



Submission to the Joint Committee on Human Rights

Black people, racism and human rights **September 2020**

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Introduction:

1. This submission's focus is Home Office nationality and immigration functions.
2. In our February 2018 submission to the Committee's *Enforcing Human Rights* inquiry, we summarised human rights consequences of a continuing and worsening neglect to respect:
 - a. many people rights to British citizenship; and
 - b. the eligibility of many other people to an immigration status permitting their stay here.¹
3. Inequalities that are cause and consequence of this neglect significantly include racism. Barely two months later, the then Prime Minister and Home Secretary each offered apologies for what is now known as the Windrush scandal.²
4. Our consideration of nationality and immigration functions indicates that one reason progress is impeded remains a widespread unwillingness or incapacity to understand and recognise racism.

Windrush:

5. Deeper reflection upon racism at this scandal's heart is needed.³ In summary:
 - a. In the post-War decades, British people from across the colonies and Commonwealth came and settled in the UK. Successive administrations responded by introducing and promoting practices, policies and legislation expressly motivated to deter and constrain entry of black and Asian British people because of their colour.⁴
 - b. That response culminated in Acts of Parliament that still underpin the UK's nationality and immigration systems: the British Nationality Act 1981 and Immigration Act 1971 respectively.
 - c. One effect of this legislation was to remove the unfettered right of many British people to enter and stay in the UK by, firstly, limiting the people who were to possess that right on the basis of 'patriality' (a concept introduced by the Immigration Act 1971) and, later, introducing a new British nationality

¹ See, in particular, paragraphs 58-68 (issue 5) of Amnesty's submission here:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/enforcing-human-rights/written/78416.pdf>

² In mid-April, the Prime Minister apologised to Caribbean leaders (*Windrush generation: Theresa May apologises to Caribbean leaders*, BBC News, 17 April 2018 and the Home Secretary apologised in the House (*Hansard HC*, 16 April 2018 : Col 27).

³ Amnesty's submission to the Windrush Lessons Learned Review provides both chronology and analysis of the scandal (its roots and impact), see:

<https://www.amnesty.org.uk/files/Resources/AIUK%20to%20Home%20Office%20Windrush%20Lessons%20Learned%20Review.pdf>

⁴ See Amnesty's Windrush submission *op cit*, particularly paragraphs 9-18

(British citizenship) that entrenched this.⁵ Many black and Asian British people already settled here thereby ceased to be recognised as this country's citizens.

- d. The application of *ius soli* in British nationality law was also ended with the introduction of British citizenship. Many people – disproportionately minority ethnic people – born in the UK since the commencement of the British Nationality Act 1981 have, therefore, been born without British citizenship.
- e. Whereas racism underlay this legislation's introduction, Parliament was alive and concerned to address some of the racist consequences it might otherwise have had.⁶ Rights to British citizenship by registration were expressly included in the British Nationality Act 1981 to provide the security of this country's citizenship to all people connected to it⁷ and avoid racial disharmony.⁸ Those registration rights importantly extended to members of the Windrush generation⁹ and to children born and growing up in the UK.¹⁰
- f. However, the Home Office intentionally discouraged members of the Windrush generation from exercising their time-limited right to register as British citizens.¹¹ People, therefore, lost that right.¹² Ministers had said time-limiting the right was necessary to encourage people to exercise it¹³ – but the Home Office did the opposite.
- g. Decades later – even after this scandal's exposure – the Home Office continues to obstruct and discourage people from exercising their British citizenship rights. This is done in various ways, some underpinned by more recent legislation passed without care or understanding of the impact it would have.¹⁴
- h. Minority ethnic people were and are disproportionately affected by all that is described here, the motivations for which are variously connected to racism.

⁵ See Amnesty's Windrush submission *op cit*, particularly paragraphs 12-13

⁶ See e.g. *Hansard* HC, Standing Committee F, 24 February 1981: Col 177 *per* Timothy Raison, Home Office Minister

⁷ See e.g. *Hansard* HC, 3 June 1981 : Cols 979-980 and *Hansard* HC, Standing Committee F, 24 February 1981: Col 177 *per* Timothy Raison, Home Office Minister

⁸ See e.g. *Hansard* HC, Standing Committee F, 24 February 1981: Col 179 *per* Timothy Raison, Home Office Minister

⁹ Section 7 of the British Nationality Act 1981

¹⁰ Section 1(3) and (4), section 3(1) and paragraph 3 of Schedule 2 to the British Nationality Act 1981 are of especial significance.

¹¹ See the March 2020 report (HC 93) of the Windrush Lessons Learned Review at page 59 available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874022/6.5577_HO_Windrush_Lessons_Learned_Review_WEB_v2.pdf

¹² Registration under section 7(2) was available within 6 years of the Act's commencement, which period could be extended under section 7(8) by a further two years in special circumstances.

¹³ *Hansard* HL, 21 July 1981 : Col 184 and *Hansard* HL, 7 October 1981 : Cols 117 & 121 *per* Lord Belstead, Minister of State

¹⁴ Several of these barriers were succinctly summarised by the Project for the Registration of Children as British Citizens (PRCBC) in its October 2016 submission to the Committee's inquiry on *UK's record on children's rights*, see <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/childrens-rights/written/40459.pdf>

The original changes to nationality and immigration laws were expressly to restrict entry of people on grounds of colour. The inhibiting of citizenship rights in the 1980's was clearly known to have particular impact upon black and Asian people. Continuing barriers to citizenship rights disproportionately affect minority ethnic people and are sustained by an attitude at the Home Office that regards many people as migrants or guests in the country of their birth, connection and to whose citizenship they are in law entitled.

Primary conclusions:

6. We invite the Committee to draw three conclusions from the above (upon which we briefly elaborate under discrete subheadings below):
 - a. Racism remains embedded in laws governing British citizenship and in their application.
 - b. Officials are licensed and encouraged to perceive many minority ethnic British people as not belonging to this country and exercise immigration powers against them – powers from which they would and should be exempt by British citizenship. This can only provide wider licence and encouragement to racist attitudes and prejudices, including attitudes and prejudices that may be neither overt nor recognised.
 - c. The causes and consequences of this are integrated with racism in other areas of law, policy and practice.

British citizenship:

7. British citizenship rights remain profoundly and widely neglected with especial impact upon minority ethnic people born and grown up in this country.
8. The root of profound barriers to people exercising statutory rights to British citizenship lies in persistent Home Office error in treating these rights as if akin or no different to its discretionary powers to naturalise adults who have moved to this country from other places where they have connection (and usually nationality).¹⁵
9. Those barriers include that to register citizenship, many British children and young people are required to prove themselves to be 'good',¹⁶ pay fees of over £1,000¹⁷ or

¹⁵ For example, Home Office decision letters on registration applications regularly refer to naturalisation; and statements such as the following in the Minister's response to correspondence from PRCBC, Amnesty & others are common: "*Citizenship is not necessary to enable individuals to live, work or study in the UK and a grant of indefinite or limited leave to remain will enable lawful residence and confer appropriate access to benefits and services.*" That correspondence is available at: <https://prcbc.org/information-leaflets/>

The suggestion that the citizenship of someone born in this country and entitled to it is unnecessary for that person to live here is insulting and reflects an underlying failure to recognise that registration of citizenship concerns rights to citizenship that are fundamentally different to powers of naturalisation – a distinction made express in the statutory language and by Ministers in passing the 1981 Act, see e.g. *Hansard* HC, 2 June 1981: Col 855 *per* William Whitelaw, Home Secretary.

¹⁶ This requirement is explained further in the joint PRCBC and Amnesty briefing here:

https://prcbc.files.wordpress.com/2019/10/briefing_good-character_oct-2019-1.pdf

A brief account of the history of the requirement's introduction is provided by the joint PRCBC and Amnesty

satisfy unreasonable and prohibitive evidential demands (including where the Home Office already holds confirmation of the relevant fact it demands someone must provide evidence to prove).¹⁸ In its ‘justifications’ for this, the Home Office wrongly treats the children and young people affected as migrants applying to naturalise.¹⁹ It also wrongly does so in guidance it applies in deciding applications to register as British citizens by children brought to this country at a young age and growing up here.²⁰

10. The disproportionate effect upon minority ethnic people clearly suggests the same deeply ingrained culture that unjustly robbed many black and Asian British people of their citizenship rights decades previously remains in place.

The immigration system:

11. Statements made and attributed to its ministerial masters have long attested to systemic problems of the immigration system. For example, Lord Reid was widely reported as declaring it ‘not fit for purpose’.²¹ Theresa May made trenchant criticisms including that it was ‘closed, secretive, defensive’.²² Amber Rudd identified its tendency to indifference to (‘losing sight of’) the lives and experiences of people subjected to it.²³ Most recently, Priti Patel has emphasised ‘institutional ignorance’ and its (and others’) failure to ‘walk in the shoes’ of people over whom it exercises power.²⁴
12. In this short submission, we cannot outline every way by which these and other persistent deficiencies relate to racism. However, if racism in policy and practice is tolerated even in connection with the department’s statutory function of formally recognising British people’s citizenship rights, it is hardly surprising that it may affect the department’s treatment of people who are not British.
13. In this connection, we observe that at its root racism concerns treating people as of less worth than others. It may thereby licence, encourage and facilitate policy and

submission to the Committee’s scrutiny inquiry on the Draft British Nationality Act 1981 (Remedial) Order 2019, here: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/draft-british-nationality-act-1981-remedial-order-2019/written/102809.pdf>

¹⁷ See e.g. PRCBC and Amnesty joint briefing on these fees:

https://prcbc.files.wordpress.com/2019/03/fees_briefing_revised_march_2019.pdf

¹⁸ For example, where the Home Office has granted settled status to a child’s estranged parent or naturalised that parent but refuses or fails to confirm this to establish the child is a British citizen under section 1(1) of the British Nationality Act 1981 or entitled to register as such a citizen under section 1(3).

¹⁹ See e.g. fn 15

²⁰ Home Office guidance *Registration as a British citizen: children* largely incorporates statutory requirements for naturalisation (which have nothing to do with children) into decision-making on registration under section 3(1) of the British Nationality Act 1981, which Act expressly does not adopt those requirements and which requirements are not properly applicable to registration.

Registration rights are more fully discussed in *Reasserting Rights to British Citizenship Through Registration*, IANL, vol 34, no. 2, 2020, pp139ff

²¹ Lord Reid has since explained that the phrase was wrongly attributed to him but rather came from a senior civil servant, see: <https://www.bbc.co.uk/news/av/uk-politics-15786213>

²² *Hansard* HC, 26 March 2013 : Cols 1500-1501

²³ *Hansard* HC, 16 April 2018 : Col 28

²⁴ *Hansard* HC, 21 July 2020 : Cols 2020-2022

practice that does or aims to deprive people of their most basic needs and interests in respect of both tangible things (such as to access accommodation, work or healthcare, to be with family and at liberty) and intangible things (such as to be secure, feel belonging and express pain, fear, exclusion and loss).²⁵

Wider connection to racism:

14. Recent years have seen several inquiries and reviews into racism in the UK.²⁶ These have looked at public institutions and policy areas (e.g. the criminal justice, health, care and education systems).²⁷ A striking and harmful omission is that nationality and immigration policy and practice have not been considered – neither in themselves nor in connection with these and other policy areas.
15. For example, racism has been consistently observed in many aspects of the criminal justice system.²⁸ Yet, attention is not given to the implications for people whose experience of the criminal justice system is treated by the Home Office as grounds for refusing to recognise citizenship rights and/or exercising immigration powers.²⁹

Final remarks on how progress is impeded:

²⁵ As regards the need to express pain, fear, exclusion and loss, the Committee will recall the evidence of Natalie Barnes, daughter of Paulette Wilson, whom the Home Office had unlawfully detained, describing her feelings and reactions that led to her being banned from the immigration centre at which her mother had been required to report (Oral Evidence: Detention of Windrush generation, HC 1034 : Wednesday 16 May 2018, Q6, p14); and the Chair's summary of this to the then Home Secretary and Director-General of Border Immigration and Citizenship (Oral Evidence: Detention of Windrush generation, HC 1034 : Wednesday 6 June 2018, Q24, p15). As the Chair summarised: "*There was extreme distress. There was a pile of evidence and lawyers, but there was this other strand of extreme distress. Instead of responding to that, the department banned the daughter and locked her mother up.*"

Poignantly connected to need to be secure and feel belonging is the High Court ruling in *R (Project for the Registration of Children as British Citizens, O & A) v Secretary of State for the Home Department* [2019] EWHC 3536 (Admin), December 2019 when finding there to be a mass of evidence showing there to be many children in the UK prevented from exercising their right to British citizenship by an unaffordable fee and by this made to "*feel alienated, excluded, isolated, "second-best", insecure and not fully assimilated into the culture and social fabric of the UK.*" The Home Office has appealed against the court's ruling that it had breached its children's duty (section 55 of the Borders, Citizenship and Immigration Act 2009) by failing to assess, consider or apply the best interests of children. However, there is no appeal against the court's finding of fact about the impact of the Home Office fee, which remains in place.

²⁶ For example, *An independent review into the treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the criminal justice system*, 2017 (often referred to as 'the Lammy Review'):

<https://www.gov.uk/government/publications/lammy-review-final-report>

²⁷ For example, the Race Disparity Audit commissioned by Theresa May:

<https://www.gov.uk/government/publications/race-disparity-audit>

²⁸ See e.g. the Lammy Review *op cit*; also research more recently published by the Sentencing Council:

<https://www.sentencingcouncil.org.uk/publications/item/investigating-the-association-between-an-offenders-sex-and-ethnicity-and-the-sentence-imposed-at-the-crown-court-for-drug-offences/>

Amnesty's *Trapped in the Matrix*, May 2018 also raised concerns of 'racial bias' in policing and 'heavily racialised' policing tools, see:

<https://www.amnesty.org.uk/files/reports/Trapped%20in%20the%20Matrix%20Amnesty%20report.pdf>

²⁹ For example, policing data that is itself questionable by reason of racial bias is directly and intentionally used as the basis for the exercise of powers to refuse citizenship and to deport someone. See pages 22-23 of Amnesty's *Matrix* report *op cit*.

16. Amnesty provided a detailed submission to the Windrush lessons learned review,³⁰ including analysis of the significance of racism in the harms that had been done and continue.³¹ The review's report was published in March this year.³²
17. The review fell short of finding institutional racism.³³ The Committee may wish to reflect on why that was and whether the reasons for it give example of how progress is impeded or throw light on the systemic change that is required to equality and human rights monitoring. The review was (as our submission explained) potentially hampered by its terms of reference.³⁴ Whereas an independent advisor was commissioned, and ultimately the report emanates from her, the review as originally established was supported by a team mostly drawn from the Home Office and headed by a Home Office director.³⁵ There may be alternative reasons why the review has not adequately addressed, for example, matters concerning citizenship and deportation to which we drew attention.³⁶
18. It is also urgently necessary to review the impact of wide exemptions from basic safeguards,³⁷ including equalities duties relating to racism,³⁸ granted to the Home Office in connection with its nationality and immigration functions.

³⁰ *Op cit*

³¹ See paragraphs 9ff and 32(c), *op cit*

³² *Op cit*

³³ See page 7, *op cit*

³⁴ See paragraphs 2-6 of Amnesty's Windrush submission, *op cit*

³⁵ The original terms of reference are available here:

[http://data.parliament.uk/DepositedPapers/Files/DEP2018-0756/WLLR Terms of Reference vn 5 0 003 .pdf](http://data.parliament.uk/DepositedPapers/Files/DEP2018-0756/WLLR_Terms_of_Reference_vn_5_0_003_.pdf)

³⁶ See Amnesty's Windrush submission paragraphs 39ff, *op cit*

³⁷ These include the wide immigration exemption in paragraph 4 of Schedule 2 to the Data Protection Act 2018, the various immigration and nationality exceptions and exemptions to duties under the Equality Act 2020, the general exclusion of non-asylum immigration from legal aid introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the removal of appeals against immigration decisions (unless those decisions were made on asylum or human rights applications) by section 15 of the Immigration Act 2014.

³⁸ Paragraphs 17 and 18 of Schedule 3 to the Equality Act 2010 provide distinct exceptions to the prohibition of discrimination (under section 29 of the Act) on grounds of nationality, ethnic or national origin or grounds of religion or belief. Paragraph 2 of Schedule 18 to the Equality Act 2020 provides an exception to the duty (under section 149(1)(b) of the Act) to advance equality of opportunity between persons sharing and persons not sharing the protected characteristics of race and religion or belief. There are other exceptions in respect of other protected characteristics (particularly age and disability).