Borders, Citizenship and Immigration Bill
House of Lords Committee
Part 2 Citizenship

Amendments
101A* Proposed new Clause: The Ilois, further provision as to citizenship

92 Proposed new Clause The Ilois Citizenship

ILPA supports Amendment 101A* laid in the names of the Lord Avebury and the Lord Roberts of Llandudno:

After Clause 41 insert the following new clause :

"**The Ilois: further provision as to citizenship**

"(1) Section 6 of the British Overseas Territories Act 2002 is amended as follows.

(2) In subsection 6(1) leave out 'on or after 26 April 1969'

Purpose
To ensure that the Chagos Islanders of Diego Garcia and the surrounding islands of the British Indian Ocean Territory born in exile before 26 April 1969 are British Citizens.

ILPA supports Amendment 92 in the names of the Lord Avebury and the Lord Roberts of Llandudno

After Clause 41 **i**nsert the following new clause

The Illois: citizenship

In section 6 of the British Overseas Territories Act 2002 (c. 8) (The Illios: citizenship) subsection (2) is omitted."

Purpose
To amend the British Overseas Territories Act 2002 so that Chagossians who benefit from its provisions are British citizens *simpliciter* rather than British citizens by descent. A British citizen by descent cannot pass on his/her citizenship to his/her

children born outside the UK or a qualifying territory. That the children of Chagossians are born outside the UK or a qualifying territory is no fault of their own but the result of their enforced exile.

GENERAL

Parliament battled hard to insert special provision for the Chagos Islanders in exile in section 6 of the British Overseas Territories Act 2002. By that section all those born between 26 April 1969 and 1 January 1983 to a woman who at the time was a Citizen of the UK and Colonies by virtue of her birth became British Citizens by descent if they were not already British Citizens. They also became British overseas territories citizens by descent. The amendment was thus designed to make provision for those born in exile from the Islands, many of them in Mauritius. However, it fails to make provision for all of them. These amendments are designed to address some of the lacunae in that section.

The House of Commons Foreign Affairs Committee, in its July 2008 report *Overseas Territories* recommended:

> **"69. We conclude that there is a strong moral case for the UK permitting and supporting a return to the British Indian Ocean Territory for the Chagossians."** [1]

The Committee also dealt with the question of extraordinary rendition to the British Indian Ocean Territory and then went on to make recommendations about British Citizenship for the Chagossians, discussed in detail below. The Government in its September 2008 response to the Committee[2] said

> *'The Government regrets the way the resettlement of the Chagossians was carried out and the hardship that resulted for some of them. We do not seek to justify the actions taken in the 1960s and 1970s. These regrets have been repeated on many occasions.'*

The Government contended that return was not feasible citing a April 2000 study. The main ground given in the response is cost. Thus the government's position is that Chagossians will remain in exile.

There has been much hand-wringing by government over what has been done to the Chagossians. When the House of Lords gave judgment in the *Bancoult*[3] case on 22 October 2008, the Lord Hoffman stated:

> *'10. My Lords, it is accepted by the Secretary of State that the removal and resettlement of the Chagossians was accomplished with a callous disregard of their interests.'*

It is one thing to wring one's hands at the more than shabby way in which the Chagossians have been treated, it is another to do what is in our power to ensure that

---

[1] Foreign Affairs Committee, Seventh Report of Session 2007-2008, HC 147 Vols I and II
[2] Annexe 1 to the Report, *op cit.*
[3] *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2008] UKHL 61 available at www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd081022/banc-1.htm

they are not further disadvantaged. These amendments are steps it is within the power of the government to take.

The proposed new amendment

The 26th of April 1969 was the date on which Prime Minister Harold Wilson finally authorised the removal of the population from Chagos. The date was inserted into the British Overseas Territories Act 2002 without consultation with Chagossians, or their advisers. The notion informing this wording was that those who left Chagos before this date were free to return, but if they did not do so, they were voluntarily absent, and any children then born in e.g. Mauritius was born to parents who could have returned and given their child citizenship by birth.

This analysis is not correct. It has now been made clear, not least by discovery of documents and the decisions of Ouseley J. in the Group litigation judgment of October 2003[4], that it was much earlier that the difficulties of return arose. Planning for closure of the islands started in August 1964 as the judgment in that cases records:

> *17 In 1964, discussions started in earnest between the United States and the United Kingdom Governments over the possible establishment of American defence facilities in the Chagos Archipelago [….]*
>
> 18. *On 30th December 1966, in an Exchange of Notes, the UK and US Governments agreed that the islands should be available to meet their various defence needs for an initial period of 50 years, and thereafter for 20 years, unless either Government gave notice to terminate the agreement.*

It was the independence of Mauritius on 12 March 1968 that finally cut the shipping link between Mauritius and Chagos. Ouseley J summarises the matter thus

> *24. Thus, from 1964 onwards, the UK Government had been dealing with a number of aspects: the operation of the plantations, the ascertainment of the numbers and status of those working and living on the islands, the contemplation of their removal and resettlement somewhere, the means of achieving those ends, political relations with Mauritius, in particular over those matters, and suspicions or hostilities faced or risked in the UN.*
>
> *25. […]*
>
> *26. In 1967 and 1968, on two voyages, the "Mauritius" brought plantation workers, including Ilois, to Port Louis in Mauritius. They came on leave, or on the expiry of their contract or for medical reasons [….] When those who had arrived in Mauritius in 1967 and 1968 eventually tried to return to the Chagos islands in 1968 and later, they were refused passage and were unable to return. The Mauritius Government made representations to the UK Government in September 1968 about the fate of some of those stranded in Mauritius. These Ilois are among the Claimants, asserting that the UK prevented their return by instructing Moulinie & Co or its shipping agent not to permit their return, and asserting that that was unlawful. In July 1968, the "Nordvaer", a 500-ton cargo ship, had been acquired by the BIOT*

[4] *Chagos Islanders v Attorney General and Her Majesty's British Indian Ocean Territory Commissioner* [2003] EWHC 2222(OB) http://www.hmcourts-service.gov.uk/judgmentsfiles/j1970/chagos.htm

Administration to connect the Seychelles, where it was based, and BIOT; the shipping link between Mauritius and Chagos largely ceased."

Appendix A to the judgment sets out the facts in detail and describes the attempts to treat the population of the islands as being only migrant labourers and the official memoranda that refuse them passage back to the islands. A short extract will give a flavour:

> *128. Various resettlement options were examined including resettlement of Diego Garcian Ilois on Agalega, which was seen as "helping to prove our point that they have no right to permanent residence in BIOT". They would also not have to be resettled if the whole of Chagos had to be cleared. This internal discussion document was followed up in 5/388 and 5/396; although it preceded the US requirement for Diego Garcia in July 1968, and in a sense can be seen as contingency planning, at a time when there was no management agreement, it contemplates control of recruitment as an aid to resettlement planning.*
>
> *129. […]Amongst the matters raised at the end of February in relation to the requirement for goods was that there was a rice shortage, that rice was unobtainable, that in consequence rations would be changed to ? flour and ? rice and flour should be sent as a replacement for the unobtainable rice. This exchange is relevant because of suggestions that there was a deliberate running down of provisions on the islands to encourage departure. […*
>
> *130. Meanwhile, the shipping records show the arrival of the "Mauritius" in Port Louis on 30th March 1968, (5/377). The 142 steerage class passengers included a number of Claimants among whom were the 4 year old Olivier Bancoult and Rita Marie Elyse. They are listed as coming from Peros Banhos. The Bancoult family had gone to Mauritius to be with their daughter Noelie who had suffered a serious accident and needed medical treatment which only Mauritius could provide. Sadly she died a few months later. Some of the passengers off this boat, as with those who arrived in 1967, were among those who later tried unsuccessfully to return to the islands in circumstances which were crucial to a number of issues in the case.'*

The House of Commons Foreign Affairs Committee in its July 2008 Report *Overseas Territories* identified the number of exiled islanders and their descendants living in Mauritius now totals 3700 and that there also about 1,000 in the UK and 500 in the Seychelles. This group includes British citizens. The Committee said

> *'43. In 1965 Britain bought the archipelago which makes up BIOT from Mauritius for £3 million as part of an agreement which led to the latter's independence in 1968. One of the islands, Diego Garcia, was then secretly leased to the US. Between 1968 and 1973, the British Government cleared the entire archipelago of its inhabitants'*

They cite the evidence of Mr Olivier Bancoult:

> *"We were all removed and forced to leave everything behind. Arriving in Mauritius was a nightmare for us. No planning had been made. No house, no job: cast aside without any provision"*

When the House of Lords judgment in giving judgment inthe *Bancoult* case on 22 October 2008, the Lord Hoffman said:

> *"9. Between 1968 and 1971 the United Kingdom government secured the removal of the population of Diego Garcia, mostly to Mauritius and the Seychelles. A small population remained on Peros Banhos and the Salomon Islands, but they were evacuated by the middle of 1973. No force was used but the islanders were told that the company was closing down its activities and that unless they accepted transportation elsewhere, they would be left without supplies. The whole sad story is recounted in detail in an appendix to the judgment of Ouseley J.[…]."* [5]

Even by the standards of some of the disclosures happening today, these official memoranda are an unedifying read.

There are thus persons born before 26 April 1969, in exile, who did not become British citizens under section 6. This amendment seeks to address their situation by removing the cut-off date. Those who benefit are those who have not otherwise become British Citizens or British Overseas Territories Citizens and who live in exile.

If the government wishes to contend that those born before 26 April 1969 should become British citizens by registration, rather than by birth, for practical reasons, consideration could be could be given to this, provided always that those who so registered did so by entitlement, and were not subject to a good character or other tests, and that they paid no fee for their registration.

Amendment 92

By section 6 of the British Overseas Territories Act 2002 all those born to woman who was at the time of her birth a citizen of the United Kingdom and Colonies by virtue of her birth in the British Indian Ocean Territory between 26 April 1969 and 1 January 1983 became British citizens. By section 6(2) the Chagossians became British Citizens by descent, thus their children born outside the UK and the qualifying territories would not inherit the British nationality of their parents.

The exile of the Chagossians has, notoriously, continued. Not all have been able to afford to come to the UK or want to do so. They are still unable to return to the Islands, following the decision on the House of Lords on 22 October 2008. Although they continue their fight, many remain in exile in Mauritius or in other parts of the Indian Ocean. Many of the islanders now have children born in exile (a person born in 1983 is now 26 years old). Section 6(2) does not avail those children.

---

[5] For a summary version of these same facts, *see R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2008] UKHL 61 available at www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd081022/banc-1.htm

The House of Commons Foreign Affairs Committee, in its July 2008 report *Overseas Territories*[6] said of the Chagossians:

> *"72. […] quite a number have come to the UK, with the single largest population based in Crawley, West Sussex. Chagossians who arrive in the UK are currently obliged to pass the Habitual Residence Test before they become entitled to any welfare benefits. The Diego Garcian Society told us that many Chagossians wanted to exert the right of abode in the UK but could not do so do so because the Habitual Residence Test prevented them from getting state benefits to start a new life until they could find a job, and fend for themselves.]*
>
> *73[…] Mr Bancoult called for a desk to be established in Mauritius to provide detailed guidance to Chagossians wishing to travel to the UK.. He argued that Chagossians living in Mauritius should be offered the same support in relation to health issues and training as British citizens.*
>
> *74. British passports are very expensive for native Chagossians. […] some families were being split up not just because the cost of passports meant only part of the family could afford to come to the UK, but also because most of the third generation born in Mauritius were not entitled to British Citizenship by descent. The Chagos Community Association told us:*
>
> > *This causes a real trauma. It is possible to get long stay visas, but these cost nearly a thousand pounds which Chagossians do not have. Even then, when a family has been temporarily united through a long-term visa, big problems arise. We have a case currently where the father and his children, who came to stay with the mother in Crawley, on a long term visa, has been told that he has failed a Citizenship English test and is liable to be returned because of this to Mauritius with his children unless he is able to purchase a new visa to restart his stay here. There is no other word for this but torture. The family are distraught and fearful about what is to happen to them."*
>
> *The Diego Garcia Society argued that it was unfair that people were unable to satisfy the criteria that the law requires for British Overseas Territories Citizenship because they were born in Mauritius, when this was "as a consequence of exile rather than their own choice." We agree. We recommend that British Overseas Territories Citizenship should be extended to third generation descendants of exiled Chagossians. We also recommend that the Government should provide more guidance to those Chagossians wishing to resettle in the UK.* " [7] (footnotes are omitted).

. In response to the recommendation on citizenship the government stated:

> *"24. […] The Government notes the Committee's recommendation that British Overseas Territories citizenship should be extended to third generation descendants of exiled Chagossians. In May 2002, as part of the extension of citizenship rights across Overseas Territories, Chagossians were granted*

6

[7] Foreign Affairs Committee, Seventh Report of Session 2007-2008, HC 147 Vols I and II

British citizenship (not British Overseas Territories citizenship as mentioned in paragraph 72 of the Committee's report) if they were born on or after 26 April 1969 and before 1 January 1983 to a woman who at the time was a citizen of the United Kingdom and Colonies by virtue of her birth in the British Indian Ocean Territory. British Overseas Territories citizenship does not confer the right of abode in the UK. British citizenship does.

25. There is no precedent elsewhere in nationality law for citizenship to be extended to a third generation born outside of the UK or an Overseas Territory. Since 1915, citizenship has in general terms been transmissible to one generation born abroad. There is provision for British Overseas Territories citizenship to be obtained by registration by 2nd generation children, but this is dependent on either the British Overseas Territories citizenship by descent parent or the child and its parents having spent a period of residence in a Territory.

26. If the Government extended the acquisition of citizenship for Chagossians, this could lead to pressure to consider extending citizenship to other descendants of British nationals. This would be contrary to the current principles of British nationality law which limits citizenship to one generation born overseas.

27. The Government notes the Committee's recommendation that the Government should provide more guidance to those Chagossians wishing to settle in the UK. The Government advises Chagossians wishing to settle in the UK to contact the British High Commission in Port Louis, Mauritius, before departure where information is available. Once in the UK, the Department of Health and Department for Work and Pensions as well as local social services are the departments with primary responsibility for welfare of British citizens in the UK."

The government's statement *that 'There is no precedent elsewhere in nationality law for citizenship to be extended to a third generation born outside of the UK or an Overseas Territory'* is inaccurate, as the subsequent paragraphs of its own response to the Committee reveal. The attempt to argue that the existing provision is no precedent because it is effected by registration is no answer.

If further precedent be needed, it is to be found first in the law 1705 statute 4 Anne c 4[8]. This dealt with the situation of the descendants of Princess Sophia, Electress of Hanover and provided

> *'the said Princess…and the issue of her body and all persons lineally descended from her, born or hereafter to be born, be and shall be…deemed…natural born subjects of this kingdom.'*

If that sounds archane, be aware first that this was confirmed to be good law as late as 1948 in the House of Lords 1957 judgment in the case of *AG v Prince Augustus of Hanover*[9] in which the Prince was held to have become a Citizen of the UK and

[8] Also known as 4 & 5 Anne c 16.
[9] [1957] AC 436 HL

Colonies on passage of the British Nationality Act 1948. Indeed, the current UK Border Agency Nationality Instructions contain a chapter entitled 'Hanover (Electress Sophia of)[10]. Nor is it an isolated example. Until 1914 'natural born subjects' could transmit their nationality to children and grandchildren born abroad and under the common law certain person such as ambassadors, beyond this.[11] Bringing matters up to date, under the British Nationality Act 1981 a person serving in the armed forces, or in 'Community Institution' who was him/herself born abroad and is thus a British citizen by descent can transmit his or her British citizen to a child born abroad.[12] Under that Act, A child born outside the UK and the qualifying territories to a British Citizen by descent can be registered up to six years after the birth[13]. Yes there is a requirement of residence in the UK but, after all, the Chagossians do not have the option of residing in the British Indian Ocean Territory, do they?

That is the point, and perhaps we dignify the government's 'unprecedented' argument with too much of a response. Even if it were unprecedented, so, one hopes, is the situation of the Chagossians, forced in to exile by their own government.Few can have as compelling a claim to British citizenship as those children.

This is not necessarily the last word on the difficulties the Chagossians face with their British Citizenship in the circumstances of the exile, indeed the amendment on legitimacy is also of huge relevance to them, but is designed to serve to raise the matter. The government should heed the recommendations of the Foreign Affairs Committee, rather than inventing non-existent rules of British nationality law to deny what will not amount to justice, but will provide some little redress.

For further information please get in touch with ILPA via Steve Symonds, Legal Officer (Steve.Symonds@ilpa.org.uk) or Alison Harvey, General Secretary (Alison.Harvey@ilpa.org.uk) 0207 251 8383.

[10] Nationality Instructions, Volume 2 Section 2, available on the UK Border Agency website at www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/nationalityinstructions/nisec2gensec/

[11] See the Act 13 Geo III C 21 of 1772, as confirmed one hundred years later in the probate case of *De Geer v Stone* (1882) 22 Ch D 243. For a discussion see *Fransman's British Nationality Law* (1998) at pages 155 to 156. As explained therein (page 156) *'At the end of 1914, immediately prior to the commencement of the Act of that year, the law on descent remained the same as it had been after De Geer v Stone'*

[12] Section 2(1).

[13] Section 3