

**Shadow Report to the UN Human Rights Committee
with respect to the Seventh Periodic Report of the United Kingdom of Great Britain and
Northern Ireland**

114th Session, Geneva, 29 June- 24 July 2015



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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 breaches of Articles 1, 7, 12 and 17 of the International Covenant on Civil and Political Rights ('ICCPR'). The United Kingdom of Great Britain and Northern Ireland ('UK') has failed to meet its obligations under the ICCPR in regards to its treatment of the former inhabitants of the Chagos Islands (the 'Chagos Islanders') in the British Indian Ocean Territory ('BIOT'). Those inhabitants were removed from the islands between 1967 and 1973 and, but for a four year period between 2000 – 2004 in which no one returned to the islands, the inhabitation of the islands has been prohibited by Orders of the UK executive. Furthermore, the UK Government has failed to comply with or address the Human Rights Committee's Concluding Observations dated 6 December 2001¹ and 30 July 2008² in respect of this treatment.
2. MRG requests that the failure to address the concerns in the 2001 Concluding Observations and the 2008 Concluding Observations be raised by the Human Rights Committee during its examination of the UK in its 114th Session, to be held from 29 June- 24 July 2015 in Geneva.

II. Background³:

3. The Chagos Islands have been under British control since 1814. By 1960 the population was approximately 1,000⁴.
4. In 1964 discussions began between the UK and US Governments to establish a US Naval base in the region and remove the inhabitants. On December 20, 1966, the UK and US Governments agreed that the latter should have use of the islands of BIOT for defence purposes for an indefinite period with provision for a review in 2016. The UK Government acquired the land and interests held by a plantation company that owned most of the property on the islands. After obtaining congressional approval, the US Defence Department gave notice that Diego Garcia, the largest of the Chagos Islands, would be required in July 1971.
5. The evacuation of the islands was effected between 1967 and 1973. Some islanders were prevented from returning after visits elsewhere, others were transferred either to Mauritius or to the Seychelles. For a while some islanders were given alternative accommodation on outlying islands. In 1971, the US construction teams arrived on Diego Garcia. Houses were demolished. No force was used but the islanders were told that the plantation company on the island was closing down its activities and that unless they accepted transportation elsewhere, they would be left without supplies.
6. On 16 April 1971, the UK's BIOT Commissioner enacted the Immigration Ordinance 1 of 1971 which made it unlawful, and a criminal offence, for anyone to enter or remain in the territory without a permit.

¹ 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 [hereafter '2001 Concluding Observations'] 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 [hereafter '2008 Concluding Observations'], CCPR/C/GBR/CO/6 (2008).

³ Adopted with adaptations from the European Court of Human Rights summary in *Chagos Islanders v UK* (2013) EHRR SE15.

⁴ Gifford & Dunne (2014) *Population Space and Place* 20:37-49

7. The islanders suffered miserable conditions on being uprooted, having lost their homes and livelihoods. In 1973, the United Kingdom paid £650,000 to the newly independent Government of Mauritius to assist with the costs of resettlement. This sum was distributed, with interest, by the Mauritius authorities in 1977 after discussions on how best to use the money. Those islanders rejected a proposed resettlement plan in favour of a cash distribution to 595 families. Importantly, however, no compensation was paid to the evacuees on the Seychelles.
8. Further, in February 1975, a case was brought in the High Court in London concerning the expulsions. In February 1978, the Government made an open offer to settle the claims of all the islanders. In March 1982, a further settlement was reached in which the UK Government agreed to pay £4 million to the Mauritian Government, which in turn agreed to contribute land to the value of £1 million. A trust fund was set up by the Mauritius Government and between 1982 and 1984 and payment was made to 1,344 Chagossians in Mauritius of £2,976 each. The Mauritius Government provided some low-cost housing.
9. Again, nothing was paid to the 232 Chagossians who were removed to the Seychelles⁵, who played no part in the negotiations and who did nothing to compromise their rights.
10. In 2000 another action was brought in London, *R. (on the application of Bancoult) v Secretary of State for the Foreign and Commonwealth Office*⁶, challenging the validity of the 1971 Immigration Ordinance and on 3 November 2000 the divisional court upheld that challenge and found that the 1971 Immigration Ordinance was invalid. As a result, the Commissioner of BIOT revoked the 1971 Immigration Ordinance and made the BIOT Immigration Ordinance 2000, which contained a provision that restrictions on entry or residence should (with the exception of Diego Garcia) not apply to anyone who was a British Dependent Territories Citizens by virtue of connection with BIOT. Entry to Diego Garcia remained subject to permit.

III. Existing Concluding Observations and Responses:

11. Against this background the Human Rights Committee's 2001 Concluding Observations read as follows at paragraph 38:

British Indian Ocean Territory.

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 [the islanders] who had left or been removed from the territory was unlawful.

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.

⁵ Gifford & Dunne (2014) *Population Space and Place* 20:37-49

⁶ [2001] Q.B. 1067

12. This was reflective of the practical difficulties to be faced by the Islanders in returning and rebuilding on the islands; in the four years which followed the 2000 Ordinance permitting return to all islands except Diego Garcia, no islanders returned.
13. A claim for a right to return to Diego Garcia was rejected along with a further claim for compensation in *Chagos Islanders v. The Attorney General* in 2003⁷. The Mauritius-based islanders were considered to have settled their claims and the claims of those islanders on the Seychelles were considered to be time-barred.
14. Instead of addressing the concerns in the 2001 Concluding Observations, on 10 June 2004 the BIOT (Constitution) Order 2004 was issued. It declared that no person had the right of abode in the territory or the right to enter it except as authorised. The same day there passed into law the BIOT (Immigration) Order 2004, repealing the 2000 Ordinance. This prohibited anyone from entering the territory without a permit from the immigration officer (members of the armed forces, public officers and contractors working on the American base were exempt or deemed to hold a permit). On 15 June 2004, the UK Government issued a statement announcing the abandonment of a feasibility study into resettlement.
15. Judicial review proceedings were brought seeking to challenge the 2004 orders barring the return to the islands as unlawful in *R. (on the application of Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2)*⁸. That challenge was successful in the UK Court of Appeal whose decision was referred to in the Human Rights Committee's Concluding Observations in 2008.
16. The 2008 Concluding Observations read as follows at paragraph 22:

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.

17. However, by the time the UK responded, the UK's Supreme Court had permitted an appeal⁹. The UK's response to these Concluding Observations is set out at paragraph 206 of the Seventh Periodic Report of the UK¹⁰ dated 29 April 2013. It is as follows:

⁷ [2003] EWHC 2222

⁸ [2006] EWHC 1038 (Admin)

⁹ [2009] 1 AC 453

¹⁰ ICCPR, *Seventh Periodic Report of the United Kingdom, the British Overseas Territories and the Crown Dependencies*. CCPR/C/GBR/7 (2013).

Reply to the recommendations contained in paragraph 22 of the concluding observations

206. In 2008 the Law Lords (now the Supreme Court of the United Kingdom) upheld the validity of the British Indian Ocean Territory (BIOT) 2004 Orders in Council. This means that no person has the right of abode in BIOT or the right to enter the Territory unless authorised. A case has been brought against the UK at the European Court of Human Rights around these issues. The UK government has not yet been informed when to expect a judgement.

18. The response, however, does not address the concerns in the Concluding Observations.
19. Firstly, the Judgment of the Supreme Court does not alter the obligations of the UK to comply with the requirements and Concluding Observations of the Human Rights Committee.
20. Secondly, the Judgment of the Supreme Court does not determine whether the removal of the Islanders was legal in 1968. Instead, the court was asked to consider whether it was illegal to reimpose the ban on inhabitation in 2004 given that no Islanders had actually returned in the period between 2000 and 2004. A 3-2 majority of the Supreme Court held that, given the absence of the Islanders since 1968, it was permissible to reimpose the ban on inhabitation. However, it is clear that the court would have ruled against the removal of the Islanders at the time. Lord Hoffman, a member of the majority, held at paragraph 53:

If we were in 1968 and concerned with a proposal to remove the Chagossians from their islands with little or no provision for their future, that would indeed be a profoundly intrusive measure affecting their fundamental rights.

21. Finally, the Chagossians are also now seeking to overturn the 2008 decision of the Supreme Court, alleging that documents which should have been disclosed were withheld by the UK Government and that had these been disclosed at the time the Court's decision would have been different. The application is due to be heard by the Supreme Court on 22 June 2015¹¹.
22. The Human Rights Committee is able to, and has, formed a holistic conclusion about the situation of the Chagossians not based on how matters are now, with the islands uninhabited, but on how they ought to have been since 1967. It has formed the view that the removal of the Islanders was an impermissible breach of their rights and has concluded that they should be allowed to return.
23. The UK refers to a case was brought in the European Court of Human Rights and heard in 2013¹² which dismissed the Chagos Islanders claims on the basis that compensation had been received by the Mauritius-based islanders and the Seychelles-based islanders were time-barred.
24. The 2001 and 2008 Concluding Observations of the Human Rights Committee and their recommendation that the Islanders should be allowed to return are not limited by these decisions, particularly in relation to the procedural time-bar argument raised

¹¹ *Bancoult 2* - <https://www.supremecourt.uk/cases/uksc-2015-0021.html>

¹² (2013) 56 E.H.R.R. SE15

against the Seychelles-based islanders. The factors purporting to bar the claims of the Islanders were in existence at the time both Concluding Observations and the recommendation to allow the return was made. The UK has not followed that recommendation.

25. In a further collateral attempt to prevent the reinhabitation of the Chagos Islands, the UK declared a Marine Protection Area surrounding the islands in 2010. However, the UN's Arbitration Tribunal in the case of *The Republic of Mauritius v The UK* determined on 18 March 2015 that such a declaration was breach of the UK's international obligations to Mauritius and in breach of the 1982 UN Convention on the Law of the Sea¹³.
26. Following this decision, the declaration of the MPA is also being challenged in the UK courts in litigation due to be heard on 22 June 2015 in the Supreme Court.¹⁴
27. It is of note that in the course of the International Arbitration proceedings before the Tribunal, the Attorney-General of England and Wales, the Rt. Hon. Dominic Grieve QC MP, made the following statement regarding the Chagossian population:

“We regret very much the circumstances in which they were removed from the islands and recognise that what was done then should not have happened.”

III. ICCPR is applicable to the BIOT and should be included in the UK's periodic report

28. 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 report¹⁵, the UK in a written response to the concluding observations of this Committee, replied that the ICCPR does not apply to the BIOT¹⁶. 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 reservation¹⁷ this declaration of selective application should

¹³ *The Republic of Mauritius v UK In the matter of the Chagos Marine Protected Area Arbitration* 18.3.15 paragraphs 536 -541

¹⁴ Bancoult 3 - This is an appeal a Court of Appeal decision dismissing Mr Bancoult's challenge to the MPA.

¹⁵ 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.

¹⁶ 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).

¹⁷ 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

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.”¹⁸ 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.

29. 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.”¹⁹ 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,²⁰ it is not correct in stating that it therefore need not “report to the Committee in respect of that Territory.”²¹ 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.
30. 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 BIOT²². 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 believe²³ 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.

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).

¹⁸ *Vienna Convention on the Law of Treaties* [hereinafter “*Vienna Convention*”], art. 19(c), 23 May 1969, 1155 U.N.T.S. 331.

¹⁹ *General Comment 24*, ¶ 8

²⁰ 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 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).

²¹ *Id.*

²² *Concluding Observations*, ¶ 22.

²³ *Id.*

IV. The Rights Violated

Article 1 Self-determination

31. 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."²⁴ 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."²⁵ 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.
32. The Chagossians live today in forced exile. 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. The UK courts themselves have recognised that this situation constitutes a violation of their right to self-determination.²⁶

Article 7- Freedom from degrading treatment

33. The degrading treatment occurred in the unilateral 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 Seychelles-based Chagos Islanders for the violations which occurred.
34. External sources confirm the anguish that characterises Chagossian life in exile.²⁷ 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."²⁸

35. Journalistic accounts of life in exile also consistently mention the "slum conditions,"²⁹ "poverty,"³⁰ and "racism"³¹ that the Chagossians face in Mauritius and the

²⁴ ICCPR, art. 1.

²⁵ *Id.*

²⁶ *R v Secretary of State for Foreign and Commonwealth Affairs*, at para 101

²⁷ 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.

²⁸ *Chagos Islanders v. the Attorney General*, EWHC 2222, ¶ 154 (9 October 2003).

²⁹ 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).

Seychelles.

36. As stated above, the Islanders currently living on the Seychelles have received no compensation for this treatment.

Article 12 – Right to enter one’s own country

37. 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.
38. 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. 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.”³² 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.”³³ 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.”³⁴

39. 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’ eviction must have been *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.

Article 17 - Right to privacy, family and home

40. Article 17 of the ICCPR prohibits the arbitrary and unlawful interference with a person’s privacy and family. “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.”³⁵ In the circumstances described above, the State’s original removal of the Chagossians and their continued exile constitutes a clear and unjustified interference with these rights.

V. Recommendations

³⁰ David White, “Exiled Chagos Islanders Make Painful Return Visit,” *The Guardian*, 20 March 2006.

³¹ Paul Harris and Martin Bright, “Exiled from Paradise to Crawley New Town,” *The Guardian*, 27 July 2003.

³² 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).

³³ *Id.* para. 11.

³⁴ *Id.* para. 14.

³⁵ 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).

37. MRG requests that the Human Rights Committee include in its Concluding Observation recommendations that the State Party take the following action:

- (1) That the State Party include the BIOT in its next periodic report, so that the Human Rights Committee may monitor the implementation of the ICCPR in the BIOT;
- (2) That the State Party, recognising that a recent report³⁶ has assessed resettlement to be feasible, take immediate steps to allow the Chagos Islanders to exercise their right to return to their homeland, including consulting publicly as to the possible means and arrangements for return to the islands, with the full participation of the Chagos Islanders.
- (3) 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;
- (4) 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;
- (5) 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;
- (6) That the Government provide Chagos Islanders with adequate compensation for the denial of their right to return to their homeland over an extended period;
- (7) 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.

³⁶ Feasibility study for the resettlement of the British Indian Ocean Territory. 31 January 2015. KPMG Consultants <http://qna.files.parliament.uk/ws-attachments/178757/original/Feasibility%20study%20for%20the%20resettlement%20of%20the%20British%20Indian%20Ocean%20Territory%20Volume%201.pdf>