

# 13<sup>TH</sup> SESSION OF THE WORKING GROUP OF THE UNIVERSAL PERIODIC REVIEW - MAY 2012

## UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

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minority  
rights  
group  
international

**RIGHTS VIOLATIONS:** Freedom of movement, self-determination

### SUGGESTED RECOMMENDATIONS

It is recommended that the UK Government:

1. Abide by all recommendations issued by the Human Rights Committee and the Committee on the Elimination of Racial Discrimination, issued since the last review of the UK under the UPR mechanism, not least:
  - To withdraw discriminatory restrictions on Chagossians (Ilois) from entering Diego Garcia or other Islands on the BIOT
  - To provide for the right of return of the Ilois' to the Chagos Islands.
  - To consider appropriate levels of compensation for the denial of this right over several decades.
  - To include the territory in all periodic reports.
2. Repeal the two 2004 Orders in Council
3. Consult with and seek the free, prior and informed consent of the Chagossians in relation to the return and compensation process.

### BACKGROUND - CHAGOS ISLANDERS

Up until the 1960s, the Chagos Islands in the Indian Ocean were inhabited by the Ilois (also known as Chagossians), who were born there, as were their parents and many of their ancestors. In the early 1960s, the Government of the United Kingdom resolved to establish a major military base on the largest of the Chagos Islands, Diego Garcia. To facilitate the creation of the base, in 1965 the Chagos archipelago (including Diego Garcia) was divided from Mauritius, then a British colony, and constituted as a separate colony called the British Indian Ocean Territory ('BIOT') by way of Order in Council. This was criticized in General Assembly Resolution 2066 XX of December 1965 which underlined that the UK should take "no action which would dismember the Territory of Mauritius and to violate its territorial integrity".

Between 1967 and 1973, the United Kingdom removed the inhabitants of the Chagos Islands by refusing to let them return from visits to Mauritius, often visits provided for by the government, and closing down the plantations which provided for their employment. **This constituted a violation of Article 12 of the International Covenant on Civil and Political Rights which states that no one shall be arbitrarily deprived of the right to enter his own country.**

In 1971, an 'Immigration Ordinance' was issued by the Commissioner of BIOT requiring the compulsory removal of the population territory to Mauritius. The Ordinance also provided that no person could enter the territory without a permit. The last inhabitants were removed from the Chagos Archipelago in 1973. The Chagossians have never been appropriately consulted about their removal from the island. Subsequent to their removal, a treaty was concluded between the US and the UK by which the island of Diego Garcia was leased to the American military, which has constructed and operates a military base there and was subsequently found to have been used a transit point for secret rendition flights.

The UK government failed and continues to fail to make adequate provision for their housing, employment, healthcare, social needs and community facilities. As a result many Chagossians became impoverished and marginalised.

The UK government has been criticised multiple times by UN treaty bodies for its stance of not including reference to the British Indian Ocean Territories in its reports.

## **LEGAL ACTIONS**

The Chagossians have brought a number of legal actions in the UK courts challenging their expulsion. In 2000, the High Court struck down the relevant part of the Immigration Ordinance on the grounds that the relevant power contained within 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 a new Ordinance which allowed 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.

A second case was brought challenging the legality of the new arrangement including the provision where (a) no person has the right to abode in the BIOT and (b) that no person is entitled to enter 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."

An application to the European Court of Human Rights - alleging breaches of Articles 3, 6, 8 and 13 and Article 1 of Protocol 1 - is currently pending for the Court review.

## UN TREATY BODY RECOMMENDATIONS TO THE UK RELATING TO THE CHAGOS ISLANDERS

	OBSERVATION	RECOMMENDATION
<b>Human Rights Committee</b>		
<b>HRC, 2008</b> CCPR/C/GBR/CO/6	The Committee regrets that, despite its previous recommendation, the State party has not included the British Indian Ocean Territory in its periodic report because it claims that, owing to an absence of population, the Covenant does not apply to this territory. It takes note of the recent decision of the Court of Appeal in Regina (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs (No 2) (2007) indicating 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 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.
<b>HRC 2001</b> (CCPR/CO/73/UKOT)	38. Although this territory was not included in the State party's report (and the State party apparently considers that, owing to an absence of population, the Covenant does not apply to this territory), the Committee takes note of the State party's acceptance that its prohibition of the return of Ilois who had left or been removed from the territory was unlawful.	<b>The State party should, to the extent still possible, seek to make exercise of the Ilois' 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.</b>
<b>Committee on the Elimination of Racial Discrimination</b>		
<b>CERD 2011</b> CERD/C/GBR/CO/18-20	The Committee is deeply concerned at the State party's position that the Convention does not apply to the British Indian Ocean Territory (BIOT). The Committee further regrets that the BIOT (Immigration) Order 2004 not only bans Chagossians (Ilois) from entering Diego Garcia but also bans them from entering the outlying islands located over one hundred miles away, on the grounds of national security (articles 2 and 5(d)(i)). The Committee reminds the State party that it has an obligation to ensure that the Convention is applicable in all territories under its control. In this regard, the Committee urges the State party to include information on the implementation of the Convention in the British Indian Ocean Territory in its next periodic report.	<b>The Committee recommends that all discriminatory restrictions on Chagossians (Ilois) from entering Diego Garcia or other Islands on the BIOT are withdrawn.</b>
<b>CERD, 2003</b> CERD/C/63/CO/11	c) no information on implementation of ICERD in British Indian ocean territory was provided in state's report	<b>The Committee looks forward to receiving in its next periodic report information on the measures taken by the State party 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.</b>