 Oct 2002 Column 286)

We are pleased that these people with "no right of abode, either in this country or elsewhere" will retain their right to register. However, we consider that if the government has accepted this principle then other changes need to be made to the clause to reflect it. Sub-section 58(2)(d) should be removed. This refers to section 1 of the British Nationality (Hong Kong) Act 1997 which concerns Hong Kong residents whose entitlement to register derives from their having a form of British nationality other than British Citizenship and being, on 4 February 1997, stateless but for that citizenship and who have not since renounced any other citizenship. To amend the Bill to allow these people to register by entitlement would be in line with the government's amendment to leave out "4B". Similarly subsection 58(2)(e) should be deleted. Article 6 of the Hong Kong (British Nationality) Order 1986 is entitled "Provisions for reducing statelessness". Article 6(3) says:

> *"* (3) A person born stateless on or after 1st July 1997 outside the dependent territories shall be entitled, on an application for his registration as a British Overseas citizen made within the period of twelve months from the date of the birth, to be registered as such a citizen if the requirements specified in paragraph (4) below are fulfilled in the case of either that person's father of his mother"

We suggest that it is in line with the UK's obligations under both the UN Convention on the reduction of statelessness, and the UN Convention on the Rights of Child, to allow those who are, in effect, stateless babies under 12 months to register as British.

12. The Parliamentary Under-Secretary of State, the Baroness Ashton of Upholland, was faced both in Grand Committee and at Lords Report the criticisms levelled at the clause for subjecting *inter alia* babies under 12 months to the good character test and denying them the opportunity to register by entitlement. She said in Grand Committee:

> *"Concern has been expressed that we would extend the rule to very young children or even babies—that was raised with me yesterday. Of course, the*

> *rules would state that that would be a silly thing to do, and it would not happen. (*19 Jan 2006 : Column GC279)

We have vocied our objections this legislation, and to the passing of "silly" legislation in any event. We have a further concern that the approach outlined would not be possible in practice. The sole purpose of the clause is to subject the identified groups to a good character test when they apply to register. Three provisions apply *only* to babies under 12 months – subsection 58(2)(e) as described above, and the references to s. 3(2) and s.17(2) of the British Nationality 1981 in s.58(2)(a). Were guidance to seek to lift these groups *as a whole* (and no one has suggested it is possible to distinguish good and bad under-12-month-olds) out of the application of the clause, would this not be in direct conflict with, and thus *ultra* vires the statutory provision?

ILPA
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