

**PRE-SESSIONAL REPORT TO THE COUNTRY REPORT TASK FORCE ON
THE UNITED KINGDOM**

MINORITY RIGHTS GROUP INTERNATIONAL

112th Session of the Human Rights Committee, Geneva
7 October – 31 October 2014

Minority Rights Group International (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.

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I. Executive Summary

1. This submission focuses on Articles 1, 7, 12 and 17 of the International Covenant on Civil and Political Rights ('ICCPR'). More specifically, it will outline in brief the ways in which the Government of the United Kingdom of Great Britain and Northern Ireland ('UK') has failed to meet its obligations under the Covenant through its treatment of the former inhabitants of the Chagos Islands (the 'Chagos Islanders'). Minority Rights Group International ('MRG') seeks the inclusion of these issues in the List of Issues to be taken up in connection with the examination of the UK by the Human Rights Committee in its 112th Session, to be held from 7-31 October 2014 in Geneva.
2. The UK has failed to meet its obligations under the ICCPR in regards to its treatment of the Chagos Islanders. Despite this Committee's recommendations in 2001¹ and 2008 that the British Indian Ocean Territory (BIOT) be included in the country's Periodic Report, the UK has continued to be non-compliant. In 2008, this Committee made the following recommendation:

*“The State party should 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 should consider compensation for the denial of this right over an extended period. It should also include the Territory in its next periodic report.”*²

In spite of this recommendation, the UK's Seventh Periodic Report³ in 2012 did not include the BIOT, or address the various violations of the ICCPR suffered by the Chagos Islanders, as requested by the Human Rights Committee.

3. This submission emphasises the shortcomings in the UK's compliance with its fundamental human rights obligations under Articles 1, 7, 12, and 17 of the ICCPR. The submission provides an analysis of the issues, including legal frameworks, and highlights inadequacies in the UK's previous periodic reports. MRG respectfully requests that the issues presented below be included by the Committee in its List of Issues. Further, at the end of the document, MRG has included suggested recommendations to the state party to improve compliance with its obligations and duties under the ICCPR.

¹ The Committee recommended: “The State party should, to the extent still possible, seek to make exercise of the Ilois’ [Chagos Islanders’] right to return to their territory practicable. It should consider compensation for the denial of this right over an extended period. It should include the territory in its next periodic report.” International Covenant on Civil and Political Rights [hereinafter “ICCPR”], Human Rights Committee [hereinafter “Committee”], *Concluding Observations of the Human Rights Committee, United Kingdom of Great Britain and Northern Ireland and Overseas Territory of Great Britain and Northern Ireland*, ¶ 38, U.N. Doc. CCPR/CO/73/UK (2001).

² ICCPR, HRC, *Concluding Observations of the Human Rights Committee, United Kingdom of Great Britain and Northern Ireland and Overseas Territory of Great Britain and Northern Ireland* [hereinafter “*Concluding Observations*”], ¶ 22, U.N. Doc. CCPR/C/GBR/CO/6 (2008).

³ UN Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: [Universal Periodic Review]: United Kingdom of Great Britain and Northern Ireland*, 8 March 2012, A/HRC/WG.6/13/GBR/1, available at: http://daccess-ddsny.un.org/doc/UNDOC/GEN/G12/116/92/PDF/G121169_2.pdf [accessed 24 June 2014].

II. ICCPR is applicable to the BIOT and should be included in the UK's Periodic Report

4. This Committee and the Government of the UK disagree over the applicability of the ICCPR to the BIOT. While the Human Rights Committee, in multiple Concluding Observations, has urged the UK to include the overseas territory in its periodic report⁴, the UK in a written response to the concluding observations of this Committee, replied that the ICCPR does not apply to the BIOT⁵. However, it is clear that the ICCPR is applicable to the BIOT and should be included, for a number of reasons. Firstly, the BIOT is an overseas territory under the control of the UK, and no reservations have been made by the UK in regards to the Covenant. Second, even if the State intends their written response claiming that the ICCPR does not apply to the BIOT, to qualify as a reservation⁶ this declaration of selective application should be declared invalid. According to Article 19(c) of the Vienna Convention on the Law of Treaties, a reservation may not be “incompatible with the object and purpose of the treaty.”⁷ Limiting the territories to which the ICCPR applies not only modifies the “object and purpose” of Article 2(1), but completely negates it, denying whole classes of people (those of the excluded territories) the ability to enjoy any of the rights enshrined in the ICCPR at all. This reservation is incompatible with the object of the entire treaty, since the Chagos Islanders belong precisely to the class of persons the Covenant is intended to protect and their exile is just the sort of action that it should prevent.
5. Third, even if the Committee does consider that a territorially selective application of the ICCPR is not presumptively invalid, it must nonetheless hold that certain rights - some of which we will argue below have been violated by the UK government - cannot be withheld from individuals living in the excluded territories. This is because the Committee has stated that reservations “that offend peremptory norms would not be compatible with the object and purpose of the Covenant.”⁸ The Committee specifically mentions freedom from cruel, inhuman, and degrading treatment, the right to culture, and the right to self-determination as guarantees that may not be eliminated by way of reservation. Thus, even if the UK government is correct in asserting that selective application is acceptable under the ICCPR,⁹ it is not correct in stating that it

⁴ This Committee has indicated that it considers the ICCPR to apply to the BIOT, and has urged the UK to “include the territory in its next periodic report.” *Concluding Observations*, ¶ 22.

⁵ In its written response to the concluding observations of this Committee, the UK government explained that “when, in 1976, the United Kingdom ratified the Covenant in respect of itself and certain of its Overseas Territories, it did not ratify it in respect of BIOT. It is for this reason...that the Covenant does not apply, and never has applied, to BIOT.” *The Queen (on the application of Louis Olivier Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs Rev1* (2006) EWHC 1038 (Admin) (11 May 2006).

⁶ Although it was not formally registered as a reservation, the UK’s declaration that the ICCPR does not apply to the BIOT should nonetheless be considered one and evaluated according to international law and to the Committee’s practice on reservations. According to General Comment 24, “[i]t is not always easy to distinguish a reservation from a declaration as to a State’s understanding of the interpretation of a provision, or from a statement of policy. Regard will be had to the intention of the State, rather than the form of the instrument. If a statement, irrespective of its name or title, purports to exclude or modify the legal effect of a treaty in its application to the State, it constitutes a reservation.” ICCPR, HRC, *General Comment 24* (52), *General comment on issues relating to reservations made upon ratification or in relation to declarations under article 41 of the Covenant* [hereinafter “*General Comment 24*”], ¶ 3, U.N. Doc. CCPR/C/21/Rev.1/Add.6 (1994).

⁷ *Vienna Convention on the Law of Treaties* [hereinafter “*Vienna Convention*”], art. 19(c), 23 May 1969, 1155 U.N.T.S. 331.

⁸ *General Comment 24*, ¶ 8

⁹ ICCPR, HRC, *Concluding Observations of the Human Rights Committee, United Kingdom of Great Britain and Northern Ireland, Addendum, Comments by the Government of the United Kingdom of Great Britain and*

therefore need not “report to the Committee in respect of that Territory.”¹⁰ This Committee, however, seems to already be treating the UK’s response as an invalid reservation by dismissing the UK’s inapplicability argument and insisting that the government include the BIOT in its next report to the Committee.

6. Lastly, the Committee has made clear that the UK may not cite “absence of a population” as grounds for the ICCPR being inapplicable in the BIOT¹¹. 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 believe¹² 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. In accordance with public international law, where the State exercises its control, authority or power abroad, there should be a presumption of extraterritorial reach of the State’s human rights obligations, in accordance with the purposes and objects of human rights treaties.

III. The UK’s Treatment of the Chagossians Constitutes a Violation of the Right to Self-Determination (Article 1)

7. The individuals exiled from the Chagos Islands constitute a people entitled to exercise the right to self-determination under Article 1, and the UK government’s exclusion of them from the BIOT prevents the Chagos Islanders from exercising that right. Article 1 guarantees to “all peoples...the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”¹³ All peoples are also guaranteed the right to, “for their own ends, freely dispose of their natural wealth... [and]...in no case may a people be deprived of its own means of subsistence.”¹⁴ The Chagossians are legally entitled to choose how to order their economic, social, and cultural affairs and, moreover, to do so freely and actively, and in consultation with the government in the case of state action affecting their internal self-determination. In practice, the Chagos Islanders are denied the ability to meaningfully, freely and actively, order their affairs.
8. The Chagos Islanders are currently barred from returning home by Orders-in-Council made by the Queen which “declared that no person has the right of abode in BIOT nor the right without authorisation to enter and remain there. The Chagossians were thus effectively exiled.”¹⁵ In addition to being restricted from participating, actively or otherwise, in the decisions regarding their ability to return home, the Chagos Islanders are also prevented from freely pursuing their economic, social and cultural development. The Chagossians live today in forced exile, mostly in Mauritius, with

Northern Ireland on the reports of the United Kingdom (CCPR/CO/73/UK) and the Overseas Territories, (CCPR/CO/73/UKOT) [hereinafter “*Addendum*”], ¶ 88, U.N. Doc. CCPR/CO/73/UK/Add.2 (2002).

¹⁰ *Id.*

¹¹ *Concluding Observations*, ¶ 22.

¹² *Id.*

¹³ ICCPR, art. 1.

¹⁴ *Id.*

¹⁵ *The Queen (on the application of Bancoult) v. Secretary of State for the Foreign and Commonwealth Affairs* (2007), [2007] EWCA Civ 498, para 11.

small communities in the Seychelles and the UK as well. They are completely barred from living on, or even visiting, any of their ancestral homelands and therefore are unable to organise their economic, social, and cultural affairs the way they were before their exile. Their poverty and marginalisation in Mauritius, a result of insufficient relocation assistance and compensation from the UK government,¹⁶ also limits the autonomy of their life in exile. The UK courts themselves have recognised that this situation constitutes a violation of their right to self-determination.¹⁷

9. In spite of this recognition, there have been troubling developments in the UK courts further restricting the Chagos Islanders' right to self-determination. As a result, the Chagossians will not be permitted to resume their former way of life and advance their community's economic, social and cultural affairs, in line with the values of the ICCPR. After successfully challenging the aforementioned Orders-in-Council prohibiting the population from returning to their home, the Chagossians' claims were finally rejected by the House of Lords in 2008. The Court 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."¹⁸
10. In addition to the judicial decisions barring the Chagos Islanders from returning to their homeland, in 2010 the UK created another barrier by designating the islands as part of the Chagos Marine Protected Area. The creation of this conservation area included the prohibition of anything but recreational fishing – a ban that would effectively deprive the Chagossians of their main source of livelihood. The subsequent publication of a confidential 2009 cable by the organization WikiLeaks has suggested that the UK government had been aware that it would make it "difficult, if not impossible, [for the Chagossians] to pursue their claim for resettlement on the islands if the entire Chagos Archipelago were a marine reserve."¹⁹ The cable further claimed that establishing a marine reserve would safeguard U.S. interests and maintain the strategic value of the BIOT, essentially by prohibiting the Chagos Islanders from pursuing their former way of life on the islands.²⁰

IV. The Continued Exile of the Chagos Islanders from their Homeland is an Act of Cruel, Inhuman, and Degrading Treatment (Article 7)

11. Forced evictions have been recognised as crimes against humanity, and may disclose inhuman and degrading treatment or punishment.

¹⁶ That the UK government failed to adequately assist the Chagossians' in the resettlement process has been recognised by the UK courts (*Chagos Islanders v. The Attorney General*, EWHC 2222 (QB), ¶ 154 (9 October 2003)), and the need for additional compensation has been recognised by this Committee (*Concluding Observations*, ¶ 38).

¹⁷ *R. v. Secretary of State for Foreign and Commonwealth Affairs*, ¶ 101.

¹⁸ See dicta of Lord Mance in *Bancoult 2*, para. 157.

¹⁹ BBC, 'Chagos Marine Park is lawful, High Court rules', 11 June 2013; The Guardian, 'US embassy cables: Foreign Office does not regret evicting Chagos islanders', 2 December 2010.

²⁰ The Court of Appeal found the WikiLeaks' cables to be admissible; however, the outcome of the case was not thought to have turned on the content of the cables. Therefore, the decision of the lower court to permit a Marine Protect Area was upheld. *Regina (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* (No 3) [2014] EWCA Civ 708; [2014] WLR (D) 237.

12. In their case²¹ lodged in the European Court of Human Rights ('ECtHR'), the Chagos Islanders asserted that the UK had violated Article 3 of the European Convention on Human Rights ('ECHR'), which prohibits torture and inhuman or degrading treatment or punishment. The degrading treatment occurred in regards to the decision-making process leading to the removal from the islands, the removal itself and the manner in which it was carried out, the reception conditions on their arrival in Mauritius and the Seychelles, the prohibition on their return, the refusal to facilitate return once the prohibition had been declared unlawful, and the refusal to compensate the Chagos Islanders for the violations which had occurred.
13. External sources confirm the anguish that characterises Chagossian life in exile.²² The UK High Court, for example, noted that the Chagossians...

*"...were uprooted from the only way of life which they knew and were taken to Mauritius and the Seychelles where little or no provision for their reception, accommodation, future employment and well-being had been made. Ill-suited to their surroundings, poverty and misery became their common lot for years... Their poverty, sadness and sense of loss and displacement impel their continuing desire to return to the islands which were their home."*²³

Journalistic accounts of life in exile also consistently mention the "slum conditions,"²⁴ "poverty,"²⁵ and "racism"²⁶ that the Chagossians face in Mauritius and the Seychelles.

14. In 2012, the Chagossians' case before the ECtHR was dismissed on procedural grounds, and the substantive merits of the claims were never addressed by the court. However, as a result of the continued anguish and mental suffering that accompanies the Chagossians' forced exile upon the orders of the UK government; the UK continues to commit a gross violation of Article 7. Fair and adequate compensation ought to be provided to the Chagossians to supplement their time in forced exile from their homeland and to compensate for the degrading and inhuman treatment suffered by the population.

V. The State Deprived the Chagos Islanders of the Right to Enter their own Country (Article 12)

15. The UK's actions, specifically the decision to remove the population not only from Diego Garcia but also from the outlying islands, without any consultation or resettlement provision, have violated the Chagos Islanders' right to enter their own country. The UK's tactics included compulsorily removing the Chagossians from the islands, causing islanders who had visited Mauritius to become stranded there by

²¹ ECtHR, *Chagos Islanders v. United Kingdom* (Dec. No. 35622/04) (2012).

²² Although in *Quinteros* and *Schedko* the Committee did not require objective verification of the suffering and anguish of those recognized as victims of an article 7 violation, external confirmation of the injury to the Chagossians' "dignity and...mental integrity" only bolsters the argument that the UK government is in violation of article 7.

²³ *Chagos Islanders v. the Attorney General*, EWHC 2222, ¶ 154 (9 October 2003).

²⁴ BBC News Online, "Diego Garcia Islanders Battle to Return,"

<http://news.bbc.co.uk/1/hi/world/africa/2380013.stm> (31 October 2002) (last visited 23 June 2014).

²⁵ David White, "Exiled Chagos Islanders Make Painful Return Visit," *The Guardian*, 20 March 2006.

²⁶ Paul Harris and Martin Bright, "Exiled from Paradise to Crawley New Town," *The Guardian*, 27 July 2003.

refusing them re-entry to the islands, and closing down the plantations on the islands which provided their employment. The UK's continued exile of the Chagos Islanders from their homeland is a persistent and serious violation of their right to return to their own country.

16. Article 12 of the ICCPR provides everyone the right to enter and leave his or her own country. It states that anyone who is lawfully within the territory of a State has a right of movement within that territory. It also prohibits arbitrary deprivation of a person's rights to enter their own country. The Chagossians challenged the abolition of their right to return in the UK Courts (*Bancoult 2*).²⁷ The challenge was successful both in the High Court and the Court of Appeal, the latter holding that the 2004 Orders-in-Council amounted to an abuse of power by the government because they denied the islanders' rights to return to their homeland. After considering the UK's periodic report, the Committee affirmed the decision of the UK court and stated in its Concluding Observations that:

*"The Chagos islanders who were unlawfully removed from the British Indian Ocean Territory should be able to exercise their right to return to the outer islands of their territory. (art. 12) [The State] should consider compensation for the denial of this right over an extended period."*²⁸

However, the UK government then received permission to appeal the decision to the House of Lords. In 2008, the Court rejected the Chagos Islanders' claim for relief, on the basis of the matter being one for Parliament, not for the judiciary. The Chagossians' right to return to their country was never considered by the Court.

17. This Committee "considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable."²⁹ Article 12, paragraph 3, "authorizes the State to restrict these rights only to protect national security, public order, public health or morals and the rights and freedoms of others."³⁰ As per General Comment 27 on Article 12, the provision in paragraph 3

*"...clearly indicates that it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected."*³¹

Accordingly, the UK government may only justify restricting the Chagos Islanders' right to enter their own country for a limited number of reasons. It is not sufficient that leasing the BIOT to the United States for military use serves the purpose of national security, but rather the Chagossians' forceful eviction must have been

²⁷ *R (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs (No. 2)* [2008] UKHL 61 ('Bancoult 2').

²⁸ *Concluding Observations*, ¶ 22.

²⁹ ICCPR, HRC, *General Comment 27, General comment on the freedom of movement under article 12 of the Covenant* [hereinafter "*General Comment 27*"], ¶ 21, U.N. Doc. CCPR/C/21/Rev.1/Add.9 (1999).

³⁰ *Id.* para. 11.

³¹ *Id.* para. 14.

necessary to protect national security. Moreover, by prohibiting the Chagossians' return to the territory, the State's acts are disproportionate and an overly intrusive mechanism to achieving their purpose.

VI. The State Subjected the Chagos Islanders to an Unjustified Interference of Privacy, Family, and Home (Article 17)

18. Article 17 of the ICCPR prohibits the arbitrary and unlawful interference with a person's privacy and family. The forced eviction of the Chagos Islanders by the UK government violates Article 17, as it deprives their right to privacy, home and family lives and their right to the peaceful enjoyment of their possessions. "When families and communities are torn apart by eviction, the right to family life is infringed... [and] the rights to privacy and to security of the home are violated."³² The State's original removal of the Chagossians constituted an unlawful interference with these rights. The Court declared the removal Ordinance invalid in *Bancoult I* because "the removal or subsequent exclusion of the population 'for reasons unconnected with their collective wellbeing' could not be a legitimate purpose of the power of colonial governance exercisable by Her Majesty in Council."³³
19. The State has continued such interference by prohibiting the Chagos Islanders' return to their homeland and effectively exiling the population. The continued exile of the Chagossians is, however, permitted by law due to the decision in the House of Lords dismissing the Chagossians' claim for relief. Nonetheless, in this Committee's view, the expression "arbitrary interference" can apply to interferences provided for under the law.³⁴ General Comment 16 on the right to respect of privacy, family and home life states "The introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances."³⁵ Therefore, despite the fact that the State's interferences were lawful, the actions constitute an arbitrary interference as the acts were grossly disproportionate in prohibiting the Chagos Islanders' return.
20. Furthermore, it is this Committee's view in the General Comment to Article 17 that "State party reports should also contain information on complaints lodged in respect of arbitrary or unlawful interference...as well as the remedies provided in such cases."³⁶ Formal complaints have been lodged in the UK Courts in regards to the original removal and continued exile of the Chagos Islanders, however, the UK's state report fails to mention the British Indian Ocean Territory or the Chagos Islanders' as a population.³⁷

³² Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, *Fact Sheet No.25, Forced Evictions and Human Rights*, Vienna (1993).

³³ The Court declared the removal and subsequent exclusion of the population "an abuse of power". *R (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs* (No. 2), ¶ 29 [2008].

³⁴ ICCPR, HRC, *General Comment 16, General comment on the right to respect of privacy, family, home and correspondence, and protection of honour and reputation under article 17 of the Covenant* [hereinafter "General Comment 16"], ¶ 4, U.N. Doc. HRI/GEN/1/Rev.9 (Vol.I) (1988).

³⁵ *Id.*

³⁶ *Id.* para.6.

³⁷ UN Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: [Universal Periodic Review]: United Kingdom of Great Britain and*

VII. Recommendations

21. MRG recommends, based on the preceding observations, the following:

- (1) That the Government include the British Indian Ocean Territory in its next periodic report, so that the Human Rights Committee may monitor the implementation of the ICCPR in the BIOT;³⁸
- (2) That the Government act promptly in applying the ICCPR to the British Indian Ocean Territory;
- (3) That the Government take immediate steps to allow the Chagos Islanders to exercise their right to return to their homeland, including conducting an independent and transparent public consultation on the possible means and arrangements for return to the islands, with the full participation of the Chagos Islanders, civil society and other stakeholders;
- (4) That the Government remove barriers that inhibit the Chagos Islanders from returning to their homeland, such as the Chagos Marine Protected Area, which was created with the intent to deprive the Chagossians of the ability to return to their land;
- (5) That the Government open a good-faith dialogue with the Chagos Islanders to ensure their full participation in all decision-making processes concerning their lands;
- (6) That the Government consults the Chagos Islanders in regards to the state action affecting their right to self-determination, and allow their free and active choices in how to order their economic, social, and cultural affairs;
- (7) That the Government provide Chagos Islanders with adequate compensation for the denial of their right to return to their homeland over an extended period;
- (8) That the Government act immediately to prevent further degrading treatment by means of ending the exile of the Chagos Islanders from their homeland, and facilitating their return to the territory in accordance with principles of good-faith.

Northern Ireland, 8 March 2012, A/HRC/WG.6/13/GBR/1, available at: http://daccess-ddsny.un.org/doc/UNDOC/GEN/G12/116/92/PDF/G121169_2.pdf [accessed 24 June 2014].

³⁸ *Concluding Observations*, ¶ 22.