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MINORITY RIGHTS GROUP INTERNATIONAL

Submission to the United Nations

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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. PURPOSES OF THIS SUBMISSION

This submission has been prepared by Minority Rights Group International (MRG) in advance of the review of The United Kingdom of Great Britain and Northern Ireland (UK) by the Universal Periodic Review at its 27th session. It focuses on the behaviour of the UK Government towards the Chagos Islanders in light of its obligations under the international law and also includes MRG's recommendations on how the UN should encourage the UK to address these issues.

II. BACKGROUND AND FRAMEWORK

1. In 1965, the UK separated the Chagos archipelago from Mauritius to form a separate colony called the British Indian Ocean Territory ('BIOT') and agreed that the United States of America (US) could establish a military base on Diego Garcia, the largest of the Chagos Islands. At the time, the Chagos Islands were home to the Ilois (also known as Chagossians), a community of indigenous people numbering around 1,500 who, along with their parents and many of their ancestors, were born there.
2. Between 1967 and 1973, the UK removed the Ilois from the Chagos Islands by, *inter alia*, refusing to allow the Chagossians to return from visits to Mauritius and by removing employment by acquiring, and closing down, the plantation company which provided for their employment. In 1971 the Commissioner of BIOT issued an 'Immigration Ordinance' that required the compulsory removal of the entire population of BIOT to Mauritius and the Seychelles. The Ordinance further provided that no person would be allowed to enter BIOT without a permit. In effect, the Chagossians were left on the docksides of Mauritius or the Seychelles without adequate provision of housing, employment, healthcare, social and community facilities or compensation.
3. Since their removal, the Chagossians have tried to seek recourse through legal avenues. In 2000, the UK High Court, in the first legal case to consider the Chagos Islands, quashed the 1971 Immigration Ordinance that required the removal of the Chagossians. The Court held that the BIOT, which was given the power to legislate for the 'peace, order and good government' of the territory, did not have the power to exile a people from their homelands.¹
4. Initially in response, the UK Government passed a new Ordinance allowing inhabitants to return to the outer islands of the archipelago while continuing to exclude inhabitants from Diego Garcia. However, in 2004 the Government passed the BIOT (Constitution) Order and the BIOT (Immigration) Order, which officially exiled the Chagossians once again,

¹ *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2001] QB 1067.

‘declar[ing] that no person has the right of abode in BIOT nor the right without authorization to enter and remain there’.²

5. A second case challenged the legality of the 2004 Orders, including the provisions that (a) no person had the right to abode in the BIOT and (b) that no person was entitled to enter BIOT without authorization.³ The challenge was successful at both the High Court and the Court of Appeal, the latter holding that the 2004 Orders amounted to an abuse of power because they infringed on the rights of the Chagossians to return to their homeland.⁴
6. On an appeal brought by the UK Government, the then House of Lords overturned the decision, holding that this was a matter of concern to the Parliament and not one for the courts to decide.⁵ One of the Law Lords, in dissent, supported the Chagossians stating 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’.⁶
7. The then House of Lords decision was subsequently challenged before the now Supreme Court, with the Chagossians claiming that key evidence related to a feasibility study on resettlement was withheld by the Government during the earlier litigation.⁷ In particular, it was argued that new documents, released under the Freedom of Information Act, suggested that an academic had been paid by the Foreign Office to critique the original draft of the study, which in reality was more favourable to the return of the Chagossians than the final version of the feasibility study.⁸ However, in 2016, the Supreme Court ruled in favour of the UK Government. It held that there was no probability that the court would have made a different decision if it had seen the papers.⁹
8. The Chagossians also brought their case to the European Court of Human Rights (‘ECtHR’) in 2012, alleging breaches of Articles 3 (*prohibition of torture*), 6 (*right to fair trial*), 8 (*right to respect for private and family life*) and 13 (*right to an effective remedy*) and Article 1 of Protocol 1 (*right to protection of property*) of the European Convention on Human Rights.¹⁰ The Court decided in *Chagos Islanders v. United Kingdom* that even though the removal of the Chagossians was inappropriate, the application was inadmissible since domestic courts had definitively settled

² *R (Bancoult) v. Secretary of State for the Foreign and Commonwealth Affairs (No 2)*, [2007] EWCA Civ 498, para. 11.

³ British Indian Ocean Territory (Constitution) Order 2004, available at: <http://www.worldstatesmen.org/BIOT2004.PDF>, accessed on 27 June, 2011.

⁴ *R (Bancoult)*, *supra* note 2

⁵ *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No.2)* [2008] UKHL 61

⁶ *Ibid* para 157

⁷ *R (on the application of Bancoult No 2) v Secretary of State for Foreign and Commonwealth Affairs* [2015] UKSC 2015/0021

⁸ FOI release: Chagos resettlement’ (*Gov.uk*) <<https://www.gov.uk/government/publications/foi-release-chagos-resettlement>> accessed 11 May 2016

⁹ *R (on the application of Bancoult No 2) v Secretary of State for Foreign and Commonwealth Affairs* [2015] UKSC 2015/0021, para. 65

¹⁰ *The Chagos Islanders v UK*, Application no 35622/04

the issue.¹¹ The ECtHR found that the Chagossians had lost their right to bring any further claims because they had accepted and received compensation.¹² However, of the Chagossians living in Mauritius, only 1,344 had received compensation, which totalled £2,976 per person and no compensation was paid to any Chagossians living in the Seychelles.¹³ Recipients were also required to sign an English-language document upon receipt of the compensation waiving their right to further compensation and the right of abode; which many could not understand because they were either illiterate, Creole-speaking, or generally did not understand the intent behind the document they were signing.¹⁴

9. In 2010, the UK declared the Chagos archipelago a Marine Protection Area, which prohibits any fishing or deep-sea mining within its boundaries.¹⁵ The Chagossians challenged the creation of Chagos Marine Protection Area on the basis that it was created for an improper purpose as it would effectively prohibit them returning because fishing is their primary livelihood. To do so, they sought to rely on cables or their copies which the High Court ruled the Diplomatic Privileges Act of 1964 prohibited from being admitted as evidence in the case.¹⁶ The High Court dismissed the case.

III. THE APPLICABILITY OF THE INTERNATIONAL LAW TO BIOT AND UK ACTS AFFECTING THE CHAGOSSIANS

10. The UK is party to most international human rights agreements, and its obligations extend to extraterritorial territories where it has effective control. Any reservation made by the UK that limits the scope of the applicability of international law, such as a limitation on which territories the UK's international obligations apply to, would be contrary to international law and to Article 19(c) of the Vienna Convention on the Law of Treaties, according to which a reservation may not be "incompatible with the object and purpose of the treaty."¹⁷
11. Furthermore, the UK courts have accepted jurisdiction over the events that took place on the Chagos Islands. Under international law the BIOT is a UK territory and under domestic law the BIOT is directly administered by the UK Government.
12. The UN Human Rights Committee has found that the International Covenant on Civil and Political Rights (ICCPR) may be applied extraterritorially, and that it would be 'unconscionable to so interpret the responsibility under article 2 of the [ICCPR] as to permit a State party to perpetrate violations of the [ICCPR] on the territory of another State, which violations it could not perpetrate on its own territory'.¹⁸

¹¹ ECHR Press Release, 'Chagos islanders' case inadmissible because they accepted compensation and waived the right to bring any further claims before the UK National courts' (20 December 2012) ECHR 420 20112

¹² *ibid*

¹³ *Chagos Islanders v the United Kingdom* [2012] ECHR 35622/04

¹⁴ *Ibid* paras 12 and 53

¹⁵ 'About the Chagos Marine Reserve' <<http://chagos-trust.org/about/chagos-marine-reserve>> accessed 16 May 2016

¹⁶ 'Chagos Marine Park is lawful, High Court rules' (BBC 11 June 2013) <<http://www.bbc.co.uk/news/uk-22852375>> accessed 11 May 2016

¹⁷ Vienna Convention on the Law of Treaties, art. 19(c), 23 May 1969, 1155 U.N.T.S. 331

¹⁸ *Lopez Burgos v. Uruguay* (Communication No. 52/1979)

13. General Comment No. 31 reaffirmed this position, stating that ‘States Parties are required by article 2, paragraph 1, to respect and to ensure the [ICCPR] rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State Party must respect and ensure the rights laid down in the [ICCPR] to anyone within their power or effective control of that State Party, even if not situated within the territory of the State Party’.¹⁹

IV. HUMAN RIGHTS VIOLATIONS

A. Right to Equality and Non-Discrimination

Articles 2 and 7 UDHR; Articles 2 and 26 ICCPR; Article 2(2) ICESCR, Articles 2 and 5 ICERD; Articles 2, 9, 15(2) and 17(3) UNDRIP; Article 3 and 4(1) UNDM

14. Statements made by the UK Government leading up to and during the eviction process of the Chagossians shows that racial discrimination was a factor in their removal from the island. For example, the Chagossians were referred to as ‘a few Tarzans and Man Fridays’ in internal Government communications and memoranda.²⁰
15. The Government of the UK has argued that anything other than short-term resettlement would be too expensive and that it would therefore be ‘impossible for the Government to promote or even permit resettlement to take place’.²¹ However, this determination was based on a deeply flawed first feasibility study conducted by the UK government without consultation with any of the former residents of the Chagos Islands. A subsequent feasibility study, conducted by KPMG in 2014-2015, has found that there is scope for resettlement.
16. While the Chagossians are prevented from returning, members of the armed forces, public officers, and listed contractors working on the US military base may enter the area. Further, British policemen and civil servants that are based on Diego Garcia and/or involved in its administration are permitted to enter. While the Chagossians are banned from living on or even visiting their homelands for national security reasons, private yachters are allowed to sail into the territorial waters of Diego Garcia.²²
17. Moreover, the two 2004 Orders in Council directly targeted the Chagossians. Both orders are therefore discriminatory in nature and cannot be justified.

B. Right to Self-Determination

Article 1 of UN Charter; Article 1, 15.1(a) of ICESCR; Article 1 of ICCPR; Article 5(c) of ICERD

¹⁹ UN Human Rights Committee, ‘General Comment no. 31: The nature of the general legal obligation imposed on States Parties to the Covenant (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add. 13, para. 10

²⁰ Decision of Ouseley J in *Chagos Islanders v The Attorney General and HM BIOT Commissioner*, [2003] EWHC 2222 (QB) para 74.

²¹ Written statement of the Parliamentary Undersecretary for Foreign and Commonwealth Affairs, 15 June 2004, cited in *R (Bancoult) supra* note 1, at para 93.

²² *R (Bancoult) supra* note 5, at para 138

18. Decisions about the fate of the Chagossians have been made without public debate and without consulting them. States are obligated to make decisions regarding evictions, particularly those involving large groups,²³ in consultation with the affected persons and to explore all feasible alternatives before carrying out an eviction.
19. Further, relocation of indigenous peoples cannot “take place without the free, prior and informed consent of the indigenous people concerned and after agreement on just and fair compensation and, where possible, with the option of return.”²⁴ This also applies to military activities, which should not take place on indigenous lands “unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned”.²⁵
20. Therefore, the Chagossians have been denied the right to participate in public affairs.

C. Right to an Effective Remedy

Articles 2, 11, 15 of ICESCR; Article 8 UDHR; Article 2(3) ICCPR; Articles 27, 28 and 40 UNDRIP

21. The Chagossians have filed multiple legal cases to try to return to their homelands. As shown above, in 2000 the UK High Court quashed the 1971 Immigration Ordinance requiring the removal of the entire population of the territory and held that the power within BIOT did not extend to the compulsory removal of a people.²⁶ Additionally, the reasoning within the judgment shows that the High Court quashed the order in order to ensure that the Chagossians could return to BIOT.
22. However, the 2004 BIOT (Constitution) Order and the BIOT (Immigration) Order precluded the implementation of the previous decision of the High Court, which would have allowed the return of the Chagossians.
23. The Chagossians challenged the 2004 Orders through the High Court which quashed the 2004 Orders, and, the UK Court of Appeal upheld the decision. However, the then House of Lords ruled that this issue was essentially a matter for Parliament to decide.²⁷
24. As a result, the Chagossians have not been able to obtain a remedy through the courts. Remedy in the form of compensation has also not been sufficient to allow the Chagossians to relocate and lead a dignified life. In 1973, the UK Government paid £650,000 to Mauritius to be used to resettle the Chagossians. However, the money was not distributed until 1977, at which point its value had diminished due to inflation.²⁸ Further, the money was granted

²³ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 7: The Right to Adequate Housing (Art. 11(1)): forced evictions, 20 May 1997, E/1998/22, para 13

²⁴ G.A. Res. 69/295, art. 10, Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007).

²⁵ G.A. Res. 69/295, *ibid*, at art. 30, para 1.

²⁶ *R (Bancoult)*, *supra* note 1

²⁷ *R (Bancoult)*, *supra* note 5

²⁸ ECtHR, *Chagos Islanders v. United Kingdom*, *op. cit.*, para. 11.

only to 595 Chagossian families.²⁹ As noted above, this compensation amounted to only £2,976 per person.³⁰ The Chagossians living in the Seychelles received no compensation. As a result, the Chagossians live in poverty and marginalization. The Human Rights Committee has recognised the need for additional compensation in its concluding observations.³¹

Therefore, MRG calls on the Working Group of the Universal Periodic Review to recommend that the Government of the United Kingdom:

25. Recognise the violations that the Chagossians have endured after being removed from the islands;
26. Repeal the two 2004 Orders in Council;
27. Facilitate and support the Chagossians' right to return to the islands immediately;
28. Pay the Chagossians adequate compensation for the violation of their rights over the past 40 years; and
29. Appropriately consult with and seek the free, prior and informed consent of the Chagossians in relation to the return and compensation process.

²⁹ Ibid

³⁰ *Chagos Islanders v the United Kingdom* [2012] ECHR 35622/04

³¹ Human Rights 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', U.N. Doc. CCPR/CO/73/UK (2001) para 38