

**ILPA Briefing for debate on Chagos Islands - Dr Paul Monaghan,
Westminster Hall Wednesday 28 October 4.30 to 5.30**

The Immigration Law Practitioners' Association (ILPA) is a registered charity and a professional membership association. The majority of members are barristers, solicitors and advocates practising in all areas of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Founded in 1984, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on advisory and consultative groups convened by Government departments, public bodies and non-governmental organizations.

ILPA is very much aware that the main focus of the debate will be the return of the islanders to their home. It is however important to recognize that exile has had consequences in terms of nationality law that would not all be addressed even if the islanders return tomorrow. We have discussed with their representatives raising the matter in this debate and as a result have prepared this briefing.

For further information please get in touch with Alison Harvey, Legal Director,
Alison.Harvey@ilpa.org.uk

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 Committee² 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.’

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.’

One of those interests is in the matter of nationality.

¹ Foreign Affairs Committee, Seventh Report of Session 2007-2008, HC 147 Vols I and II

² Annex I 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

Citizens of the UK and Colonies whose parents or grandparents were born, registered or naturalized in a British overseas (previously called Dependent) territory became British overseas territories citizens on 1 January 1983, when the British Nationality Act 1981 came into effect. Wives of men who became British overseas territories citizens also became British overseas territories citizens on that date.

Those born after 1 January 1983 were British overseas territories citizens if born in a British overseas territory to a parent who was at the time of their birth a British overseas territories citizen or settled in a British overseas territory, if adopted in an overseas territory by a British overseas territories citizen or if born outside the British overseas territory to a parent who is a British overseas territories citizen otherwise than by descent. Of course, by that date, all those routes were closed to the Chagos Islanders, who had no possibility of being on the territory. Those routes continue to be closed.

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 26th 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 26th of April 1969 was the date on which Prime Minister Harold Wilson finally authorised the removal of the population from Chagos.

The amendment was thus designed to make provision for those born in exile from the Islands, many of them in Mauritius. The thinking behind this is that on and after 1 January 1983 women could pass on their citizenship to the first generation born overseas, which they could not do prior to that date.

That approach assumes, however, that only one generation of will be born in exile. That is not the case. The children of women born in the British Indian Ocean Territory have themselves had children.

Not only are Chagos Islanders cut out of British overseas territories citizenship, they are cut out of British citizenship.

British overseas territories citizens (except those on the sovereign base areas on Cyprus) automatically became British citizens on 21 May 2002. Those born after that date may qualify for registration as a British citizen. Those Chagos Islanders who never became British overseas territories citizens cannot use this route to British citizenship.

Birth in the UK, or in a “qualifying territory” (all the British Overseas Territories with the exception of the sovereign bases on Cyprus) after the “appointed day (21 May 2002) confers British citizenship if a “parent” is a British citizen or settled. Birth in the British Indian Ocean Territory (the Chagos Islands) has never been an option during this period.

Birth outside the UK or a qualifying territory confers British citizenship if a “parent” is British “otherwise than by descent,” that is to say if the parent was born in the UK or in a qualifying territory after 21 May 2002, or in earlier times was born in a place that was part of the “UK and Colonies” at the time of the parent’s birth. Thus it is normally the case that British citizens and British overseas territories citizens, be they men or women, can only pass their citizenship to the first generation born overseas. This applies in the case of the Chagos islanders. But there is nothing normal about the situation of those prevented from returning to the Chagos Islands who are prevented from passing on their citizenship to the second generation born in exile.

The consequence of exile is that the second generation of Chagossians born overseas (the grandchildren of those exiled) are not British citizens because of exile. Had they not been exiled, had they been born in the British Indian Ocean Territory, they would have been British.

That historical wrong persists even if the islanders are permitted to return. Return will not make a person a British overseas territories citizen or a British citizen. There are likely to be routes to British overseas territories citizenship and British citizenship for such persons. As in other overseas territories (much may depend on the “belonger” laws – the “who is Chagossian” question, but nonetheless, the iniquities would not be resolved at the moment of return and possibly for many years thereafter.

Those exiled from the Chagos Islands and their descendants should have a right to register as British overseas territories citizens and thence as British citizens.

It is the case that British nationality is not normally transmitted to more than one generation born overseas. But there is nothing normal about the story of the islanders. Exile continues; generation after generation is born in exile. That they may not be stateless but may acquire Mauritian or Seychellois or another nationality does not solve the fundamental problem. They are Mauritian or Seychellois as a result of exile not of free choice. That they may come to the UK and acquire British citizenship there does not solve the fundamental problem – living in the UK is not living in the islands. It is not a substitute. British citizenship is not British overseas territories citizenship to be held against the possibility of a future return. Moreover, immigration laws have become increasingly restrictive in the UK. A person may have a UK passport as a British citizen but be unable to benefit from it because they are caring in Mauritius for an adult dependent relative who holds no such passport whom they cannot bring to the UK. A person may hold a UK passport as a British citizen but have a Mauritian or Seychellois wife or husband whom they cannot bring to the UK.

The House of Commons Foreign Affairs Committee, in its July 2008 report *Overseas Territories*⁴ 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 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.]

[...]

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

4

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. “⁵ (footnotes are omitted).

In response to the recommendation on citizenship the then 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 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.

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

⁵ Foreign Affairs Committee, Seventh Report of Session 2007-2008, HC 147 Vols I and II

transmit his or her British citizen to a child born abroad.⁶ Under that Act, A child born outside the UK and the qualifying territories to a British Citizen by descent can be registered as a British citizen⁷. 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.

There are other, more arcane references and those interested should consult the Home office Nationality Instruction *Hanover, Electress Sophia of*⁸ Even if it were unprecedented, so, 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.

⁶ Section 2(1).

⁷ Section 3

⁸ Available at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/268004/hanover_electressophiaof_.pdf