

**Liberty's Second Reading Briefing on  
Clause 60 of the Immigration Bill in the  
House of Lords**

**February 2014**

## **About Liberty**

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

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Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

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## Introduction

*“If we identify someone as a person proposing to commit a serious terrorist offence, for example, surely the obligation is on us to deal with that person. If we simply deport him, we shall be handing on – in my submission, irresponsibly – the terrorist problem to another state which may not have the same capability of dealing with it as we do. It cannot be a proper response to the terrorist threat to refuse to deal with it ourselves.”<sup>1</sup>*

The late Lord Kingsland, Conservative Shadow Lord Chancellor

October 2002

1. The Government amendment, now incorporated at Clause 60 of the Immigration Bill, was published on 29<sup>th</sup> January around 24 hours before House of Commons Report Stage consideration of the Bill. The clause provides for the Secretary of State to render a person stateless by depriving him of nationality, where citizenship has been gained through naturalisation and where the Home Secretary is satisfied that deprivation is *‘conducive to the public good because the person, while having that citizenship status, has conducted him or herself in a manner which is seriously prejudicial to the vital interests of the United Kingdom.’*<sup>2</sup>

2. Liberty believes that this clause is a gravely retrograde step which ignores the emerging international consensus on the reduction of statelessness without offering any real prospect of greater security.

### The legal background

3. Deprivation of citizenship was first enshrined in statute in 1914 with the outbreak War. It provided for revocation where fraud in obtaining citizenship was demonstrated, where disaffection or disloyalty to the King was established, or where an individual assisted the enemy during wartime amongst other grounds.<sup>3</sup> The British Nationality Act 1948 made

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<sup>1</sup> Lords Hansard, 9 October 2002: Column 278.

<sup>2</sup> Proposed new subsection 40(4A) to the British Nationality Act 1981.

<sup>3</sup> Under the *British Nationality and Status of Aliens Act 1914*, by section 7(1) revocation was on the grounds that the Secretary of State was satisfied (i) that the certificate was obtained through false representations or fraud; or (ii) the subject of the certificate has shown himself to be disaffected or disloyal to His Majesty. By section 7(2), citizenship was to be revoked where the continuance of a certificate was not conducive to the public good and one of the following scenarios applies: (a) the subject of the certificate has engaged unlawfully or traded or communicated with the enemy or otherwise assisted the enemy; (b) the subject of the certificate has within five years of naturalisation been sentenced to imprisonment for 12 months or more, to a term of penal servitude or to a fine of £100 or more; (c) the subject of the certificate was not of good character as the time citizenship was

similar provision but left the Secretary of State with a discretion to deprive an individual of citizenship on one of a number of enumerated grounds.<sup>4</sup>

4. Following UK ratification of the Convention on the Status of Stateless Persons 1954 and to facilitate our ratification of the 1961 Convention on the Reduction of Statelessness, the British Nationality (No 1) Act 1964 and the British Nationality (No 2) Act 1964 were enacted. The latter narrowed the grounds upon which an individual could be deprived of citizenship removing the ground of continuous long-residence abroad. The British Nationality (No.2) Act further provided that where the Secretary of State sought to remove nationality on the grounds that a person had been sentenced to a year or more of imprisonment within the first 5 years of naturalisation, he could not do so if it appeared to him that this would render the person stateless.

5. The next legislative intervention came with the section 40 of the British Nationality Act 1981 which provided for removal of citizenship on four grounds, (i) fraud in obtaining nationality, (ii) disloyalty or disaffection towards Her Majesty, (iii) assisting the enemy during wartime and (iv) receipt of a custodial sentence of at least 12 months in the first 5 years of naturalisation. All four grounds were dependent upon the Secretary of State also establishing that the person's ongoing citizenship was not conducive to the public good and the fourth ground could not be used in circumstances where deprivation would lead to statelessness.

6. The Nationality, Immigration and Asylum Act 2002 amended the 1981 Act to provide that citizenship could be removed on just two grounds; from those who have gained it through fraud or where the Secretary of State is satisfied that the person has done something seriously prejudicial to the vital interests of the UK, provided that revocation of citizenship would not render him stateless. This law was passed at a time when the atrocities of 9/11 were fresh in the minds of British politicians. It prohibited deprivation of citizenship on public good grounds where such deprivation would make a person stateless. Even at the height of the war on terror the last Government appeared to recognise that

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granted; (d) the subject has since the grant of citizenship spent a period of at least seven years being resident outside of His Majesty's dominions; or (e) the subject is at war with His Majesty. Removal of citizenship was in no way dependant on an individual having a second nationality.

<sup>4</sup> The 1948 Act provided that those who have gained their citizenship through registration or naturalisation may be deprived of it if the Secretary of State is satisfied that it was gained through fraud, false representation or concealment. The Secretary of State further was to have the power to revoke citizenship if the individual had shown himself to be disaffected or disloyal to His Majesty; had assisted the enemy during wartime; been imprisoned for at least a year during the first 5 years of naturalisation; been ordinarily resident elsewhere for a continuous period of 7 years. Any removal of citizenship under the 1948 Act could not occur unless the Secretary of State was satisfied that continuing citizenship was not conducive to the public good.

making an individual stateless does not make him a lesser threat. In 2006, the Immigration, Nationality and Asylum Act 2006 broadened out the grounds upon which citizenship could be removed in pursuit of the public good, but notwithstanding a domestic terrorist atrocity, the Government retained the prohibition on rendering an individual stateless in pursuit of the public good.

### **The Al-Jedda litigation**

7. The impetus to create new powers to strip individuals of all national ties comes not from the urgent necessity of fighting terrorism, but rather is a result of the Home Secretary losing a legal battle. The Government explicitly frames clause 60 as a response to the decision of the Supreme Court in *Al-Jedda*.<sup>5</sup> Al-Jedda was born in Iraq, but granted British nationality with his family in 2000, thereby automatically losing Iraqi citizenship. In 2004 he travelled to Iraq and was detained by the British authorities, without charge, for three years on suspicion of membership of a terrorist organisation. Unsurprisingly his prolonged, arbitrary detention was ruled an unlawful 2011.<sup>6</sup> Following his release from internment, the British Government sought to deprive Al-Jedda, now in Turkey, of citizenship. The Secretary of State certified that her decision was made on the basis of information which could not be put in the public domain. The question which it fell to the Supreme Court ultimately to consider, following protracted domestic litigation, was whether the prohibition on rendering an individual stateless covered situations in which he could regain a former nationality.<sup>7</sup> The Court robustly rejected the Home Secretary's claim, reaffirming that statelessness was a matter to be determined at the point at which an individual is deprived of citizenship and pointing out that domestic law prevented her from ordering this punishment.<sup>8</sup>

8. In the wake of this decision, the Secretary of State now seeks a broad discretionary power to make individuals stateless.

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<sup>5</sup> [2013]UKSC62.

<sup>6</sup> *Al-Jeddah v United Kingdom* (2011) 53 EHRR 789.

<sup>7</sup> Whilst the Court expressed extreme scepticism about the Government's claim that Al-Jeddah would be able to regain his Iraqi nationality on being stripped of British citizenship, they proceeded on that basis to determine the wider issue.

<sup>88</sup> *Id.* Para 34.

## International trend away from statelessness

9. Britain was amongst the first to engage with the scourge of statelessness, ratifying, in 1930 the Convention on Certain Questions Relating to the Conflict of Nationality,<sup>9</sup> which included a Protocol Relating to Certain Cases of Statelessness.<sup>10</sup> War highlighted the international dimensions of problems presented by unprecedented volumes of displaced persons including those rendered effectively stateless. The link between human rights violations and the absence of national protection became impossible to ignore in the aftermath of the Second World War. The Universal Declaration of Human Rights was adopted by the UN General Assembly, with UK support, in 1948. It provides, at Article 15, that: *“everyone has the right to a nationality...no one shall be arbitrarily deprived of his nationality.”*

10. Provisions designed to prevent or reduce statelessness made their way into many subsequent international instruments including the International Covenant on Civil and Political Rights,<sup>11</sup> the Convention on the Rights of the Child,<sup>12</sup> the Convention on the Elimination of all forms of Discrimination against Women,<sup>13</sup> the Convention on the Nationality of Married Women,<sup>14</sup> the Convention Relating to the Status of Stateless Persons<sup>15</sup> and the Convention on the Reduction of Statelessness.<sup>16</sup> The last of these, adopted in 1961 and ratified by the UK in 1966, is the instrument which has as its focus the reduction of statelessness. The UK was one of the first to ratify and implement the 1961 Convention which was a result of years of strenuous negotiation in which the UK was a

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<sup>9</sup> 179 LNTS 89, in force 1 July 1937, ratification for Great Britain and Northern Ireland and all parts of the British Empire.

<sup>10</sup> 179 LNTS 15, in force 1 July 1937, ratification for the UK deposited January 14th, 1932.

<sup>11</sup> International Covenant on Civil and Political Rights, adopted 19 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force 23 Mar. 1976) [hereinafter ICCPR].

<sup>12</sup> Convention on the Rights of the Child, adopted 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, at 167, U.N. Doc. A/44/49 (1989) (entered into force 2 Sept. 1990), reprinted in 28 I.L.M. 1448 (1989) [hereinafter Children's Convention].

<sup>13</sup> Convention on the Elimination of All Forms of Discrimination Against Women, adopted 18 Dec. 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1980) (entered into force 3 Sept. 1981), 1249 U.N.T.S. 13, reprinted in 19 I.L.M. 33 (1980) [hereinafter CEDAW].

<sup>14</sup> Convention on the Nationality of Married Women, opened for signature 29 Jan. 1957, G.A. Res. 1040 (XI), 309 U.N.T.S. 65 (entered into force 11 Aug. 1958) [hereinafter CNMW].

<sup>15</sup> Convention relating to the Status of Stateless Persons, adopted 28 July 1951, G.A. Res. 429 (V), 360 U.N.T.S. 117 (entered into force 6 June 1960) [hereinafter 1954 Convention].

<sup>16</sup> Convention on the Reduction of Statelessness, adopted 30 Aug. 1961, G.A. Res 896 (IX), 989 U.N.T.S. 175 (entered into force 13 Dec. 1975) [hereinafter 1961 Convention].

11. 1954 Convention, supra note 3.

vocal participant. UK delegates to Plenary Meetings which led to the agreement of the Convention were keen to point out that deprivation of nationality was a cause of statelessness which deserved the attention of assembled international representatives.<sup>17</sup> The UK delegation also pointed out the concern that existed around the creation of distinctions between the deprivation of nationality in relation to those who were born British nationals and those who gained the status, describing the distinction as “not a happy one”.<sup>18</sup> Prior to ratifying the Convention the UK introduced new domestic law reducing the grounds on which individuals could be deprived of nationality to bring our law into line with the provisions of the Convention.

11. Much mention has been made, in the debate around new clause 60, to a reservation entered into by the UK at the time the Convention came into force. It is correct that the reservation permitted by Article 8(3)(a)(ii), and entered into by the UK at the time of ratification, prevents clause 60 from bringing us into direct conflict with our international obligations. An analysis of this sweeping new power, however, should not end there. In *Al-Jedda*, the Supreme Court highlighted the “*worldwide legal disabilities with terrible consequences still flow from lack of nationality*”.<sup>19</sup> Liberty believes that the spirit and trajectory of international law on statelessness mitigates firmly against a retrograde proposal to breathe new life into a decades old reservation. We urge parliamentarians to oppose a provision which would undermine the progress of recent decades so often driven forward by the United Kingdom.

### **Rogue states and statelessness**

12. History is littered with examples of rogue states and autocratic governments using statelessness as a form of punishment and a means of facilitating other, yet more appalling ill-treatment. Prior to the mass murder of two thirds of the Jewish population of Europe during World War II, in 1935 Germany introduced the Nuremberg Laws which divided German citizens into full citizens and citizens without political rights, creating millions of stateless persons. In more recent history, former Iraqi President Saddam Hussein stripped the Faili Kurds of their Iraqi nationality by decree on one day in 1980. Many were expelled from their homes marched across the Iranian border into decades of exile and statelessness. Between 1986 and 1989 Saddam Hussein conducted operation Anfal, a

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<sup>17</sup> 16<sup>th</sup> August 1961, 16<sup>th</sup> Plenary Meeting of the Conference, UN doc. A/CONF.9/SR.16, 11 October 1961, 2, 3-4.

<sup>18</sup> 23<sup>rd</sup> August 1961, 20<sup>th</sup> Plenary Meetingm UN doc. A/CONF.9/SR.20, 11 October 1961, 2-3.

<sup>19</sup> [2013]UKSC62, para 12.

genocidal campaign against the Kurdish people in which up to 100,000 civilians lost their lives and 90% of Kurdish villages in targeted areas were demolished.<sup>20</sup>

13. During the 1998-2000 Ethiopian-Eritrean border war, Ethiopia denationalised nearly all Ethiopian citizens of Eritrean origin (possibly as many as 500,000 people) and then expelled in the region of 75,000 to Eritrea claiming they were a security risk or had renounced their citizenship by voting in the 1993 referendum on Eritrean independence.<sup>21</sup>

14. In the Democratic Republic of Congo in 1981 a 1972 decree signed by President Mobutu granting Zairian citizenship to all Rwandan and Burundians who had settled in Zaire (as DRC was then called) prior to 1950 was retroactively invalidated by the Parliament rendering people of Rwandese origin stateless. In Myanmar under the 1982 Citizenship Law, Rohingya were declared 'non-national' or 'foreign residents'. More than 700 000 are in northern Rakhine today and are effectively stateless. Over 100 000 individuals of Nepali origin were stripped of their citizenship and forcibly expelled from Bhutan in the early 1990s. In Cote d'Ivoire, former migrants from West Africa who had settled and been naturalised as 'Ivorian' were later denaturalised during a programme of ethnic homogenisation and intense xenophobia. Similarly, in parts of Central and East Africa, long standing minority populations have been denied citizenship because they have been identified with colonial powers or historic 'enemy' groups, most notably the Nubian population in Kenya.

15. Deprivation of citizenship is a severe sanction, however statelessness is a wholly separate and more brutal punishment with unique practical and legal consequences. While it is an aspiration of human rights activists that fundamental rights such as the right to life and the prohibition on torture attach to all human beings regardless of citizenship or any other characteristic or status. The reality is that we live in a world deeply divided along national borders in which it is notoriously difficult to access redress for or protection from human rights violations without nationality. Stripping a person of his nationhood and forcing him into the obvious cracks in protection created by a state based system of law and international relations is a barbaric and unprincipled response to concerns about our security.

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<sup>20</sup> For more see <http://www.hrw.org/reports/1993/iraqanfal/> and [http://www.pbs.org/frontlineworld/stories/iraq501/events\\_anfal.html](http://www.pbs.org/frontlineworld/stories/iraq501/events_anfal.html).

<sup>21</sup> Refugees International, Nationality Rights for All: A Progress Report and Global Survey on Statelessness, p.5.

## **The security fallacy**

16. Quite apart from the blot on our national conscience and the loss of international reputation involved, the assumption that rendering somebody stateless will safeguard us from potential threats is obviously flawed. In the case of those suspected of involvement in terrorist activity, this Government and its predecessor have sought to introduce all manner of exceptional measures from indefinite internment, to the imposition of onerous conditions in the community through endless, fruitless attempts to remove individuals from the country. It appears that in its desperate determination to appear tough on terror, this Government, like the last, is willing to do anything but prosecute suspected terrorists. Clause 60 appears to be another chapter in this sorry story. We now have a plethora of terrorism related offences on our statute books, from training with terrorist organisations abroad to the dissemination of terrorist publications.<sup>22</sup> The Government's most recent criminal justice Bill, the Criminal Justice and Courts Bill, would increase the maximum sentences for a number of terrorism-related offences to life imprisonment. The Bill would further extend a special and restrictive parole regime to offences of this nature. Liberty does not believe the Government can seriously argue that it is short of the means to deal with those who pose a threat through our criminal justice system.

17. Liberty urges parliamentarians to take the Government to task on this security fallacy. Assuming at least some of those rendered stateless cannot be removed, on what basis does the Home Secretary believe that making them stateless will improve security? Where it is possible to remove people from the UK it is still difficult to see how doing so makes the UK any safer. It is naïve in the extreme to believe, in this shrinking interconnected world, that crude medieval punishments of banishment or exile will produce any security gains. At best clause 60 appears to be based on a lack of imagination about the genesis of threats to our security. In a world in which international travel and online communication are easier than ever before, the best place for those guilty of plotting terrorist offences is in prison. We have one of the oldest and most respected justice systems in the world and should take responsibility for securing the prosecution of people who pose a threat to the safety of those in this country and across the world. Borrowing again from the words of the late Lord Kingsland:

*“Why should such a person not be prosecuted in the normal way in our criminal courts instead? Why on earth should the Secretary of State be given this discretion to*

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<sup>22</sup> See e.g. section 54 of the Terrorism Act 2000 and Section 2 of the Terrorism Act 2006.

*pick somebody out of the normal judicial process and deal with him by his own subjective judgement.*<sup>23</sup>

18. In the fight against terror, public safety is best served by criminal investigations and prosecutions in front of an independent and open court. We encourage you, in the strongest possible terms, to oppose clause 60 of the Bill.

### **Consideration of Clause 60 in the House of Commons**

19. So far, clause 60 has attracted around 40 minutes of parliamentary scrutiny. Two areas of particular confusion emerged from the short Report stage debate.

#### *Scope of the provision*

20. In introducing the provision to the Commons Report stage debate, the Secretary of State argued *“we are talking about a situation in which [the person deprived of citizenship] would be able to acquire statehood from somewhere else.”*<sup>24</sup> She repeated this assertion later in the debate arguing *“[t]he important point is that the process applies in cases where the individual could access the citizenship of another country, and it would be open to them to apply for such citizenship. That is the whole point.”*<sup>25</sup> Putting aside the Home Secretary’s optimistic view, as commented on by the Supreme Court in *Al-Jedda*, of the ease with which an individual may regain a former nationality, even the most cursory glance at the clause reveals it is not limited in this way, but rather allows an individual to be rendered stateless without reference to the possibility securing citizenship elsewhere. Plainly put, clause 60 is not concerned with the length or intractability of statelessness and allows it to be visited as an indefinite and life-long punishment.

21. Liberty further notes that when pressed by one of her backbenchers to consider whether provision might one day be extended to all British nationals regardless of the means by which nationality was obtained, the Home Secretary responded:

*“My hon. Friend makes an important point...about the desire that we have in the House to ensure that we can take appropriate action against people who are acting in a manner that is not conducive to the public good and who are acting in a manner that is seriously prejudicial to this country’s interests.”*<sup>26</sup>

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<sup>23</sup> Lords Hansard, 9 October 2002, Column 277.

<sup>24</sup> Commons Hansard, 30 Jan 2014, Column 1040.

<sup>25</sup> Commons Hansard, 30 Jan 2014, Column 1045.

<sup>26</sup> Commons Hansard, 30 Jan 2014: Column 1043.

22. As discussed below, this Government has already demonstrated a willingness to deprive British born dual nationals of their nationality on the grounds that this is conducive to the public good.<sup>27</sup> Clause 60 may well pave the way for powers allowing for any British citizen to be rendered stateless.

#### *Purpose of the provision*

23. During the brief Commons consideration of the Bill, the Home Secretary said of clause 60 “[t]he whole point of the measure is to be able to remove certain people from the United Kingdom, where we are currently unable to do so.”<sup>28</sup> This assertion raises a number of important questions. Firstly, how does the Government propose to remove people who have no nationality and no travel documents? This is a difficulty which the Home Secretary has herself acknowledged recognising, during the course of the Report Stage debate, that “[i]t might not always be possible to [remove the individual from the United Kingdom], especially when the individual is stateless.”<sup>29</sup> What, then, does the Government envisage will happen to those individuals who cannot be removed? Liberty further observes, with serious concern, an apparent drive by this Government to remove nationality whilst individuals are outside of the UK. Unfortunately we do not have a complete picture of the use of current powers to deprive dual citizens of British nationality, but we understand, from a Home Office response to a Freedom of Information request submitted by ILPA, that of the five individuals stripped of their British nationality during 2010, all five lost their nationality whilst outside of the UK.<sup>30</sup> In the case of *Al-Jedda*, too, the Government was not seeking to remove a threat from our shores but to render stateless somebody already outside the country. This trend not only casts doubt on the claimed purpose of the clause, it suggests a darker and more disturbing motivation for this new power.

#### **The extra-judicial killing and kidnap of those deprived of British nationality**

24. A Bureau of Investigative Journalism investigation published in February last year revealed that between 2010 and February 2013, the Home Secretary had revoked the passport of 16 British nationals under current section 40 of the British Nationality Act 1981 on public good grounds. At least 5 of those people had been born in the UK and one had been resident for almost 50 years.<sup>31</sup> When asked during Report Stage consideration of the

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<sup>27</sup> See below. As of February 2013, five British born nationals had been stripped of their nationality since 2010.

<sup>28</sup> Commons Hansard, 30 Jan 2014: Column 1043.

<sup>29</sup> Commons Hansard, 30 Jan 2014: Column 1044.

<sup>30</sup> Bureau of Investigative Journalism, *Former British citizens killed by drone strikes after passports revoked*, Chris Woods and Alice K. Ross, 27<sup>th</sup> February 2013.

<sup>31</sup> We understand that before 2002, an individual had not been deprived British nationality since 1973. In between 2002 and 2010, 5 attempts were made to remove nationality.

Bill what happened to the 16 people deprived of citizenship between during this time, the Home Secretary did not provide any specific information.<sup>32</sup> Liberty has been able to discover little about the fate of most of those stripped of their nationality in this way with three notable exceptions.

25. Bilal al-Berjawi, a British-Lebanese citizen came to the UK as a baby and grew up in London. He left the country for Somalia in 2009 with British-born Mohamed Sakr, a dual British-Egyptian national. The two reportedly became involved with Islamic militants al Shabaab whilst in Somalia. The Home Secretary consequently stripped both of their British nationality in their absence in 2010. Since that time al-Berjawi was hit in US drone strikes on two separate occasions. He was reportedly killed by a US drone hours after calling his wife in the UK to congratulate her on the birth of their first son. Sakr was killed by a US drone strike in February 2012. His former solicitor, Saghir Hussain argues *"the process of deprivation of citizenship made it easier for the US to then designate Sakr as an enemy combatant, to whom the UK owes no responsibility whatsoever"*.<sup>33</sup> The words of Ian Macdonald QC reinforce this statement. He argues that depriving people of their citizenship *"means that the British government can completely wash their hands if the security services give information to the Americans who use their drones to track someone and kill them."*<sup>34</sup>

26. Another of those to be stripped of nationality by the present Home Secretary is 24 year old Mahdi Hashi who came to Britain from Somalia aged 3. He left the country to travel to Somalia in 2012. During the summer of 2012 he went missing and shortly thereafter his family received a letter from the Home Office to the effect that he had been stripped of citizenship as a result of his suspected involvement with Al Shabaab. The next the family heard of his whereabouts, he was appearing before a New York District Court to answer charges of providing support to Al Shabaab, having been secretly held in the US for 5 weeks. The FBI explained that in October, *"a grand jury in the Eastern District of New York returned a sealed indictment against the defendants"* and on 14 November the FBI *"took custody of the defendants and brought them to the Eastern District of New York"*.<sup>35</sup> British nationality was removed from Mahdi Hashi six weeks before he was bundled out of Djibouti

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<sup>32</sup> Commons Hansard, 30 Jan 2014: Column 1047-1048 in response to a question by Rehman Chishti MP.

<sup>33</sup> Bureau of Investigative Journalism, Former British citizens killed by drone strikes after passports revoked, Chris Woods and Alice K.Ross, 27th February 2013.

<sup>34</sup> Bureau of Investigative Journalism, Former British citizens killed by drone strikes after passports revoked, Chris Woods and Alice K.Ross, 27th February 2013.

<sup>35</sup> Bureau of Investigative Journalism, Former British citizens killed by drone strikes after passports revoked, Chris Woods and Alice K.Ross, 27th February 2013.

by US operatives without any attempt at due process in an operation which, as recognised by Hashi's MP, Frank Dobson, is best described as kidnap.<sup>36</sup>

27. The Government has chosen to 'neither confirm nor deny' the allegation that it shares information with the Americans to facilitate drone strikes.<sup>37</sup> In a recent legal advice Jemima Stratford QC considered that, if this is the case: -

*"the transfer of data to facilitate a drone strike is likely to be unlawful for the purposes of English law because the drone strike itself would not be a lawful act, if carried out by the UK government...GCHQ employees providing locational intelligence, that they knew would be used for the purpose of drone strikes are at risk of prosecution as secondary parties to murder."*<sup>38</sup>

28. It is important to view clause 60 in this disturbing wider context. Liberty is deeply concerned by the prospect that, by stripping itself of any consular responsibility for individuals, the Government is motivated by a willingness to facilitate extra-judicial killings and kidnapping by its intelligence partners. At the very least the events described above raise some extremely disturbing questions. Liberty urges the Government to provide information about the fate of all those deprived of citizenship to the extent that this is known.

**Rachel Robinson**

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<sup>36</sup> Commons Hansard, 30 Jan 2014: Column 1048.

<sup>37</sup> *Khan v Secretary of State for Foreign and Commonwealth Affairs* [2014] EWCA Civ 24. As per Treasury Solicitor "it would not be possible to make an exception to the long-standing policy of successive governments to give a "neither confirm nor deny" response to questions about matters the public disclosure of which would risk damaging important public interests, including national security and vital relations with international partners."

<sup>38</sup> Para 84.