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This submission is also supported by the Sikh Council UK; Sikh Human Rights; CAP Liberte de Conscience, a human rights NGO with UN consultative status; and the following members of the Citizenship Is A Right Coalition: Black Lives Matter Coalition; Muslim Public Affairs Committee UK; CUBE Network; Consortium of Muslim Professionals Ltd; Association of Muslim Lawyers; and Save Our Citizenships.

1. EXECUTIVE SUMMARY

1.1 In this submission US provides information regarding the proposal by the UK Home Office ("**HO**") to create a power to issue a citizenship deprivation order without notice via Clause 9 of the Nationality and Borders Bill (the "**Bill**").[i]

1.2 This submission draws upon a Joint Legal Opinion dated 14 January 2022 prepared by Leigh Day Solicitors, Raza Husain QC and Eleanor Mitchell of Matrix Chambers and Jason Pobjoy of Blackstone Chambers (the "**Legal Opinion**").[ii] A copy of the Legal Opinion is enclosed as Annex 1.

1.3 This submission outlines how Clause 9 is likely to result in an increase in citizenship deprivation orders that are incompatible with the UK's international and domestic human rights obligations and highlights that it would allow the UK Government to retrospectively legitimise previous unlawful deprivation decisions. It recommends that Clause 9 be removed from the Bill and that the UK Government undertake not to reintroduce it in this or any other Parliamentary session.

2. NATIONALITY AND BORDERS BILL

2.1 On 6 July 2021 the UK Government introduced the Bill to Parliament[iii] and during the House of Commons Committee Stage, the UK Government introduced what became Clause 9 of the Bill. For a full text of Clause 9 as originally introduced see the Legal Opinion in Annex 1, paragraph 59. On 28 February 2022, the House of Lords voted by a majority of 36 to remove Clause 9 from the Bill.[iv] At the time of writing, the House of Commons has voted to reintroduce Clause 9 in an amended form.[v] A copy of the proposed amendment is included as Annex 2.[vi] Whilst the amendments proposed are preferable to the original Clause 9, US maintains that a power to deprive someone of citizenship without notice is not a proportionate or necessary measure under any circumstances. The

amendment also retains the unconstitutional provision which would legitimise previous unlawful decisions. US has made written submissions to Parliament urging them to delete Clause 9.[vii]

2.2 In summary, as introduced Clause 9 of the Bill would have given the Home Secretary the power to deprive a person of their British citizenship without giving any notice if (1) the Home Secretary does not have the individual's contact details, (2) it is in the interests of (i) national security or (ii) the relationship between the United Kingdom and another country, or (3) it is ***otherwise in the public interest*** (emphasis added).

2.3 Clause 9 would confer on the Home Secretary "*an exorbitant, ill-defined and unconstitutional power…*" to deprive someone of their British citizenship without notice.[viii] Clause 9 would also allow the HO to retrospectively legitimise previous deprivation orders which have been made unlawfully. This sets a dangerous precedent for future legislation. For a discussion of the constitutional implications of retroactive legislation see paragraphs 109 to 115 of the Legal Opinion at Annex 1.

2.4 Clause 9 and other parts of the Bill have encountered significant resistance and criticism within the UK. An online petition for the removal of Clause 9 has amassed over 325,000 signatures at the time of writing.[ix] Stephen Kinnock, the Shadow Minister for Immigration stated in the House of Commons debate on the proposal to remove Clause 9 that "*this Bill reflects and represents a catalogue of failure on immigration policy and a combination of incompetence and indifference from a Government who are presiding over a system that is neither fair, compassionate nor orderly. It is a desperate attempt to distract from the Home Secretary's failings, and it solves none of the challenges our immigration system faces. We know that many Members on the Government Benches are deeply uncomfortable with the content of this legislation*."[x]

2.5 Clause 9 should also be considered in the wider context of the progressive expansion by the UK Government of the Home Secretary's power to deprive individuals of their British citizenship, even in circumstances in which they render the individual stateless.[xi] The Legal Opinion notes that, from a comparative perspective "*the UK already has significantly more power to deprive and individual of their citizenship than any other G20 country*."[xii] In February 2021, the UK Supreme Court confirmed the Home Secretary's power to deprive a young woman of her British citizenship thereby rendering her stateless, despite the fact that she was arguably a victim of human trafficking.[xiii]

2.6 The situation is further exacerbated by HO hyperbole including statements in the past that "*citizenship is a privilege not a right*".[xiv] More recently, the HO has also singled out specific religions for comment in the context of counter-terrorism discussions, which causes us concern that Clause 9 might be used to target British Sikhs and other religious minorities if it becomes law.[xv]

2.7 **US recommends that the UK Government publicly accept that citizenship is a right, not a privilege.**

2.8 The principal concern with Clause 9 and the reason US says it is incompatible with the UK's existing international human rights obligations (in particular Article 8 of the 1961 Convention on the reduction of statelessness), is that it effectively denies the individual of their right to a fair hearing on the matter. Although Clause 9 includes an appeals process, practically speaking, it would be impossible for someone to appeal a deprivation order that they do not know exists. There would be no way to understand or challenge the decision without first knowing what the reasons were for making the order, and without knowing

what evidence supported the decision. A person deprived of their citizenship overseas would face huge administrative obstacles to accessing legal advice and challenging the decision in the UK. For that reason, we believe that the appeals process alone is not an adequate safeguard to mitigate the risks of injustice arising from Clause 9.

2.9 Further, we say that Clause 9 is neither a necessary nor a proportionate measure to advance the Government's national security objectives. In the House of Commons debate on the House of Lords' proposed amendment to remove Clause 9, the Parliamentary Under Secretary of State Tom Pursglove said that Clause 9 will apply to "*19 cases a year on average*".[xvi] When compared with the extreme prejudicial impact that citizenship deprivation has on the individual in question, we say it is not a proportionate measure to implement for only 19 cases per year on average.

2.10 The implications for someone deprived of their citizenship without notice would be stark. It would result in restrictions on their ability to travel. It could also result in disruption to and/or dissolution of employment rights and opportunities, and business relationships, leading to loss of income and ensuing financial hardship. For individuals deprived of their citizenship overseas, it would result in the loss of any right to consular support and could leave individuals trapped in potentially dangerous jurisdictions with no support and no right to travel. It could disrupt family ties and relationships. In certain circumstances, they may be at risk of arrest or detention in the country they are in at the time their citizenship is revoked, particularly in the paradoxical scenario where that country is notified and the individual is not. It could also compromise the rights of family members such as dependent children, whose right to live in the UK might be affected by the deprivation of their parents' citizenship.

2.11 The case of N3 offers a real-life example of the practical obstacles a person would have to overcome when seeking to challenge a deprivation order from abroad.[xvii] Whilst appealing his deprivation order to the Special Immigration Appeals Commission ("SIAC"), N3 was detained, held in a French deportation centre, and then placed under house arrest miles from civilisation pending his application for asylum. He was required to walk 6 miles per day to sign in at a police station until, ultimately, the HO withdrew the decision to deprive N3 of his citizenship and he was allowed to return home to the UK. During the process, social services intervened to assess whether his children were at risk from "radicalisation". These obstacles would be amplified in a legal process that does not include the important legal safeguard that is the requirement to serve notice.

2.12 The case of N3 demonstrates how the law on citizenship deprivation engages rights under Articles 6, 8 and 14 of the European Convention on Human Rights ("**ECHR**"), as enacted in the UK by the Human Rights Act 1998 ("**HRA**"). For a detailed examination of how Clause 9 might give rise to successful challenges pursuant to these articles of the ECHR (if Clause 9 becomes law) see paragraphs 88 to 108 of the Legal Opinion.

2.13 An illustration of the discriminatory nature of the UK's citizenship deprivation law can be found in the joined cases of C3, C4 and C7 (SIAC Appeal Nos: SC/167,168, and 171/2020), where the court found that the HO had wrongly determined that the appellants were entitled to or had Bangladeshi citizenship.[xviii] The court also stated that in issuing deprivation orders against them on that basis, the Home Secretary had unlawfully rendered them stateless. In two of the cases, the Home Secretary based her decision on the appellants' ethnicity, relying on the fact that one or both of the appellants' parents were born in Bangladesh, despite the appellants themselves being born in the UK. When the court found in favour of C3, C4 and C7, the Home Secretary also withdrew the deprivation order against N3. N3's deprivation order had also been based on the (incorrect)

assumption that N3 could claim Bangladesh citizenship.

2.14 The cases of C3, C4, C7 and N3 demonstrate how deprivation orders were unlawfully issued against British citizens with Bangladesh heritage. Many of these cases involve evidence relating to an individual's ethnicity. The cases also highlight the increased risks inherent in a process which removes the requirement to serve notice. The appeals could only be lodged once the appellants were made aware that they were the subjects of deprivation orders. If the requirement to serve notice is removed, even in tightly circumscribed circumstances, the risk that miscarriages of justice would proceed unchecked and unchallenged would increase.

2.15 We are particularly concerned about aid workers, who put their lives and their safety at risk to travel to dangerous, unstable jurisdictions and provide vital services for organisations such as the Red Cross, Doctors Without Borders, US and other organisations doing vital work abroad. Clause 9 will make it harder to recruit volunteers and staff from diverse backgrounds because of the increased risk to people of mixed heritage. In this way the UK's contribution to international civil society and its claim to being a diverse and inclusive country would be materially damaged.

3. IMPLEMENTATION OF ACCEPTED RECOMMENDATIONS

3.1 During the Third Cycle, the UK supported and noted a number of recommendations under the theme of Equality and Non-Discrimination (Theme B31).[xix] We say that Clause 9 in its original or amended form is inconsistent with those recommendations because of the increased risk if Clause 9 becomes law of breaches of Article 14 ECHR as discussed above. Many of those recommendations relate to the elimination of hate crimes and xenophobia, and we say that recent HO comments which imply citizenship is a privilege not a right, and which name specific religions as part of counter-terrorism rhetoric, are also inconsistent with those recommendations.

3.2 More broadly, HO practice in relation to citizenship deprivation has been persistently inconsistent with recommendations made in previous UPR cycles and with its obligations under international human rights law. Several states recommended during the Third Cycle that the UK should ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ("**Istanbul Convention**"). States also made a number of recommendations relating to the prevention of and protection of women from human trafficking.[xx] At the time of writing the UK has not ratified the Istanbul Convention. Further, in 2021 the UK demonstrated that it was willing to criminalise a woman for acts committed as a child in circumstances in which it recognized she could be a victim. The UK Supreme Court determined that the individual in question was lawfully stripped of her British citizenship after leaving the UK aged 15 to travel to Syria to join the so-called Islamic State of Iraq and the Levant ("**ISIL**"). The HO and Security Service accepted that individuals who were radicalized as minors could be viewed as victims but they nonetheless pursued the decision to deprive the individual of her British citizenship, thereby rendering her stateless and confining her to a military controlled refugee camp in Syria.[xxi] We say based on the facts of the case as summarised by the Supreme Court that at the time the individual travelled to Syria her case fell within the definition of "trafficking" in Article 3(a) of the Protocol on Human Trafficking (the "**Protocol**") and also within the definition of "child" in Article 3(d). On that basis, we say the UK has failed to comply with its obligations under the Protocol to protect victims of trafficking, as well as failing to implement the relevant recommendations made during the Third Cycle. If Clause 9 becomes law, cases like this would be even further complicated.

3.3 **UK should ratify the Istanbul Convention and commit to enhancing protections and measures which would prevent vulnerable individuals and children from leaving the UK and placing themselves in dangerous situations. That should include an undertaking not to deprive such individuals of their citizenship, in particular when such deprivation would effectively render the individual stateless.**

4. DEVELOPMENTS AND RELEVANT ISSUES NOT PREVIOUSLY ADDRESSED

4.1 No recommendations have been made in the previous UPR cycles which relate specifically to citizenship deprivation. The power to deprive someone of their citizenship without notice is not a proportionate or necessary measure to protect national security, sources of intelligence or international relations, nor any of the grounds set out in Clause 9, even as amended. The introduction of Clause 9, even as amended, represents an encroachment into the universally accepted principle that everyone is entitled to a fair and public hearing. It would also retrospectively legitimise previous decisions which the courts have determined were made unlawfully, thereby effectively stripping the individuals affected of their right to an appeal. For these reasons, US considers that the amendments proposed by the House of Commons are inadequate, and recommends that **UK government should permanently abandon attempts to dispense with the requirement to give notice in citizenship deprivation cases and undertake not to re-introduce the idea in this or any other Parliamentary session.**

4.2 Instead, **UK Government should expand the options for service to include (1) service on a known representative or associate (e.g. a family member, colleague, or friend) where the Home Secretary has reasonable grounds for believing that the representative or associate will be able to notify the individual that they have been deprived of their citizenship and / or (2) service by publishing the notice on the HO website, social media or whatsapp, with any sensitive details redacted**.[xxii] UK courts have been increasingly willing to allow service by websites and social media.

4.3 The HO has stated that the power to make a DO without notice will be necessary to ensure that DOs "*can be used effectively where, for example a person is no longer contactable by the Home Office*"[xxiii] "*… or they are in war zone … where to make contact would disclose sensitive intelligence sources*."[xxiv] The circumstances in which service could not be adequately effected using one of the methods outlined above would rarely if ever arise. The British Nationality (General) Regulations 2003 already allow the use of a person's last known address as an appropriate means of notification where their whereabouts are not known. If, as the HO suggests, the only reason for introducing Clause 9 is to deal with circumstances in which the individual is uncontactable, US argues that expanding the scope of means for service of notice would adequately address the problem, and there is no need for Clause 9.

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[i] https://bills.parliament.uk/bills/3023.
[ii] https://glplive.org/nbb.
[iii] Bill 141 2021-22.
[iv] https://votes.parliament.uk/Votes/Lords/Division/2691.
[v] Hansard, Volume 711, debated on Tuesday 22 March 2022:
https://hansard.parliament.uk/commons/2022-03-22/debates/FA4FBF36-5168-4B9B-8C7E-09D2AAC33C39/NationalityAndBordersBill.
[vi] Page 2. The amendment can also be viewed online: https://bills.parliament.uk/publications/45957/documents/1680.
[vii] https://drive.google.com/drive/folders/17_fXDnFKRc2Y7bA89ViCmrPEEdBoHqFd.
[viii] Paragraph 2 of the Legal Opinion.
[ix] https://petition.parliament.uk/petitions/601583.
[x] Hansard, Volume 711: debated on Tuesday 22 March 2022:
https://hansard.parliament.uk/commons/2022-03-22/debates/FA4FBF36-5168-4B9B-8C7E-09D2AAC33C39/Nationality

AndBordersBill.

[xi] See paragraphs 11 to 35 of the Legal Opinion which traces the genesis and expansion of the UK's citizenship deprivation powers.

[xii] Paragraph 7.

[xiii] (R (on the application of Begum) v SIAC; Secretary of State for the Home Department [2021] UKSC 7.

[xiv] https://www.itv.com/news/update/2013-12-22/home-office-british-citizenship-is-a-privilege-not-a-right/

[xv] For example, on 19 November 2021 at a Heritage Foundation event in Washington DC the Home Secretary stated Sikh separatist extremism was causing tension without providing any evidence to back up her statement. A transcript of Ms. Priti Patel's speech to the Heritage Foundation on 19 November 2021 was published on the UK Government website: https://www.gov.uk/government/speeches/priti-patels-speech-to-heritage-foundation.

[xvi] Hansard, Volume 711: debated on Tuesday 22 March 2022: https://hansard.parliament.uk/commons/2022-03-22/debates/FA4FBF36-5168-4B9B-8C7E-09D2AAC33C39/NationalityAndBordersBill.

[xvii] Times article on N3: https://time.com/6146655/uk-citizenship-nationality-immigration-bill/

[xviii] C3, C4, & C7 (SIAC Appeal Nos. SC 167, 168 and 171/ 2020) – link to Open Judgment: http://siac.decisions.tribunals.gov.uk/Documents/outcomes/documents/C3,C4%20&%20C7%20-%20Open%20Judgment%20-%2018.03.2021%20-%20JA.pdf.

[xix] A/HRC/36/9/Add.1 - Para. 3.

[xx] A/HRC/36/9/Add.1 - Para 3.

[xxi] (R (on the application of Begum) v SIAC; Secretary of State for the Home Department [2021] UKSC 7, paragraph 16.

[xxii] For example in CMOC Sales & Marketing Ltd v Persons Unknown and 30 others [2018] EWHC 2230 (Comm) where the court allowed service via whatsapp and Facebook, and Pirtek (UK) Ltd v Jackson [2017] EWHC 2834 (QB), where the court allowed service via a website.

[xxiii] Nationality and Borders Bill, Explanatory Notes, HL Bill 82-EN, https://bills.parliament.uk/publications/44460/documents/1174.

[xxiv] https://petition.parliament.uk/petitions/601583.