

**BORDERS, CITIZENSHIP AND IMMIGRATION BILL  
HOUSE OF COMMONS SECOND READING 2 JUNE 2009****ILPA BRIEFING – CHAGOS ISLANDERS****Bill 86**

ILPA is a professional association with some 1000 members (individuals and organisations), who are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics and nongovernment organisations working in this field are also members. ILPA works to promote and improve the giving of advice on immigration, asylum, and nationality law through teaching, provision of resources and information. ILPA is represented on numerous government, court and tribunal stakeholder and advisory groups and has worked closely with MPs and peers of all parties (and none) on subsequent pieces of immigration legislation.

ILPA has produced a general briefing for Commons Second Reading of The Borders, Citizenship and Immigration Bill and a separate briefing on the citizenship (naturalisation) provisions. These are available from [www.ilpa.org.uk](http://www.ilpa.org.uk)

**Why the situation of the Chagos Islanders should be addressed in this Bill**

This is likely to be the last bill for some time in which nationality law is addressed. It is not intended that the proposed 'simplification legislation', expected to be introduced in draft in October, will address nationality law. Thus, in the House of Lords, peers, including members of the All Party Parliamentary Group on the Chagos Islands, such as the Lord Avebury, the Baroness Whitaker and the Lord Ramsbotham, urged the government to address the nationality law consequences of the continuing exile of the Chagos Islanders.

What are those consequences? Being born in the UK or a British overseas territory to a parent who is British or settled there means that you are born a British citizen. But what of the Chagos Islanders in exile, for example in Mauritius, who are not born in the British Indian Ocean Territory because of their enforced exile from that territory?

Parliament battled hard to insert special provision for the Chagos Islanders in exile in s 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 in the British Indian Ocean Territory became British Citizens (by descent – i.e. not able to pass on their British Citizenship to their children born overseas) if they were not already British Citizens. They also became British overseas territories citizens (again 'by descent').

The 2002 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, because:

- It only assists those born on or after 26 April 1969, the date on which removal from the islands was authorised; it is clear from the court judgments in the *Bancourt* case that there was planning for this removal, and consequent enforced exile from the islands, and problems for those who traveled to Mauritius and then tried to return, before then;

ILPA Lindsey House, 40/42 Charterhouse Street London EC1M 6JN Tel: 020 7251 8383 Fax: 020 7251 8384  
email: [info@ilpa.org.uk](mailto:info@ilpa.org.uk) website: [www.ilpa.org.uk](http://www.ilpa.org.uk)

- It only assists those born to women;
- Exile did not end in 2002, when the provision was made. It continues to this today. Because those who benefit cannot pass on their British citizenship to their children born overseas it does not deal with the generation born in exile. The disadvantage those children suffer in respect of their nationality will potentially last for the rest of their lives. Not even an eventual return to the islands at a later date will cure it.

What of the consequences while exile continues? The Lord Avebury summarized these:

*“Although some of the 1,000 who are resident in the UK have become full UK citizens, they have to pass the habitual residence test and, even then, many cannot afford the enormous fees that are payable for full citizenship.”*<sup>1</sup> **4 Mar 2009 : Column 735**

*“One of the unfortunate consequences of the present situation is that families are split. Those who are British can of course come to the UK, but they can bring members of the family who are not British here only if they can demonstrate that those close relatives will have no recourse to public funds immediately on arrival. In some families, that has meant that only one parent can come to the UK to work until they can afford to support their spouse, but there are many who cannot or will not leave their partner behind—and why should they? However, the chances of saving enough in Mauritius to meet the public funds test are slim, and the community there remains very impoverished.”*<sup>2</sup>

Peers also reminded the government that the July 2008 report of the House of Commons Foreign Affairs Committee, *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.*

...

*74 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. “<sup>3</sup> (footnotes are omitted).*

In response to the Select Committee, the Government said that there was no precedent elsewhere in nationality law for citizenship to be extended to a third generation born outside the UK or in an overseas territory. This is not correct. One need not turn to the many precedents in the history of British nationality law, it suffices to acknowledge that under the current law (the British Nationality Act 1981) a person serving in the Armed Forces or in a community institution who is a British citizen by descent can transmit his or her citizenship to a child. If service in a community institution is reason enough to allow a person to transmit citizenship, why not that person's being subject to enforced exile?<sup>4</sup>

The Lord Brett, speaking for the government at Committee stage of the Bill in the House of Lords acknowledged the 'very powerful arguments'<sup>5</sup> being put to him and agreed to hold discussions between Committee stage and report to see if these could be addressed. This

<sup>1</sup> *Hansard* HL Report 4 March 2009 col 735, House of Lords Committee Stage

<sup>2</sup> *Hansard* HL Report 1 April 2009, Col 1089, House of Lords Report Stage

<sup>3</sup> Foreign Affairs Committee, Seventh Report of Session 2007-2008, HC 147 Vols I and II

<sup>4</sup> See *Hansard* HL Report 4 March 2009 col 736, House of Lords Committee Stage, where this point was made.

<sup>5</sup> *Hansard* HL Report 4 March 2009 col 737

was done, but the letter of the Lord Brett to the Lord Avebury of 20 March 2009<sup>6</sup> brought only disappointment. It said

*“...whilst the government has not sought to justify the actions taken in the 1960s and 1970s it maintains the case that its obligations, legal and otherwise, have been settled by previous compensation awards and by the grant of British citizenship under the British Overseas Territories Act 2002”.*

As described above, the British Overseas Territories Act 2002 provides only a partial remedy to the nationality law consequences of exile, and also deals only with the consequences of exile up to 2002. It does not make provision for the subsequent births in exile.

At Report stage in the House of Lords the Lord Brett said:

*“I have spoken at length to the noble Lord, Lord Avebury, on this issue, and he will understand the reluctance with which I must disappoint him...although I am personally deeply sympathetic to the position of second and subsequent generation Chagossians born in Mauritius, I regret that I am not in a position to do anything in the Bill. The noble Lord, Lord Avebury, has emphasised the importance of citizenship in tabling, and discussing, this amendment, but I hope he will forgive me for requesting that it be dealt with as part of the ongoing discussion with the Foreign Office, where it is only one of the wider issues relating to the United Kingdom’s response to the Chagossians’ plight.”*  
*This issue needs to be considered in the longer term, which is why I hope the noble Lord will understand why I ask him—reluctantly—to withdraw his amendment.”<sup>7</sup>*

In the words of the Lord Avebury:

*“The letter from the noble Lord, Lord Brett, refers to the hardship that resulted from what he calls the resettlement of the islanders, but the Government have not lifted a finger to correct the effects of exile in nationality law since Parliament persuaded them to insert Section 6 into the British Overseas Territories Act 2002.”<sup>8</sup>*

We urge that rather than the question of citizenship being kicked into the long grass, the House of Commons take up the case for this Bill to be used to address the current and ongoing nationality law consequences of continuing exile. There have been many expressions of regret for the position of the Chagossians, but amendments laid in the House of Lords offered a way of taking practical remedial action and no good reason has been given for refusing to do that.

**ILPA’s very detailed briefings on the Chagos islanders for the House of Lords debates in Committee and on Report are available on [www.ilpa.org.uk/briefings.html](http://www.ilpa.org.uk/briefings.html).**

**For further information please get in touch with**

- **Alison Harvey, General Secretary ILPA, 0207 251 8383**  
[alison.harvey@ilpa.org.uk](mailto:alison.harvey@ilpa.org.uk)
- **Steve Symonds, Legal Officer, ILPA, 0207 490 1553,**  
[steve.symonds@ilpa.org.uk](mailto:steve.symonds@ilpa.org.uk)

---

<sup>6</sup> Copies have been placed in the library of both Houses of Parliament. The letter is also cited in debates at *Hansard* HL Report I April 2009 cols 1088-9

<sup>7</sup> *Hansard* HL Report I April 2009 cols 1089-90

<sup>8</sup> *Hansard* HL Report I April 2009, col 1089