

UNIVERSAL PERIODIC REVIEW (UPR) MID-TERM REPORT

United Kingdom of Great Britain and Northern Ireland

Views of Minority Rights Group (MRG)
on the Recommendations of the Working Group of the UPR
Twenty-First Session (20 September 2012)

MRG is an international non-governmental organisation working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. MRG works with over 150 organisations in nearly 50 countries. MRG has consultative status with the United Nations Economic and Social Council, observer status with the African Commission on Human and Peoples' Rights, and is a civil society organisation registered with the Organization of American States.



minority
rights
group
international

Lucy Claridge:
lucy.claridge@mrgmail.org

54 Commercial Street
London E1 6LT
United Kingdom
Tel: +44 (0)20 7422 4200

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1. Introduction

- 1.1 These Comments have been written for the Ministry of Justice to assist it in its preparation of the UK's Mid-Term Report to the UPR (the "Mid-Term Report") on the recommendations of the Working Group of the UPR adopted by the Human Rights Council on 20 September 2012 (the "Recommendations").
- 1.2 These Comments have been prepared by Minority Rights Group International (MRG). MRG is an international non-governmental organization working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. MRG works with over 150 organisations in nearly 50 countries. MRG has consultative status with the United Nations Economic and Social Council, observer status with the African Commission on Human and Peoples' Rights, and is a civil society organisation registered with the Organization of American States.
- 1.3 The UK is a party to most international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The UK voted in favour of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007.
- 1.4 Throughout the UPR reporting process, the UK has publicly stated its strong commitment to promoting human rights in its overseas territories. In its response to the Recommendations, the UK indicated its commitment to abide with human rights law in British overseas territories.
 - 1.4.1 In response to Recommendation 110.2 that the UK "[a]ccept the full implementation of the provisions of the CAT and the ICCPR in overseas territories under its control," the Government positively responded, "The recommendation **enjoys** the support of the United Kingdom. . . The [ICCPR] has been extended to all except Anguilla."
 - 1.4.2 In response to Recommendation 110.45 that the UK "[c]ontinue to support overseas territories to abide with basic human rights protection for all," the Government positively responded, "The recommendation **enjoys** the support of the United Kingdom. . . The UK and the Territories share a common agenda to promote respect for human rights and tackle discrimination. The UK Government expects the Territories to abide by the same basic standards of human rights as the UK. Territory Governments, with support from the UK, are doing a great deal of work to look after vulnerable members of society and to tackle discrimination."
- 1.5 Additionally, at a meeting with civil society organisations on 18 September 2013 to discuss the Mid-Term Report, a representative of the Foreign and Commonwealth Office reiterated the Government's strong commitment to combatting discrimination and supporting basic human rights in overseas territories.
- 1.6 **However, the Government's stated commitment to human rights in overseas territories overlooks a glaring exception: The human rights of Chagossians expelled from their home in the British Indian Ocean Territory (the "BIOT").**

- 1.7 Both the Human Rights Committee (HRC) and the Committee on the Elimination of Racial Discrimination (CERD Committee) have urged the UK to address the human rights of Chagossians. Both treaty bodies have rejected the UK's argument that human rights treaties do not apply to the BIOT because it is "uninhabited."
- 1.8 MRG understands from the Government's most recent consultation with civil society organisations that the UK again plans to omit the BIOT and the situation of Chagossians from its Mid-Term Report, relying on the argument that the BIOT is uninhabited. MRG rejects this cynical and offensive argument and reminds the Government that the BIOT is uninhabited as a direct result of the UK forcefully removing all indigenous inhabitants from the Chagos Islands.
- 1.9 **MRG considers that under international human rights law, the UK made unjustified interferences with the Chagossians' rights to private life and home, and is in continuous violation of these rights by failing to facilitate their return to the islands.**
- 1.10 **MRG further considers that under international human rights law, the UK has an obligation to ensure that human rights treaties to which it is a party apply in all territories under its control. MRG reminds the UK of its commitment to the full implementation of the ICCPR in all territories under its control, and its pledge to continue to support overseas territories to abide with basic human rights protection for all.**
- 1.11 **MRG urges the UK Government to respect, protect and promote the individual and collective rights of Chagossians, including by:**
- 1.11.1 **Providing information on the BIOT and the human rights of Chagossians in the Mid-Term Report and in future reports to UN treaty bodies, particularly with regard to Chagossians' right to return and right to privacy and home; indigenous rights and rights to property, religion and culture; and the right to an effective remedy;**
 - 1.11.2 **Conducting an independent, transparent and extensive public consultation on the possible means and arrangements for return to the islands, with the full participation of the Chagossians, civil society and other stakeholders;**
 - 1.11.3 **Considering compensation for the denial of the Chagos Islanders' right to return to their territory over an extended period; and**
 - 1.11.4 **Issuing a formal apology for the colonial injustice suffered by the Chagossian people over the past 50 years.**

2. Background

- 2.1. Until the 1960s, the Chagos Islands were inhabited by an indigenous people, the Ilois - also known as the *Chagos Islanders* or the *Chagossians*. In 1964, the UK entered into negotiations

with the US to establish an American military base in the region. The talks culminated in the passing of British Indian Ocean Territory Order in Council (SI 1965/120) on 8 November 1965 which established the colony of the BIOT. This new colony included the Chagos Islands. In December 1966, the UK and US agreed that the US would use the BIOT for defence purposes, and the US commenced the construction of a military base on Diego Garcia, the largest of the three island groups which comprise the Chagos Islands.

- 2.2. From 1965 onwards, the UK began removing the Chagossians from the islands without consultation, and failed to provide the inhabitants with reasons for their removal. Their tactics included refusing to let the Chagossians return to the islands from visits to elsewhere, and closing down the plantations which provided their employment. US construction works on Diego Garcia also demolished Chagossian homes. Many Chagossians were taken to the shores of Mauritius or the Seychelles and left there without housing, employment or compensation.
- 2.3. In 1971, the Commissioner of the BIOT passed Immigration Ordinance 1971, No. 1 of 1971 which required the compulsory removal of the whole of the population of the Chagos Islands to Mauritius. The law made it a criminal offence for anyone to enter or remain on the islands without a permit.
- 2.4. Following the independence of Mauritius in 1968 and the Seychelles in 1976, the BIOT has been ruled directly from London. The last inhabitants were removed from the Chagos Islands in 1973. Most of the Chagossians now live in poverty in Mauritius and the Seychelles, with a small number in the UK.
- 2.5. With many Chagossians living in poverty, in 1972, the UK agreed to pay £650,000 to Mauritius to assist with the costs of resettlement. However, it was not until 1977 when the Mauritian government distributed the money, the value of which had been weakened by inflation. Further, the money was granted to only 595 Chagossian families.
- 2.6. Chagossians have brought a number of legal actions challenging their expulsion. In 1975, Michael Vencatessen, a Chagossian who had left Diego Garcia in 1971, brought a claim before the UK courts. The case settled in 1982. But only 471 of 1,786 applicants received compensation and, even then, the amount received was minimal. The vast majority of recipients signed forms to renounce their claims arising from removal of the islands. But these renunciation forms - which were thumbbed rather than signed - were written in English, a language which many of the signatories could not read or understand.
- 2.7. In 2000, the High Court struck down the relevant part of the Immigration Ordinance on the grounds that the relevant power contained within the BIOT, the power to legislate for the “peace, order and good government” of the territory, did not include a power to exile a people from their homelands. The UK Government did not appeal the decision and passed anew Ordinance allowing inhabitants to return to the outer islands of the archipelago but not to Diego Garcia. However, the Government later overturned its decision to support the resettlement and revoked the original BIOT order, passing new orders - the BIOT (Constitution) Order and the BIOT (Immigration) Order - in 2004. These provisions reinstated full immigration control.

- 2.8. Another case was brought challenging the legality of the new arrangement including the provision where (a) no person had the right to abode in the BIOT and (b) that no person was entitled to enter the BIOT without authorisation. The challenge was successful both in the High Court and the Court of Appeal, the latter holding that the orders amounted to an abuse of power because they negated the islanders' rights to return to their homeland. The Government appealed to the House of Lords, where the majority ruled that the exercise of power under the 2004 orders was essentially a concern for the Government and Parliament and not properly a matter for the courts. In dissent, one of the Lords stated that the Government's submission "treats BIOT and the... power to make... laws relating to BIOT as if they related to nothing more than the bare land, and as if the people inhabiting BIOT were an insignificant inconvenience."
- 2.9. The Chagossians made an application to the European Court of Human Rights ("ECtHR"), claiming several violations of their rights under the European Convention on Human Rights: Article 3 (*prohibition of torture*), Article 8 (*right to respect for private and family life*), Article 6 (*right to fair trial*), Article 13 (*right to an effective remedy*), and Article 1 of Protocol 1 (*right to protection of property*). The ECtHR declared the application inadmissible. It is important to note that the Chagossians' application to the ECtHR did not fail on the issue of extraterritorial control or on the substantive merits of the Chagossians' case, but rather on a technical issue (the "lack of victim status"). Further, the ECtHR's decision was not unanimous, although the minority judgments have not been made available for public scrutiny.
- 2.10. Both the Human Rights Committee (HRC) and the Committee on the Elimination of Racial Discrimination (CERD Committee) have urged the UK to address the human rights of Chagossians, as detailed below.

3. Jurisdiction (Article 2(1) of the ICCPR; Article 6 of ICERD)

- 3.1. It is highly regrettable that the UK has excluded the BIOT from its comments on its overseas territories in its 2012 National Report to the Working Group on the UPR. The UK's jurisdiction under the ICCPR and ICERD extends to the territory of the BIOT. The Chagossians who were forcefully removed from the Chagos Islands, and who are now prevented from returning, are entitled under international law to the rights and freedoms within those instruments.
- 3.2. The ICCPR applies extraterritorially, as the UK acknowledged in its response to Recommendation 110.2. The HRC has made clear that the UK may not cite "absence of a population" as grounds for the ICCPR not applying to the BIOT. In 2000, the UK did not include the BIOT in its state report to the HRC, as it considered that the ICCPR did not apply to that territory due to the absence of a population. However, the HRC considered that the UK should include the BIOT in its next periodic report. The HRC reiterated its view in 2008, and clearly stated that the Chagossians had the benefit of Article 12 of the ICCPR, entitling them to return to their territory.
- 3.3. The ICERD also applies extraterritorially. Article 6 of ICERD requires States Parties to assure "to everyone within their jurisdiction" an effective remedy for any acts of racial discrimination which violate the individual's human rights and fundamental freedoms

contrary to ICERD. Like the HRC, the CERD Committee has rejected the UK's argument that the ICERD does not apply in the BIOT due to absence of a population. In 2003, the CERD Committee expressed regret that no information on the implementation of the ICERD in the BIOT had been provided in the UK's state report. The CERD Committee further stated that it looked forward to receiving in the next periodic report information on the measures taken by the UK "to ensure the adequate development and protection of the Ilois for the purpose of guaranteeing their full and equal enjoyment of human rights and fundamental freedoms in accordance with article 2, paragraph 2, of the Convention." The CERD Committee reiterated these concerns in 2011: it stated that it was "deeply concerned" at the UK's position that the ICERD does not apply to the BIOT, and reminded the UK that "it has an obligation to ensure that the Convention is applicable in all territories under its control." The CERD Committee again urged the UK to include information on the implementation of the ICERD in the BIOT in its next periodic report, and recommended that all discriminatory restrictions on Chagossians from entering the islands are withdrawn.

3.4. MRG is deeply concerned by the UK's position that human rights treaties do not apply to the BIOT because the BIOT is uninhabited. Not only does this argument fail legally, as the HRC and CERD Committee have explained, but the argument is also cynical and offensive. The inhabitants of the BIOT were forcefully removed from their homeland by the UK Government, in violation of their human rights. The UK appears to believe that because it removed these inhabitants, it may now avoid responsibility under human rights law. This stance runs directly counter to the UK's commitments to the full implementation of the ICCPR in all territories under its control, and its pledge to continue to support overseas territories to abide with basic human rights protection for all. Moreover, the UK Government's reasoning, if adopted by other governments, could provide an excuse to defend ethnic cleansing and other forms of forced displacement.

3.5. **MRG therefore urges the UK Government to include information on the BIOT and its obligations under international human rights instruments in respect of that overseas territory in its Mid-Term Report.**

4. Right to return; right to private life and home (Articles 12 and 17 of the ICCPR; Articles 2 and 5(d)(ii) of the ICERD)

4.1. The UK has violated the Chagossians' rights to return and to respect for private life and home enshrined under the above-mentioned provisions. Chagossians' forced removal, the failure of the UK Government to facilitate their return to the islands, and Chagossians' inability to maintain links with their traditional ways of life on the islands constitute unjustified interferences with their rights to return and to respect for private life and home.

4.2. In 2001, the HRC called on the UK "to the extent still possible" to "seek to make exercise of the Ilois' right to return to their territory practicable" and "consider compensation for the denial of this right over an extended period." It echoed these calls in 2008 when it recommended that the UK "ensure that the Chagos islanders can exercise their right to return to their territory and should indicate what measures have been taken in this regard." It also called on the UK to "consider compensation for the denial of this right over an extended period."

- 4.3. In 2003, the CERD Committee stated that it would look forward to receiving information from the UK on the measures taken by it “to ensure the adequate development and protection of the Ilois for the purpose of guaranteeing their full and equal enjoyment of human rights and fundamental freedoms” in accordance with its obligations under the ICERD. In 2011, it recommended “that all discriminatory restrictions on Chagossians (Ilois) from entering Diego Garcia or other Islands on the BIOT are withdrawn.
- 4.4. We emphasise that the above arguments are not prejudiced by the 2012 decision of the ECtHR in which it dismissed the Chagossians’ claims under Article 8 of the ECHR on technical grounds (due to the lack of victim status), and *not* on the substantive merits of the claim.
- 4.5. **We therefore maintain that under international human rights law, the UK made unjustified interferences with the Chagossians’ rights to private life and home, and is in continuous violation of these rights by failing to facilitate their return to the islands.**
- 4.6. **We urge the UK Government to address these issues in its Mid-Term Report, and to commit and take immediate steps to facilitate the return of the Chagossians to the islands without delay, including by:**
- 4.6.1. **Conducting an independent, transparent and extensive public consultation on the possible means and arrangements for return to the islands, with the full participation of the Chagossians, civil society and other stakeholders;**
- 4.6.2. **Considering compensation for the denial of the Chagos Islanders’ right to return to their territory over an extended period; and**
- 4.6.3. **Issuing a formal apology for the colonial injustice suffered by the Chagossian people over the past 50 years.**
- 5. Indigenous rights and the rights to property, religion and culture (UNDRIP; Articles 18 and 27 of the ICCPR; Articles 5(d)(v), (vii) and (e) of the ICERD)**
- 5.1. The Chagossians are indigenous to the Chagos Islands and are entitled to the individual and collective rights guaranteed to indigenous peoples under international human rights instruments. UNDRIP, an important source of emerging customary law, enshrines the right not to be subjected to forced assimilation or destruction of culture (Article 8), the right not to be forcibly removed from lands or territories (Article 10), the right to lands, territories and resources traditionally owned (Article 26), the obligation on States to establish processes recognising indigenous laws, traditions, customs and land tenure systems (Article 27), the prohibition on military activities unless justified by a relevant public interest or otherwise freely agreed with the indigenous people concerned (Article 30), and the right to prompt and fair procedures for the resolution of conflicts (Article 40).
- 5.2. It is a well-established principle of international human rights law that property can be acquired through traditional methods of land occupation and use practiced by indigenous groups, as opposed to the acquisition of legal title through conventional legal systems. National courts in Australia, Canada and South Africa and the UK Privy Council have

recognised that such land rights continue after the seizure of indigenous land by colonial forces.

- 5.3. Additionally, the UK Government cannot ignore the Chagossians' individual rights under the ICCPR, ICERD and other applicable international human rights instruments. These rights include the right to property and the rights of members of ethnic, linguistic and religious minorities to enjoy their own culture and to profess and practise their own religion in community with the other members of their group. The Chagossians' expulsion from the islands represents flagrant violations of these rights, the enjoyment of which depends on the use of their island lands.
- 5.4. **MRG therefore urges the UK Government to respect, protect and promote the individual and collective rights of the Chagossians and report against these rights in its Mid-Term Report, particularly with regards to the Chagossians' rights to property, religion and culture.**
6. **Right to an effective remedy (Article 2(3) of the ICCPR; Article 6 of the ICERD; Article 28 UNDRIP)**
 - 6.1. There is a significant body of well-established international jurisprudence that forced evictions are serious human rights violations, which may constitute crimes against humanity. The Chagossians have the right to an effective remedy and reparation for the violations of the rights detailed above. Accordingly the HRC has called on the UK to "consider compensation for the denial of this right over an extended period."
 - 6.2. **MRG therefore urges the UK Government to respect, protect and promote the rights of the Chagossians to an effective remedy for the injustice suffered by them, and report on this issue in its Mid-Term Report.**