



HUMAN
RIGHTS
WATCH

“That’s When the Nightmare Started”

UK and US Forced Displacement of the Chagossians and Ongoing Colonial Crimes

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and Ongoing Colonial Crimes

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Map of the Chagos Archipelago

Chagos Archipelago



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Summary

Life was easy, it was like Paradise I was very sad when I realized we wouldn't be able to go back [after a holiday trip to Mauritius in 1967]. We had left four brothers and a sister in Chagos. My mother cried and said to us, "Now we will live a very different life." And that's when the nightmare started.

— Louis Marcel Humbert, born in Peros Banhos, Chagos in 1955, speaking in April 2022

About 60 years ago, the United Kingdom government secretly planned, with the United States, to force an entire Indigenous people, the Chagossians, from their homes in the Chagos Archipelago. The Indian Ocean islands were part of Mauritius, then a UK colony. The two governments agreed that a US military base would be built on Diego Garcia, the largest of the inhabited Chagos islands, and the island's inhabitants would be removed. The UK government split the Chagos Archipelago from Mauritius, creating a new colony in Africa, the British Indian Ocean Territory (BIOT). So that it would not have to report to the United Nations about its continued colonial rule, the UK falsely declared that Chagos had no permanent population.

The reality was that a community had lived on Chagos for centuries. The Chagossians are predominately descendants of enslaved people, forcibly brought from the African continent and Madagascar to the then-uninhabited Chagos islands where they worked on coconut plantations under French and British rule. Over the centuries they became a distinct people with their own Chagossian Creole language, music, and culture.

But the UK and US governments treated them as a people without rights, who they could permanently displace from their homeland without consultation or compensation to make way for a military base. From 1965 to 1973, the UK and US forced the entire Chagossian population from all the inhabited Chagos islands, not only Diego Garcia but also Peros Banhos and Salomon. They abandoned them in Mauritius or Seychelles, where they lived in abject poverty.

Years later, the UK paid, through the Mauritian government, a small amount of compensation to some Chagossians, and decades later awarded citizenship to

Chagossians, but has otherwise refused to even discuss reparations to the Chagossians. The US, which has benefited from the military base ever since, has consistently denied any responsibility towards the Chagossian people.

In recent decades, much of the secret planning of the forced displacement has been exposed through the publication of official documents. They exposed not only the plans, but the blatant racism of UK officials toward the Chagossians that highlights the discriminatory nature of their treatment.

Chagossians of all generations have striven, including in litigation in domestic and international courts, for acknowledgment of the violations committed against them and recognition of their rights, notably the right to return home. Today, thousands of Chagossians live around the world, mostly in Mauritius, the UK, and Seychelles, but the UK government, with the involvement of the US, still prevents them from returning and permanently living in their homeland.

The UK government has since acknowledged that the treatment of the Chagossians was “shameful and wrong.”¹ But both the UK and the US have refused to right the wrongs they have committed against the Chagossians for the last half century, now opposing their return on the grounds of cost and security.

The forced displacement of the Chagossians and ongoing abuses amount to crimes against humanity committed by a colonial power against an Indigenous people. UK colonial rule in the Chagos Archipelago, unlike in most of its other colonies in Africa, did not end in the 1960s, and it has continued at extraordinary cost to the people of Chagos. This colonial rule was built on systematic racism and ethnic and racial discrimination in the treatment of the Chagossians. Private comments about the Chagossians written by senior UK officials during the planning of the expulsion, calling the Chagossians “Men Fridays ... whose origins are obscure” illustrates this discrimination. The UK authorities have continued to treat the predominately African Chagossians very differently from other islanders under their rule, such as in Cyprus and the Falklands, islands which have UK military bases. The UK has tried to treat Chagos as a territory where international human

¹ International Court of Justice (ICJ), *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf> (accessed February 1, 2023).

rights law does not apply. And the US has continued to benefit from the operation of its geopolitically strategic military base on Diego Garcia, while refusing to take responsibility for the crimes against the Chagossians.

For many years, the government of Mauritius has claimed the return of its sovereignty over the territory of Chagos. On November 3, 2022, the UK government announced that it had opened negotiations with Mauritius on the future of the Chagos islands, to “secure an agreement on the basis of international law to resolve all outstanding issues, including those relating to the former inhabitants of the Chagos Archipelago.” Even with this significant development, at the time of writing the Chagossians still cannot return to permanently reside on the islands, with many never having had the opportunity to visit since their families were forced to leave. It is unclear how any new agreement will affect them, including whether it will address the issue of reparations for the expulsion and decades of abuse. There is, currently, little transparency about the negotiations and no clear declaration that the Chagossian people will be effectively and meaningfully consulted in this decision that will affect them profoundly, and that their right to reparations, including the right to return, will be fully and effectively centered in the negotiations and guaranteed in the outcome.

This report, based on interviews with Chagossian people and extensive review and analysis of documents, examines the abuses committed by the UK and US governments against the Chagossian people, the decisions that led to their expulsion, and the abuses they suffered during and since their eviction from the Chagos islands.

The report explores the poor conditions under which the Chagossians lived in Mauritius, Seychelles, and, more recently, the UK; their efforts to reclaim their rights to permanently return home; and the failure of the UK and US governments to adequately compensate them or provide any other form of reparations.

In the 1960s, the UK and US secretly agreed to build a military facility on Diego Garcia, which, like the rest of the Chagos islands, was part of the British colony of Mauritius. The US wanted Diego Garcia without inhabitants. Under the plan, the UK would keep control of Chagos, despite the imminent independence of Mauritius, and would expel the population of the islands. The UK pressured the government of Mauritius, before independence, to

give up Chagos. The UK then declared, in 1965, Chagos as a new colony—the British Indian Ocean Territory (BIOT)—the last colony the UK created, and now its last colony in Africa.

The UK, with the US, then expelled the entire Chagossian population over the next eight years. The UK government forced the entire population of Chagos, not only Diego Garcia, from their homes. UK officials have, as documents show, admitted to having lied in claiming that there were no permanent inhabitants of Chagos. Documents written at the time illustrate the institutional racism and bigotry behind the treatment of the Chagossians, with senior British officials writing and joking about the population in openly racist terms.

After the agreement with the US and the creation of the BIOT, the UK authorities expelled the population of Chagos in three stages—often using the coconut plantation companies on the islands to do so. First, from 1967 they prevented Chagossians who had left the islands temporarily, on holiday or for urgent medical treatment, from returning. People who, for any reason, had left Chagos assuming they were only on a short trip away were told that they could not return home and were separated from their families without any warning. The frequency of ships bringing food and other supplies to the islands from Mauritius was also drastically reduced. The next stage in the expulsion, once the US decided to proceed with the construction of the military base, involved the BIOT administrators telling the remaining population of Diego Garcia, in January 1971, that they had to leave. British officials emphasized the point by ordering the killing of the Chagossians' dogs. Some were initially allowed to go to Peros Banhos and Salomon islands, still within Chagos. In the final stage, starting in June 1972, the authorities told the remaining population of Peros Banhos and Salomon islands to leave. By 1973, all Chagossians had been forced to leave the islands.

The BIOT authorities forced Chagossians to go to Seychelles or Mauritius. There, many lived in extreme poverty and experienced difficulty finding sufficient and adequate food, work, and housing. Chagossians said that some of those displaced, including children, died from the economic hardship and, they believe, from the emotional devastation (which they call “sagren”) of being torn from their homeland. They experienced discrimination in their new communities, and many have said they still experience severe economic hardship. After the UK government granted some Chagossians citizenship in 2002, many

came to live in the UK, where they also described not being accepted, not having housing or work on arrival, and experiencing discrimination.

The US and UK governments paid considerable sums, including sums in kind, for the establishment of the US base on Diego Garcia. The UK financially compensated the Mauritian government for the loss of the Chagos territory. The coconut plantation company owners were bought out and compensated by the UK. In return for the base, the US gave the UK a substantial discount on nuclear weapons it sold to the UK.

But the Chagossians, who had suffered the international crime of forced displacement, initially received no compensation. Following demonstrations, spearheaded by Chagossian women, and litigation brought by Chagossians, the UK, on two occasions, paid the Mauritius government what amounted to a small sum for Chagossians in Mauritius, which was eventually paid to some Chagossians. But the UK government required Chagossians who received payments to sign, or thumbprint, a document purportedly giving up their right to return to Chagos. Those who signed it said that it was written only in English, a language unfamiliar to many of them, with legal terms that they did not understand nor had explained to them. Chagossians exiled to Seychelles received nothing.

Chagossians have struggled over the years for recognition of the harms done to them and their right to return. In 2000, a UK court declared the BIOT Immigration Ordinance of 1971 that authorized the forcible removal of the Chagossians from their homeland to be unlawful. Many of the secret documents from the 1960s were made public at this time, showing the deceit and racism behind the Chagossians' expulsion. The then-UK government accepted the ruling, said it could not defend what had been done to the Chagossians in the past, and revoked the laws that prevented the Chagossians from returning and living in Chagos—except for the island of Diego Garcia where they were still legally banned from returning.

The Chagossians did not, however, receive adequate financial compensation from the US or UK governments, or the support they needed to restart their lives on the islands during this short-lived period, so none were able to return to live in Chagos. Then, in 2004, with Diego Garcia being used by the US as a key base in the so-called “Global War on Terror,” the UK government reversed its position. Queen Elizabeth II, on behalf of the government, issued new “Orders-in-council”—a legal device that allows the executive to avoid going

through parliament—to once more ban Chagossians from returning to live on any of the islands.

The UK government has never provided an adequate explanation as to why it was considered viable in 2000 to lift the ban on Chagossians from permanently returning home, and yet the UK government considered it necessary to reinstate this ban after four years. Successive UK governments have argued that it is not possible for the Chagossians to return based on vague assertions of security and cost—the latter, they suggest, would place an unfair burden on the British taxpayer. The US has kept a low profile and side-stepped its responsibilities by claiming it is not responsible for the Chagossians.

In 2012, the UK government started a review of policy toward the Chagossians, commissioning a survey by the global firm KPMG that found that the vast majority of Chagossians it spoke to wished to return, that their return was practicable, especially with the cooperation of the US, and that the maximum cost would be approximately GBP£500 million. But in 2016, the UK again announced that it would block the return of Chagossians, once more claiming security and cost as its reasons. This has remained its position to present, as negotiations with Mauritius began in late 2022.

In 2019, the International Court of Justice (ICJ), in an advisory opinion, ruled that the UK had acted unlawfully in detaching Chagos from Mauritius and creating a new colony, the BIOT. The ICJ also stated that the rights of the Chagossians to be resettled should be addressed by the United Nations General Assembly. Until November 2022, the UK ignored this ruling.

This report reflects the views of Chagossians living in Mauritius, Seychelles, and the UK with whom Human Rights Watch spoke. Although there is no consensus about which country should control Chagos, all agreed that Chagossians should have the right to return, and the majority of those who spoke to Human Rights Watch, of all generations, said they personally would return to Chagos as soon as they could. They did not ask for the closure of the US base, but say they want to be able to live alongside it on Diego Garcia as well as the other habitable islands.

Human Rights Watch found that the abuses committed against Chagossians, as individuals and as an Indigenous people, to be serious violations of international human

rights law and international criminal law. The violations were committed against those forced to leave their homes more than 50 years ago and continue against them and their descendants today who are denied their right to permanently return.

Human Rights Watch found that the continuing forced displacement of the Chagossians, the prevention of their permanent return to their homeland, and their persecution on racial and ethnic grounds amount to crimes against humanity. Crimes against humanity, including “deportation” and “persecutions” on racial grounds, were set out in the 1945 Charter (drafted by the US and UK governments, with France and the Soviet Union) that created the International Military Tribunal at Nuremberg, and have become part of customary international law. The prohibition of crimes against humanity is a preemptory norm of international law, meaning it is applicable to all states and no derogation is permitted. Crimes against humanity were also included in the statutes of the international tribunals for the former Yugoslavia and Rwanda.

Crimes against humanity are defined in the Rome Statute of the International Criminal Court as certain acts when committed as part of a “widespread or systematic attack directed against any civilian population”—which is defined as “a course of conduct” involving multiple such acts committed as part of a state policy to “commit such attack” (that is, a policy to commit the crime). It has become clear over the years that the decisions to expel the Chagossians, and to prevent them from returning, and the racial and ethnic discrimination—treating the Chagossians differently from other islanders under UK rule—were UK state policies.

The UK and Mauritius are states parties to the International Criminal Court, which acts as a court of last resort to determine individual criminal responsibility for crimes within its jurisdiction when national authorities do not conduct genuine proceedings.

Three apparent crimes against humanity have been committed against the Chagossians by UK authorities: “deportation or forcible transfer of population” as a continuing crime; “other inhumane acts,” which can include prevention of the return of a population to its home, as with the Rohingya in Myanmar; and persecution on the grounds of racial, ethnic, or other grounds. The first crime, at least, was jointly committed by UK and US authorities.

The information available shows that the Chagossians have been severely deprived of their rights by intentional acts because of their race and ethnicity. This was evident not only in the manner of their expulsion from Chagos, but in the institutional and systematic way that UK authorities continue to treat the Chagossians, as people whose rights, especially the right to return, need not be respected.

Human Rights Watch calls on the UK and US governments to provide full reparations to the Chagossian people in three key areas. First, the UK should provide restitution by immediately lifting the ban on Chagossians permanently returning to the Chagos islands. The UK and the US should also ensure financial and other support and cooperation to restore the islands and enable the Chagossians to return and live and work in dignity across the Archipelago, as they would have done if the UK and US had not forced them to leave.

Second, the UK and US should provide financial compensation to all Chagossians, regardless of whether they wish to or can return, for the harm suffered from the crimes committed against them. This would include the physical, psychological, and economic harms they suffered both during the forced displacement and ever since.

Third, the UK and US should provide satisfaction and a guarantee that similar crimes will not happen again. After consultations with the Chagossians, this could entail full apologies from the UK and US and their heads of state, including the British monarch, acknowledging the extent and nature of the crimes. The UK and US should publish all material concerning the treatment of the Chagossians. They should ensure investigations into these crimes and accountability for the individuals and state institutions most responsible.

The UK should ensure that the treatment of Chagossians today is free from racism and all forms of discrimination, starting with the UK acknowledging that all human rights obligations that apply in the UK also fully apply in the Chagos islands. This would end the double standards where the UK government has effectively treated Chagos as a territory where international human rights and criminal law does not apply, and where the inhabitants have no human rights protections.

Human Rights Watch also recommends that other governments, notably Mauritius, should publicly commit to support and assist the return to Chagos of all Chagossians, regardless of their nationality or current residence. Mauritius, the UK, and Seychelles should guarantee the rights and equality of Chagossians living in their territory, including ensuring full and equal citizenship, and rights of family reunification. Judicial officials in all states should consider investigating and prosecuting those implicated in crimes against humanity in national courts under the principle of universal jurisdiction and in accordance with national laws.

With the announcement in November 2022 of negotiations between the UK and Mauritius over the future of Chagos, it is vital that both countries ensure meaningful and effective consultations with the Chagossian people. The history of the last 60 years is of governments making deals that affect the future of the Chagossians but without involving them. Any future agreement concerning Chagos needs to be centered around the rights of the Chagossians, including the right to return, and full reparations for the decades of abuse.

The abuses against the Chagossians also show the failure of UK and other courts, as well as the European Court of Human Rights, to acknowledge and remedy ongoing colonial crimes, including recognizing them as crimes against humanity. International and domestic institutions, especially those responsible for addressing international crimes, should treat crimes against humanity committed by UK and US officials like those committed by any other state.

The history of colonial crimes, even those as current as against the Chagossians, is a history of a failure to recognize—let alone address—them as such. As the UN expert on truth, justice and reparations Fabián Salvioli, quoting Wolfgang Kaleck, said in 2021:

There have never been serious efforts to investigate colonial crimes before national or international courts, nor to punish any of the surviving perpetrators, nor sanction the governments involved or to compensate the victims for the ongoing health problems triggered by the crimes.

But the Chagossian story is also one of struggle and survival. The Chagossian people have not accepted the wrongs done to them and continue to persevere for their cause through

their organization, activism, and the law. It is because of them that we know the history of the harms they endured. It is time to finally repair the wrongs that have been done.

Key Recommendations

To the United Kingdom government

- Provide full, unconditional, and effective reparations to the Chagossian people based on meaningful and effective consultation with them:
 - As part of full restitution, recognize their immediate and unconditional right to permanently return to Chagos, including to Diego Garcia.
 - Ensure that the Chagos islands are restored so that the Chagossians can return to live permanently in dignity and prosperity, at a minimum standard equivalent to how they would live today had they not been expelled over 50 years ago.
 - Provide full compensation to all Chagossians, everywhere in the world, for all the harms caused to them since 1965.
 - Guarantee the non-repetition of similar abuses and crimes. Publish all material, including all government orders, confidential agreements, notes, and instructions on removal and prevention of return concerning the Chagossians and their displacement and make this available on a free and accessible database.
 - Hold individuals responsible for crimes against humanity against the Chagossians accountable through investigations and fair trials
 - Immediately declare the full application of all human rights and international criminal law treaties ratified by the UK to Chagos (BIOT).
 - King Charles III should issue a full and unreserved apology to the Chagossian people for the crimes and other abuses committed against them by the United Kingdom, as called for by Chagossians, and reiterate that the UK government will guarantee full reparations for the harms they suffered and that such abuses will never be repeated.

To the United States government

- Provide full, unconditional, and effective reparations to the Chagossian people based on meaningful and effective consultation with them.

- Issue a full and complete apology and acknowledgement of all the harms done to the Chagossians from 1965 until today, including the crimes committed, as called for by Chagossians.
- Contribute, with the UK, to the full reparations to the Chagossian people, including their right to permanently return, ensuring they can live in dignity and prosperity in Chagos, including on Diego Garcia, and their right to receive full financial compensation for the harms inflicted on them.
- Guarantee such abuses will never happen again. Publish all material, including all government orders, confidential agreements, notes, and instructions on removal and prevention of return concerning the Chagossians and their displacement and make this available on a free and accessible database.
- Immediately lift any remaining legal restrictions on, and publicly encourage Chagossians to work on the US military base in Diego Garcia and allow them to bring their families to live there.

To the Government of Mauritius

- Repeat its declaration that it fully supports the right of all Chagossians to return to live in Chagos, wherever in the world they currently live and whatever their nationality.
- Publicly express its support for full and effective reparations by the UK and US governments to the Chagossian people.
- Publicly call for effective accountability for those responsible for crimes against humanity against the Chagossian people.

To the Governments of the UK and Mauritius, with the Governments of the US and India

- In the context of the publicly announced negotiations between the UK and Mauritius over the Chagos Archipelago, ensure that the Chagossian people are centered in this process, effective and meaningful consultations are conducted with them, and ensure that any agreement provides for binding commitments by the UK and US Government to provide full and effective reparations and a commitment by all governments to honor the right of unfettered permanent return of the Chagossian people, to all the islands of Chagos. The commitment to an

- unfettered right of return applies equally to the Mauritian government should control over the Islands pass to them.
- With respect to reparations, in addition to the right to return without restrictions, including to live on Diego Garcia, the agreement should also include restitution of Chagos so Chagossians can live there in dignity and prosperity; full compensation to all Chagossians for the harms suffered as a result of the forced displacement; and a guarantee that such atrocities will not be repeated.
 - Recognize the Chagossians as an Indigenous people

To all states

- Support investigations and prosecutions for the crimes against humanity that have been and are being committed against Chagossians.

Methodology

This report focuses on the forced eviction and continued refusal to allow the return, by the UK government, with support from the US government, of the entire population of the islands and atolls of the Chagos Archipelago in violation of international human rights law and international criminal law. Many of the families evicted had lived for several generations on the islands.

The report is based on research undertaken between November 2021 and September 2022, during which Human Rights Watch interviewed 43 Chagossians in the UK, Mauritius, and Seychelles from various Chagossian representative groups, notably Chagos Refugees Group, Chagos Asylum People, Chagossian Voices, and Seychelles Chagossian Committee. Human Rights Watch also interviewed 14 others, including UK, US, and Mauritian government officials, members of parliament, lawyers, academics, analysts, and diplomats. Human Rights Watch also reviewed numerous documents, including government records, official memorandums, meeting minutes, statements, as well as court records, documents, and processes. We also analyzed videos and photographs, maps, and other materials.

Interviews took place in person in Croydon and London in the UK, in Port Louis, Mauritius, and in Victoria and Praslin, Seychelles, in locations considered private and secure by researchers and interviewees. Interviews were conducted in English and Creole or French with the aid of interpreters as needed. Researchers explained to each interviewee the purpose of the interview, its voluntary nature, the way in which the information would be used, and that no compensation would be provided.

Interviewees at times seemed distressed and emotional as they recounted their experiences. Researchers took care to avoid retraumatizing them, including by explaining the extent and line of questioning involved before the interview commenced and their right to stop at any point.

On December 7, 2022, Human Rights Watch sent a summary of the findings of this report to officials in the UK, US, and Mauritius governments. The government of Mauritius replied on

January 10, 2023, the UK government on January 23, 2023, and the US government on January 24, 2023. Copies of the letters and government responses are available online as appendices to this report.

This report is dedicated to Dewa Mavhinga, Southern Africa director at Human Rights Watch, and dearly beloved colleague and friend, who died of illness in South Africa in December 2021 when preparing research for this report.

Background

The Chagos Archipelago is a group of islands and atolls in the Indian Ocean, approximately 2,200 kilometers northeast of the main island of Mauritius. The largest of the islands is Diego Garcia, about half of the archipelago's land area.²

Mauritius was occupied (and named) by the Dutch Republic from 1638 to 1710, and then by France in 1715, which named it Isle de France (Modern French: Île de France). France claimed Chagos and administered it as a dependency of the Isle de France.³ The United Kingdom occupied Isle de France in 1810 and changed its name back to Mauritius. Mauritius and all its dependencies, including Chagos, were ceded to the UK by France in the Treaty of Paris of 1814. From 1814 to 1965, the UK administered Chagos as a dependency of the colony of Mauritius.⁴ As is set out below, in 1965 the UK separated Chagos from Mauritius, creating the “British Indian Ocean Territory” (BIOT) as part of the plans that led to the expulsion of the Chagossians.

The Chagossian people

The Chagossians are a distinct people and community.⁵

In the 18th century under French, and then British rule, hundreds of people from Madagascar and Mozambique and elsewhere in Africa were brought to Chagos as enslaved people and forced to work on coconut plantations, which under UK rule were largely owned by British nationals and Seychellois.⁶ The UK abolished slavery in most of its empire,

² ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, February 25, 2019, <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf> (accessed November 9, 2019), paras. 25-26.

³ Permanent Court of Arbitration, *In the Matter of the Chagos Marine Protected Area Arbitration*, Award, March 18, 2015, https://lexpress.mu/sites/lexpress/files/attachments/article/2015/2015-03/2015-03-20/mu-uk_20150318_award.pdf (accessed November 17, 2022), para. 58.

⁴ ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, February 25, 2019, <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf> (accessed November 9, 2022), paras. 27-28.

⁵ Previously, the Chagossians, descendants of enslaved people, were frequently referred to as “Ilois” as distinct from Mauritian and Seychellois contract workers. This term has come to have pejorative connotations.

⁶ ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, February 25, 2019, <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf> (accessed November 9, 2022), para. 113.

including Mauritius, in 1833,⁷ and provided massive compensation for former owners of enslaved people, but not to the people who had been enslaved.⁸

After the end of slavery, Chagossians—who, like the other formerly enslaved peoples, had received no compensation—remained on the islands, many working on coconut plantations. Others, including some from South Asia, were brought by the plantation owners to the islands as indentured laborers. Indentured labor was a system of bonded labor introduced following the abolition of slavery. Indentured laborers were recruited to work on sugar, cotton, and tea plantations, and rail construction projects in British colonies, including in the Caribbean, Africa, and Southeast Asia.

By 1900, there were 426 families living in the archipelago. About 60 percent were of African-Malagasy origin—descendants of the original enslaved population—while the remaining 40 percent were descendants of indentured laborers from South Asia.⁹ At that time, more than 75 percent regarded themselves as permanent inhabitants of the islands.¹⁰

Over at least eight generations, Chagossians built their unique culture with a distinct Chagossian Creole language. The community would come together on Saturday nights to sing and tell stories.¹¹ The islands had towns, churches, and later, schools. Chagossians were born, married, and buried on the islands.

Part of the distinct Chagossian culture is a specific type of music, Segha tambour Chagos. The United Nations Educational, Scientific and Cultural Organization (UNESCO) recognized this music in 2019 and placed it on its List of Intangible Cultural Heritage in Need of Urgent Safeguarding. UNESCO describes this music as:

⁷ Ibid., para. 114. This came into force in Mauritius in 1835. However, formerly enslaved people were required to work as “apprentices” until 1838-40.

⁸ Compensation for slave-owners was £20 million, then 40 percent of the UK government’s total expenditure. See HM Treasury, “Freedom of Information Act 2000: Slavery Abolition Act 1833,” January 31, 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/680456/FOI2018-00186_-_Slavery_Abolition_Act_1833_-_pdf_for_disclosure_log__003_.pdf (accessed November 17, 2022).

⁹ Select Committee on Foreign Affairs, Submission from Minority Rights Group International, October 12, 2007, <https://publications.parliament.uk/pa/cm200708/cmselect/cmfa/147/147we26.htm#note50> (accessed January 31, 2023).

¹⁰ Ibid.

¹¹ Human Rights Watch interview with Olivier Bancoult, December 1, 2021.

[B]orn from slavery and sung in Chagossian Creole particular to the islands. Sega tambour Chagos is a gentle, vibrant and rhythmic performance of music, song and dance based on the “tambour” – a large, circular instrument that is heated and then played to produce throbbing beats – which provides the basic rhythm. The lyrics consist of everyday experiences, often composed spontaneously, including narrations of sadness, happiness and rebellion. Sega tambour Chagos is also accompanied by traditional food and drink. Nowadays, new lyrics have been created associated with the nostalgic past and motherland, rooted in an experience of dislocation to ensure young people do not lose their roots and pride.¹²

Chagossians who were born in the islands have described their lives there to Human Rights Watch as “wonderful” or “very sweet, like Paradise.”¹³ As well as working on the coconut plantations, the Chagossians had a tradition of fishing and building their own boats.¹⁴ Marie Mimose Furcy, born in Chagos in 1956, described closing her eyes in exile in Mauritius and imagining her life back in Chagos; she has written songs about her life there. Iline Talate Louis, born in Diego Garcia in 1961, said her life there until she was 10 was “beautiful.”¹⁵ Marie Jeanette Sabrie, born on Salomon Island in 1956, said that her life there was beautiful, and that there was food in abundance. She never thought she would leave the island.¹⁶ Claudette Pauline Lefade, born in Peros Banhos in 1952 and the current President of Chagos Asylum People, stated that “everyone had their garden to grow their vegetables, we lived on seafood.”¹⁷

UK authorities, who governed Chagos as part of Mauritius for 150 years, seemed to have taken little interest in the islands or its inhabitants, except during World War II.¹⁸ Then, a small airstrip and military base was built on Diego Garcia, which was used by the UK armed

¹² United Nations Education, Scientific and Cultural Organization (UNESCO), “Sega tambour Chagos,” inscribed in 2019, <https://ich.unesco.org/en/USL/sega-tambour-chagos-01490> (accessed November 11, 2022).

¹³ Human Rights Watch interview with Marie Mimose Furcy, April 1, 2022, and Olivier Bancoult, March 31, 2022.

¹⁴ Human Rights Watch interview with Olivier Bancoult, December 1, 2021.

¹⁵ Human Rights Watch interview with Iline Talate Louis, March 31, 2022.

¹⁶ Human Rights Watch interview with Marie Jeanette Sabrie, March 31, 2022.

¹⁷ Human Rights Watch interview with Claudette Pauline Lefade, August 29, 2022.

¹⁸ A magistrate visited Chagos less than once per year. See UK court ruling, *Chagos Islanders v. Attorney General*, [2003] EWHC 2222 (QB), para 8.

forces, who left at the end of the war.¹⁹ During the war, the UK did not consider it necessary to displace the population of Chagos to build and secure its military base.

The work, and in many ways the entire lives, of the Chagossians were dominated by the companies that owned and ran the coconut plantations. A company called Société Huilière de Diego et Peros took control of the plantations in 1883, which were sold in 1962 to the Seychellois Chagos-Agalega Company.²⁰ There were 3,000 hectares of coconut trees.²¹

Several Chagossians told Human Rights Watch about life in the islands at this time, dominated by the companies. Rosemond Saminaden was born in Boddam Salomon on August 29, 1926. He started work as a trainee blacksmith at age 10 and was paid seven rupees per month in addition to provisions like rice, oil, and salt. The company staff would ring a bell at 6 a.m. every day to assign jobs to all islanders including children.²² Louis Mico Xavier, born in Peros Banhos in 1937, said, “I started working at age 12 because there was no school then. I was paid five rupees per month in a savings account, plus provisions. I never signed a contract of employment because I never left the island until I was 19 in 1956.”²³ Furcy said, “If you didn’t show up for work for up to a week, you would be locked up in the island prison—a room—for one or two days. It was rare though because everyone knew they had to work.”²⁴

There was a form of segregation between company officials and Chagossians. Bernadette Dugasse, originally Bernadette Nourrice, was born on Diego Garcia in 1956. In 1958, the company manager ordered her father, a carpenter originally from Seychelles, to leave Diego Garcia for the Seychelles for making furniture for Chagossians, which violated company rules.²⁵

¹⁹ David Vine, *Island of Shame: The Secret History of the U.S. Military Base on Diego Garcia* (Princeton: Princeton University Press, 2011), p. 34.

²⁰ England and Wales High Court (EWHC), *Chagos Islanders v. Attorney General*, [2003] EWHC 2222 (QB), Judgment, October 9, 2003, <https://www.bailii.org/ew/cases/EWHC/QB/2003/2222.html> (accessed November 9, 2022), para. 13.

²¹ Human Rights Watch interview with Olivier Bancoult, December 1, 2021.

²² Human Rights Watch interview with Rosemond Saminaden, March 31, 2022.

²³ Human Rights Watch interview with Louis Mico Xavier, April 1, 2022.

²⁴ Human Rights Watch interview with Marie Mimose Furcy, April 1, 2022.

²⁵ Human Rights Watch interview with Bernadette Dugasse, September 1, 2022.

The population of Chagossians in 1965, just before the forced displacement began, is estimated at 1,500 to 1,750 Chagossians, with about 1,360 living on the islands.²⁶ There were also temporary contract workers, mostly from Seychelles, who made up 20 to 30 percent of the inhabitants at this time.²⁷

UK and US planned forced mass displacement of the Chagossians

The life of the Chagossians in their homeland was ended by the UK and US governments in the 1960s and 1970s. By 1973, they had forcibly displaced the entire population.

UK and US plans to displace the Chagossians

In the 1960s, the UK government ended its direct colonial rule across much of Africa and in other parts of the world.²⁸ In December 1960, the UN General Assembly adopted Resolution 1514 (XV), the “Declaration on the Granting of Independence to Colonial Countries and Peoples.” During the next decade many countries, including Mauritius, achieved independence from the UK and other European colonial powers.

However, the UK treated the Chagossians very differently from other colonized peoples who achieved independence in the 1960s.²⁹ Beginning in 1964, the UK and US governments planned to build a military base on Diego Garcia. The details of these plans only emerged years later when some of the documents became public. These plans resulted in not only the UK maintaining its rule over Chagos after the independence of Mauritius in 1968, but also in the forced displacement of the entire population. The UK has retained control of Chagos and has kept the Chagossians from returning ever since. The US played a key role throughout in the displacement of the Diego Garcia population and a significant (if less clear) role in preventing their return since.

²⁶ Permanent Court of Arbitration, *In the Matter of the Chagos Marine Protected Area Arbitration*, Case No. 2011-03, Award (Arbitral Tribunal), March 18, 2015, <https://pca-cpa.org/en/cases/11/> (accessed November 9, 2022), para. 88.

²⁷ Human Rights Watch interview with Felix Phares, Praslin, September 1, 2022.

²⁸ In January 1968, the UK government announced that UK forces would be withdrawn from military bases “East of Suez” including Southeast Asia, the Gulf, and the Maldives.

²⁹ By 1970, the only remaining British-ruled territories in Africa were Seychelles and BIOT. Seychelles achieved independence in 1976; Zimbabwe, after a short resumption of UK rule following a 1965 unilateral declaration of independence by a white-minority government, in 1980.

In February 1964, the US and UK governments started talks on the “strategic use of certain small British-owned islands in the Indian Ocean.” The US was using a “Strategic Island Concept” drawn up in the 1950s by Stuart Barber, a naval planner at the US Navy.³⁰ A professor of political anthropology, David Vine, has described this as a plan to avoid new bases in populous areas “vulnerable to local non-Western opposition” and instead plan for military bases on small, lightly populated islands.³¹

US officials said they were interested in establishing a military facility on Diego Garcia under the “exclusive control (without local inhabitants).”³² At the end of the 1964 talks, the US and UK delegations agreed that the UK government should be responsible for acquiring land, “resettling the population,” and providing compensation to the company owners and the Mauritius government.³³

This agreement effectively meant the removal of at least the entire population of Diego Garcia. As the documents and later court records show, this was planned in secret, without any consultation or agreement with the residents. Successive UK governments would spend nearly a decade, with the US, secretly planning and carrying out the forced displacement of the entire population of Chagos. It occurred under the Labour government of Prime Minister Harold Wilson, which took office in late 1964, and the Conservative government under Edward Heath that succeeded it in 1970. Similarly US involvement in the mass displacement of the Chagossians has continued under both Democrat and Republican administrations. Subsequent governments of both countries, whatever their political party, have continued to deny the Chagossians their right to return home.³⁴

A UK memorandum in 1964, a few months after the initial talks with the US, already referred to “the repatriation or resettlement of persons currently living on the islands selected.” It went on to address the issue that would be at the heart of the UK’s attempt to

³⁰ Philippe Sands, *The Last Colony: A Tale of Race, Exile and Justice from Chagos to the Hague* (United Kingdom: Orion Publishing Co, 2022), p. 41.

³¹ Vine, *Island of Shame*, p. 4.

³² See Vine, *Island of Shame*, p. 78.

³³ ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, February 25, 2019, <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf> (accessed November 9, 2022), para. 94. See also Volume II of Annexes to the Written Statement of the Republic of Mauritius, March 1, 2018, <https://www.icj-cij.org/public/files/case-related/169/169-20180301-WRI-05-01-EN.pdf> (accessed February 1, 2023).

³⁴ The one exception being the UK’s acceptance in principle of Chagossian return to the islands apart from Diego Garcia between 2000 and 2004.

justify expulsion—its claim that there were none, or only a few, permanent inhabitants. According to the memorandum:

The line taken with regard to those persons now living and working in the dependencies would relate to their exact status. If, in fact, they are only contract labourers rather than permanent residents, they would be evacuated with appropriate compensation and re-employment. If, on the other hand some of the persons now living and working on the islands could be considered permanent residents, i.e., their families have lived there for a number of generations, then political effects of their removal might be reduced if some element of choice could be introduced in their resettlement and compensation.³⁵

A key concern for the UK government from the start was to avoid reporting to the UN about its continued rule over a colony if it kept control of Chagos. In order to do this, it needed to claim there were no permanent inhabitants of Chagos, only “contract labourers” who, UK officials believed, could be forced to leave Chagos. Another 1964 UK government document stated:

Our understanding is that the great majority of [the islands’ residents] are there as contract labourers on the copra [dried coconut] plantations on a number of the islands; a small number of people were born there and, in some cases, their parents were born there too. The intention is, however, that none of them should be regarded as being permanent inhabitants of the islands. Islands will be evacuated as and when defence interests require this. Those who remain, whether as workers on those copra plantations which continue to function or as labourers on the construction of defence installations, will be regarded as being there on a temporary basis and will continue to look either to Mauritius or to Seychelles as their home territory ...

³⁵ EWHC, *The Queen v. Secretary of State for the Foreign and Commonwealth Office ex parte Bancoult (known as Bancoult No 1)*, [2000] EWHC 413 (Admin), Judgment, November 3, 2000, <https://www.bailii.org/ew/cases/EWHC/Admin/2000/413.html> (accessed November 9, 2022), para. 10.

In the absence of permanent inhabitants, the obligations of Chapter XI of the United Nations Charter will not apply to the territory and we shall not transmit information on it to the Secretary-General.³⁶

A June 1966 UK government document, a Minute, demonstrates why the UK wanted to deny that there were permanent inhabitants living on Chagos. A UK court in 2000 describes this Minute as expressing “considerable candour”:

They [the Colonial Office] wish to avoid using the phrase “permanent inhabitants” in relation to any of the islands in the territory because to recognise that there are permanent inhabitants will imply that there is a population whose democratic rights will have to be safeguarded and which will therefore be deemed by the UN Committee of Twentyfour to come within its purview.³⁷

In a Minute sent on November 8, 1965 from the UK Foreign Office to the UK Mission to the UN, the Foreign Office claimed that “the islands chosen have virtually no permanent inhabitants.”³⁸ In 1965, during further UK-US talks, the UK stated that when the defense facilities were installed on the island “it would be free from local civilian inhabitants.”³⁹ At this time, the UK ambassador to the UN asked that the phrase “virtually” be removed from a UK document that said “the Chagos have virtually no permanent inhabitants,” because if Chagos had any population, the UK would be accused of failing to carry out its obligations under the UN Charter to this population. The word ‘virtually’ was removed.⁴⁰

³⁶ Ibid., para. 11.

³⁷ Ibid., para. 13. The UN Committee of 24 is the Special Committee on Decolonization, created by the General Assembly in 1961 to review the political, economic, and social situation in Non-Self-Governing Territories.

³⁸ ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, February 25, 2019, <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf> (accessed November 9, 2022), para. 111. See also ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Volume III of Annexes to the Written Statement of the Republic of Mauritius, March 1, 2018, <https://www.icj-cij.org/public/files/case-related/169/169-20180301-WRI-05-02-EN.pdf> (accessed November 9, 2022), Annex 75: *Telegram* from the U.K. Foreign Office to the U.K. Mission to the U.N., No. 4327 (8 Nov, 1965).

³⁹ Ibid., para. 96. See also Volume III of Annexes to the Written Statement of the Republic of Mauritius, Annex 62, Record of UK-US Talks on Defence Facilities in the Indian Ocean, United Kingdom, FO 371/184529, September 23/24, 1965.

⁴⁰ ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Vol. III of Annexes to the Written Statement of the Republic of Mauritius, March 1, 2018, <https://www.icj-cij.org/public/files/case-related/169/169-20180301-WRI-05-02-EN.pdf> (accessed November 9, 2022), Annex 77, *Telegram* from the U.K. Mission to the U.N. to the U.K. Foreign Office, No. 2837 (8 Nov. 1965), para 4. See also Sands, *The Last Colony*, p. 45.

While the UK was negotiating the independence of Mauritius, it had already planned to keep control of the Chagos Archipelago. In September 1965, the representatives of the colony of Mauritius and the UK government signed the “Lancaster House Agreement.” After much pressure from the UK, the government of Mauritius agreed to Chagos being detached from Mauritius.⁴¹ As part of the agreement, the UK agreed to pay the costs of resettlement of Chagossians, “compensation” to landowners—but not to Chagossians—and £3 million to the government of Mauritius.⁴² In 2019, the International Court of Justice determined that this agreement was not freely entered into and concluded that “it is not possible to talk of an international agreement, when one of the parties to it, Mauritius ... was under the authority of [the United Kingdom].”⁴³

In November 1965, following the “agreement” with the government of Mauritius, the UK government declared⁴⁴ the new “British Indian Ocean Territory” (BIOT), consisting of the Chagos Archipelago, detached from Mauritius, and three island groups the UK government detached from Seychelles.⁴⁵ Mauritius became independent from the UK in 1968. In June 1976, when Seychelles attained independence, the UK government returned the three island groups—Aldabra, Farquhar, and Desroches—it had included in the BIOT to Seychelles rule.⁴⁶

Four days after the creation of the territory, the UK government in London instructed the new BIOT administration: “Essential that contingency planning for evacuation of existing population from Diego Garcia ... should begin at once.”⁴⁷

Another UK government document from this time starkly spelled out the UK and the US’s involvement:

⁴¹ ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, February 25, 2019, <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf> (accessed November 9, 2022), paras. 105, 112.

⁴² *Ibid.*, para. 108.

⁴³ *Ibid.*, para. 172.

⁴⁴ The declaration was made by Queen Elizabeth II, acting for the UK government using an “Order in Council,” rather than going through the UK parliament.

⁴⁵ Aldabra, Farquhar, and Desroches.

⁴⁶ “History,” British Indian Ocean Territory, <https://biot.gov.io/about/history/> (accessed November 9, 2022).

⁴⁷ Vine, *Island of Shame*, p. 90.

10. The primary objective in acquiring these islands from Mauritius and the Seychelles to form the new “British Indian Ocean Territory” was to ensure that Her Majesty's Government had full title to, and control over, these islands so that they could be used for the construction of defence facilities without hindrance or political agitation and so that when a particular island would be needed for the construction of British or United States defence facilities Britain or the United States should be able to clear it of its current population. The Americans in particular attached great importance to this freedom of manoeuvre, divorced from the normal considerations applying to a populated dependent territory. These islands were therefore chosen not only for their strategic location but also because they had, for all practical purposes, no permanent population.

11. It was implied in this objective, and recognised at the time, that we could not accept the principles governing our otherwise universal behaviour in our dependent territories, e.g. we could not accept that the interests of the inhabitants were paramount and that we should develop self-government there.⁴⁸

There was some opposition within the UK government to the planned displacement of the Chagossians. In an internal document in May 1966, UK Foreign Office legal adviser Henry Darwin wrote:

This is really fairly unsatisfactory. We detach these islands – in itself a matter which is criticised. We then find, apart from the transients, up to 240 “Ilois”, whom we propose either to resettle (with how much vigour of persuasion?) or to certify, more or less fraudulently, as belonging somewhere else. This all seems difficult to reconcile with the “*sacred trust*” of Art 73 [of the UN Charter], however convenient we or the US might find it from the viewpoint of defence.⁴⁹

⁴⁸ EWHC, *The Queen v Secretary of State for the Foreign and Commonwealth Office, ex parte Bancoult [Bancoult (No 1)]*, [2000] EWHC 413 (Admin), Judgment, November 3, 2000, <https://www.bailii.org/ew/cases/EWHC/Admin/2000/413.html> (accessed November 9, 2022), para. 14.

⁴⁹ EWHC, *Chagos Islanders v. The Attorney General Her Majesty's British Indian Ocean Territory Commissioner*, [2003] EWHC 2222 (QB), Judgment – Appendix A, October 9, 2003, <https://www.bailii.org/ew/cases/EWHC/QB/2003/2222.html>, (accessed November 9, 2022), para. 70.

Despite the concerns raised, the UK and US signed an “Agreement concerning the Availability for Defence Purposes of the British Indian Ocean Territory” on December 30, 1966. A confidential Agreed Minute of the same date stated that the UK would take “administrative measures” including “resettling any inhabitants” of the islands.⁵⁰ The agreement was due to last 50 years, but the UK and US extended the lease in 2016 by another 20 years, to 2036.⁵¹

In April 1967, the BIOT administration (that is the UK authorities) bought out the Chagos-Agalega company for £600,000, thus becoming the sole landed property owner in the BIOT. Later that year, it assigned management of the plantations to former managers of the company, whose new company was called Moulinie and Company (Seychelles), Limited.⁵²

At this time, the BIOT administration ordered the company to prevent Chagossians who had left the islands temporarily from returning to Chagos.⁵³ In 1968, after the company asked to be allowed to bring back Chagossians to work on the plantations, the BIOT administration permitted them to replace the Chagossians with temporary Seychellois workers.⁵⁴

Contract workers on Chagos were still largely limited to Diego Garcia and formed only a small and temporary part of the resident population. Felix Phares, who was recruited along with several others by the Moulinie company from Seychelles in 1968, said:

Seychellois contract workers formed about 20 percent of workers on Diego Garcia while the natives [permanent residents] were by far the largest group. There were only a few contract workers from Mauritius because the plantation owner and hiring company was Seychellois.⁵⁵

⁵⁰ ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, February 25, 2019, <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf> (accessed November 9, 2022), para. 37. See also Vine, *Island of Shame*, p. 88.

⁵¹ “Extended US lease blocks Chagossians’ return home,” *Financial Times*, November 16, 2016, <https://www.ft.com/content/abbc879a-ac1d-11e6-ba7d-76378e4fef24> (accessed December 15, 2022).

⁵² EWHC, *Chagos Islanders v. The Attorney General Her Majesty’s British Indian Ocean Territory Commissioner*, [2003] EWHC 2222 (QB), Judgment, October 9, 2003, <https://www.bailii.org/ew/cases/EWHC/QB/2003/2222.html>, (accessed November 9, 2022), paras. 21-22.

⁵³ Vine, *Island of Shame*, p. 92.

⁵⁴ *Ibid.*, p. 93.

⁵⁵ Human Rights Watch interview with Felix Phares, September 1, 2022.

Another confidential note by a UK Foreign Office lawyer, Anthony Aust, on October 23, 1968, highlighted the UK's disregard for the law in expelling the Chagossians:

There is nothing wrong in law or in principle to enacting an immigration law which enables the Commissioner to deport inhabitants of BIOT. Even in international law there is no established rule that a citizen has a right to enter or remain in his country of origin/birth/nationality etc. A provision to this effect is contained in Protocol No 4 to the European Convention on Human Rights but that has not been ratified by us, and thus we do not regard the UK as bound by such a rule. In this respect we are able to make up the rules as we go along and treat the inhabitants of BIOT as not “belonging” to it in any sense.⁵⁶

In 1969, a Minute from the UK foreign secretary to the prime minister stated:

I agree with the conclusion reached in the paper that on balance the best plan will be to try to arrange for these people, all of whom are citizens of the United Kingdom and Colonies or of Mauritius or both, to return to the Seychelles or Mauritius. The people with whom we are concerned are working in the Chagos under contract and own no property or other fixed assets there. However, some of them have established roots in Chagos and I should naturally have wished to consult at least these in advance of any decisions about their future, if this had been possible. Officials have examined closely the possibility of giving them some element of choice, but have advised that this would seem wholly impracticable In short I ask my colleagues to agree that ... we should aim at the return of the inhabitants of the whole Chagos Archipelago to the Seychelles and Mauritius.⁵⁷

A 1970 note from a Foreign Office legal adviser said that a key purpose of laws restricting the right of Chagossians to remain and live in Chagos was to “maintain the fiction that the

⁵⁶ EWHC, *Bancoult (No 1)*, [2000,] EWHC 413 (Admin), Judgment, November 3, 2000, <https://www.bailii.org/ew/cases/EWHC/Admin/2000/413.html> (accessed January 4, 2023), para. 16.

⁵⁷ *Ibid.*, para. 17. The UK court said the then-UK prime minister had agreed with this note (para. 17).

inhabitants of Chagos are not a permanent or semi-permanent population.” In a paragraph entitled "Maintaining the fiction," he said that keeping any population in the BIOT increased the risk of having to report to the United Nations about a colony.⁵⁸

In December 1970, the US Congress announced approval for the construction of a defense facility on Diego Garcia. The US government had told the UK government shortly beforehand that it wanted Diego Garcia evacuated by July 1971.⁵⁹

The BIOT administrator, John Todd, visited the islands in January 1971, and told the assembled inhabitants of Diego Garcia that "we intended to close the island in July." He said that Peros Banhos and Salomon could continue for some time.⁶⁰

In March 1971, in a US government document concerning the remaining inhabitants of Diego Garcia, Admiral Elmo Zumwalt, then US chief of naval operations, commented that they “absolutely must go.”⁶¹

A UK government document dated March 12, 1971, states that it had been accepted by ministers that "our best course is to resettle, as quickly as practicable, the entire population of the Chagos Archipelago," notwithstanding that the US authorities had recently confirmed that it was only Diego Garcia that was likely to be required for the foreseeable future. It was not considered appropriate to "clear out Diego Garcia" alone because the other islands might be required one day, the possibility that this might be required discouraged new investment, and "third, we do not wish to be accountable to the United Nations for any permanent inhabitants of BIOT."⁶²

⁵⁸ Ibid., para. 18.

⁵⁹ EWHC, *Chagos Islanders v. The Attorney General Her Majesty's British Indian Ocean Territory Commissioner*, [2003] EWHC 2222 (QB), Judgment, October 9, 2003, <https://www.bailii.org/ew/cases/EWHC/QB/2003/2222.html> (accessed November 9, 2022), para. 31.

⁶⁰ Ibid., para. 32.

⁶¹ US Navy, "Zumwalt E. CNO Comment Sheet 'Absolutely Must Go,' 1971-03-26," *The Chagos Archive Documents Collection*, <https://thechagosarchive.omeka.net/items/show/4427> (accessed November 14, 2022). Also quoted in Vine, *Island of Shame*, p. 111.

⁶² EWHC, *Chagos Islanders v. The Attorney General Her Majesty's British Indian Ocean Territory Commissioner*, [2003] EWHC 2222 (QB), Judgment – Appendix A, October 9, 2003, <https://www.bailii.org/ew/cases/EWHC/QB/2003/2222.html> (accessed November 9, 2022), para. 310.

Abuses Against the Chagossian People

Forced mass displacement of the population of Chagos

Between 1967 and 1973, the entire population of Chagos was forced, directly or indirectly, to leave their homes, with nearly all having to move to the main island of Mauritius or to the Seychelles, thousands of kilometers away. Many of the orders were carried out by officials of the Moulinie company, who had been administrators of the islands, but it is clear the instructions were a deliberate policy by successive UK governments and officials, and, at least with respect to the inhabitants of Diego Garcia, part of a joint plan with the US authorities.

The methods used to force the inhabitants from their homes varied and took place over a period of years. The British authorities began with clandestine methods of forcing people to leave, including preventing people from returning home after they had left Chagos, they thought temporarily, for holidays or family emergencies; and, by making the conditions of life for Chagossians difficult if not impossible, such as by stopping teachers coming to Chagos to teach in schools. Later, the authorities ordered or otherwise directly intimidated the remaining population to leave, including by killing their dogs. The residents of Diego Garcia were the first Chagossians directly forced to leave once the base started being built. All the population of the island had been forced out by 1971, some living for two more years on other islands in Chagos. In 1973, the remaining inhabitants of the other islands in Chagos were forced to leave their homes.

Chagossians today remember how their families were forced to leave. One of the first steps the UK authorities took was to stop school and medical staff coming to the islands. Olivier Bancoult and Marie Mimose Furcy were siblings, with two other brothers and one sister, living with their family on Peros Banhos. As children, they were affected by the decision of the authorities to stop teachers coming to Chagos, part of the attempt to make conditions of life difficult for the Chagossians. Furcy, who was born in 1956, said she went to school until she was 8 years old, but then the teachers, who used to come from Mauritius and remain in Chagos for two years, stopped coming, and she never received an education. It

remains a source of great regret to her.⁶³ Similarly, Iline Talate Louis, born in 1961, said she did not go to school because there was no teacher.⁶⁴

Rachel Prosper, a nurse who had been born on Seychelles and moved to Chagos in the final years before the displacement, said:

I started working as a nurse in Diego Garcia in 1970 when my husband, Willie Prosper, was hired as the assistant manager of the Moulinie Company. I took on the job of nurse and midwife all by myself. There was nothing in the clinic except what I brought with me like cotton wool, antiseptic, and razors. Already at that time there was talk of closing the island, so the clinic was mostly empty with no drugs or equipment. I heard there'd been a nurse before me who had also gone back to Mauritius. A medical attendant I met there also left on the next boat that came through.⁶⁵

Subsequently the UK authorities, sometimes acting through the company, started preventing Chagossians returning to their homes when they had left the islands temporarily, not aware this was going to lead to their permanent exile.

On March 30, 1968, when Bancoult was 4 and Furcy was 13, their youngest sister was injured in an accident on Peros Banhos. Their parents took the whole family to Mauritius for treatment for her, fully intending to return and leaving their belongings in their home. Three months later, their sister died from an infection. Their mother went to the company office to arrange their return to Peros Banhos. Bancoult was with her when the company officer told them they could not return home as Chagos had been given away to build a US military base. Their mother, they said, “would not accept this.”⁶⁶

Louis Humbert was born in Peros Banhos in 1955 and lived there with his family. He said that in 1967 he and his mother and brothers traveled to Mauritius on holiday. But when they tried to return to Chagos some months later, and his mother went to the agents' office

⁶³ Human Rights Watch interview with Marie Mimose Furcy, April 1, 2022.

⁶⁴ Human Rights Watch interview with Iline Talate Louis, Saint Louis, March 31, 2022.

⁶⁵ Human Rights Watch interview with Rachel Prosper, Seychelles, September 1, 2022.

⁶⁶ Human Rights Watch interviews with Olivier Bancoult, December 1, 2021, and Marie Mimose Furcy, April 1, 2022.

to book their return trip home, the agent told her that people were no longer allowed to return to Chagos because it was about to be closed. This made him very sad, and split up his family, as four brothers and his sister remained in Chagos. He said, “that’s when the nightmare started.”⁶⁷

Suzelle Baptiste, born in Diego Garcia in 1965, said her mother had to take her and her twin brother to Seychelles when they were 11 months old as her brother was ill. When her brother got better, and her mother tried to take them all back to Diego Garcia, the company told her that they could not return there as the island was being closed.⁶⁸

By 1971, the authorities were ordering the remaining inhabitants to leave, starting with those living on Diego Garcia. Talate Louis said her parents were told in meetings in Diego Garcia in 1971 by the administrator that they had to leave the island, as it had been sold. She said they were overwhelmed by this. They went to Peros Banhos for six months, but then the administrator told them that they had to leave for Mauritius.⁶⁹

Rosemone Bertin was born in 1955 and grew up on Salomon with four sisters and six brothers. In 1972, after she had a baby, the administrator told her family that the UK had said they had to leave, and if they did not go, they would not have food.⁷⁰

In 1971, the BIOT commissioner and governor of the Seychelles, Sir Bruce Greatbatch,⁷¹ enacted an Immigration Ordinance that made it unlawful for any person to enter or remain in the Chagos Archipelago without a permit.⁷² This law did not apply to members of the British armed forces or UK government officials.⁷³

⁶⁷ Human Rights Watch interview with Louis Humbert, April 2, 2022.

⁶⁸ Human Rights Watch interview with Suzelle Baptiste, April 2, 2022.

⁶⁹ Human Rights Watch interview with Iline Talate Louis, March 31, 2022.

⁷⁰ Human Rights Watch interview with Rosemone Bertin, March 31, 2022.

⁷¹ A UK Court later ruled that, “The Commissioner and other officials to be appointed under the Order were effectively agents of the Crown under the control and direction of the Secretary of State.” EWHC, *Bancoult (No 1)*, [2000] EWHC 413 (Admin), Judgment, November 3, 2000, <https://www.bailii.org/ew/cases/EWHC/Admin/2000/413.html> (accessed January 4, 2023), para. 66.

⁷² ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, February 25, 2019, <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf> (accessed November 9, 2022), para 115. See also *Chagos Islanders v Attorney General*, [2003] EWHC 2222 (QB), para. 34.

⁷³ EWHC, *Bancoult No 1*, [2000] EWHC 413 (Admin), Judgment, November 3, 2000, <https://www.bailii.org/ew/cases/EWHC/Admin/2000/413.html> (accessed February 3, 2023), para. 5.

The same year, Greatbatch ordered all the dogs on Diego Garcia to be killed, an order that was carried out by company manager Marcel Moulinie. Moulinie described later how he first tried shooting the dogs, then poisoning them. Eventually more than 1,000 dogs, including pets, were gassed with exhaust fumes, from pipes attached to the exhaust pipes of US military vehicles.⁷⁴ Talate Louis said her family's dog was killed; they felt it was done to make them leave.⁷⁵

In July 1971, the Nordvaer ship came from the Seychelles to Diego Garcia to take the inhabitants away. It took some of the islanders to Salomon and Peros Banhos before “limping” with engine trouble to Mahé, on the Seychelles. The Isle of Farquhar, a ship belonging to Moulinie & Co., was chartered the same year by the BIOT government, arriving in Diego Garcia early in September and then sailing to Peros Banhos and Salomon with Chagossian families.⁷⁶

Chagossians remained on Peros Banhos and Salomon for another two years, but conditions worsened as food supplies declined, due to decisions by the UK (through the BIOT administration) and the company. Milk supplies ran out and women fed children a mixture of coconut milk and sugar instead.⁷⁷

In 1973, the final forced removals of Chagossians took place. Rosemond Saminaden, who lived on Peros Banhos, said, “the company staff told us we had to leave the island because it had been sold but that they had houses and work waiting for everyone in Mauritius. So, we had no choice but to get on the boat. Those promises were, however, lies.”⁷⁸

⁷⁴ “Moulinie Marcel Statement. 1999-11-22.pdf,” The Chagos Archive Documents Collection, <https://thechagosarchive.omeka.net/items/show/3311> (accessed November 17, 2022), para. 14. See also Vine, *Island of Shame*, p. 113-114.

⁷⁵ Human Rights Watch interview with Iline Talate Louis, March 31, 2022.

⁷⁶ EWHC, *Chagos Islanders v. The Attorney General Her Majesty's British Indian Ocean Territory Commissioner*, [2003] EWHC 2222 (QB), Judgment, October 9, 2003, <https://www.bailii.org/ew/cases/EWHC/QB/2003/2222.html>, (accessed November 9, 2022), para. 36.

⁷⁷ Vine, *Island of Shame*, p. 119.

⁷⁸ Human Rights Watch interview with Rosemond Saminaden, Port Louis, March 31, 2022.

On May 26, 1973, the Nordvaer left Peros Banhos for Mauritius via the Seychelles; it arrived on June 13, 1973, carrying 8 men, 9 women, and 47 children. This was the last of the Chagossian population removed from Chagos; the plantations were closed.⁷⁹

The final boat trips were particularly difficult. Talate Louis, who at age 10 was on the Nordvaer with her family in 1971, said that initially for the children it felt like a holiday, but for the adults it was terrible. They were transported in the bottom of the boat, “like animals,” and all had to sleep together.⁸⁰ Bertin, whose family had been told they had to leave Salomon, said her trip on the Nordvaer to Mauritius with a 6-month-old baby was “bad.” She also described how the Chagossians were put in the bottom of the boat.⁸¹ Greatbatch had insisted on rescuing horses from Diego Garcia—these were put at the top of the boat, on the deck.⁸²

Chagossians who were taken from Diego Garcia to Seychelles in 1971 were forced to live in an unused part of the prison in Mahe, for eight days, before another boat took them to Mauritius.⁸³

Liseby Elyse, born in Peros Banhos in 1953, said that:

The condition of our evacuation was terrible. We shared the cabin with animals like pigs and horses. People fell sick, there were no toilets, so we defecated in the same room. I saw two people die on the boat and their bodies were thrown into the sea. They weren’t people I knew personally because they only got on the boat when we stopped in Seychelles.

Elyse said that she was pregnant when the boat left Peros Banhos in April 1973, “but because of the trauma after we arrived in Mauritius on May 2, I lost my pregnancy two

⁷⁹ EWHC, *Chagos Islanders v. The Attorney General Her Majesty’s British Indian Ocean Territory Commissioner*, [2003] EWHC 2222 (QB), Judgment, October 9, 2003, <https://www.bailii.org/ew/cases/EWHC/QB/2003/2222.html> (accessed November 9, 2022), para. 49.

⁸⁰ Human Rights Watch interview with Iline Talate Louis, March 31, 2022.

⁸¹ Human Rights Watch interview with Rosemone Bertin, March 31, 2022.

⁸² Marcel Moulinie, quoted in Vine, *Island of Shame*, p. 114.

⁸³ EWHC, *Chagos Islanders v. The Attorney General Her Majesty’s British Indian Ocean Territory Commissioner*, [2003] EWHC 2222 (QB), Judgment, October 9, 2003, <https://www.bailii.org/ew/cases/EWHC/QB/2003/2222.html> (accessed November 9, 2022), para. 38.

weeks later. It made me so angry to lose my baby this way. I was so sick when we arrived that I had to stay below the deck for many days.”⁸⁴

Pervasive Abuses After Forced Displacement

By 1973, the entire population of Chagos had been forcibly displaced. But the abuses against them did not end. In both Mauritius and Seychelles, where they were initially forced to live, they faced extreme poverty and discrimination. The situations that Chagossians have described to Human Rights Watch involved forms of deprivation linked to poverty, including lack of access to adequate health services and education, and insufficient and inadequate food, sanitation, and housing. Many of these problems have persisted to the present.

The UK, with the US, was responsible for their situation, but had done nothing to ensure the Chagossians would not face extreme poverty. Promises made by BIOT authorities and company managers to the Chagossians that they would have work and housing waiting for them were not true. In 1972, the UK paid the small amount of £650,000 to Mauritius for the resettlement of all Chagossians, and not until 1982, after being forced into action by a court case, did the UK government give an additional amount of compensation to Chagossians in Mauritius; it gave no compensation at all to those in Seychelles. But still the UK refused to allow Chagossians to permanently return home. Chagossians described how their forced exile resulted in extreme mental and physical harm, from the pain of being permanently separated from their home to the daily struggle of finding enough food for their children.

Poverty, Stigma and Discrimination in Mauritius

Chagossians who were forced to move to the main island of Mauritius shared very similar accounts with Human Rights Watch. They described how, after being forced to leave Chagos, where food was abundant, they were reduced to living in extreme poverty, including severe hunger that they believed led to the deaths of family members. They also described the ongoing profound sense of shock and loss that still resonates with those who were forced to leave their homes as children.

⁸⁴ Human Rights Watch interview with Liseby Elyse, April 1, 2022.

The final arrivals of Chagossians in Port Louis on the Nordvaer in 1973 led to Chagossians demonstrating and refusing to leave the boat. They were eventually given housing—but in terrible conditions.

Rosemond Saminaden, who had been forced to leave Peros Banhos in 1973, said the company staff told them:

We had to leave the Island because it had been sold but that they had houses and work waiting for everyone in Mauritius. So, we had no choice but to get on the boat. Those promises were, however, lies. We arrived in Mauritius to find that no such arrangements had been made for us. The captain of the boat ... was so distressed by our conditions that he threatened to take us right back to Peros Banhos because he had never been involved in transporting people who had nowhere to go. He kindly allowed us to stay on his boat and then sleep in the harbor for three days. Paul Moulinie, the Chagos plantation company owner, was the only one who gave me and a few others MUR 10 [10 Mauritian rupees, or \$1.84] each when he visited us on the docks.⁸⁵

Saminaden said: “Immigration officials then offered us an uncompleted abandoned estate occupied by animals. We refused this and then they took us to the dock workers estate where we lived for 15 years. It was only slightly better than the cow shed—it was one bedroom for my entire family to live in. But it was rent free, and we had no money.”⁸⁶

Bancoult and Furcy said that after Chagos, life in Mauritius was “very difficult.” At first the entire family lived in a very small room in their grandmother’s home, with eight people sharing two mattresses. They moved out to a hut with a straw roof, held together by cow excrement. But even there, they said their family could not pay the rent. Furcy described the shock and inability to feed the family as breaking her father’s heart, who started crying like a child.⁸⁷ Their father had a stroke, and their mother had to find temporary work. They had virtually no communication with Chagos. After their forced departure their grandfather

⁸⁵ Human Rights Watch interview with Rosemond Saminaden, March 31, 2022.

⁸⁶ Ibid.

⁸⁷ Human Rights Watch interview with Marie Mimose Furcy, April 1, 2022.

died in Chagos after being electrocuted, but it took four years before their mother found out.⁸⁸

Talate Louis said, “the misery began [for us] in Mauritius.” She described how after arriving in Mauritius they had to live in the Bois Marchand area with animals. Her grandmother, mother, and six children had to live in one room together. Her baby brother died there because her mother’s milk dried up, and two other brothers also died. A few years later they moved to a house, but she received no education. After “much struggle,” with her mother being one of the leaders of the Chagossian women, they received some compensation in the 1980s. Her mother got 36,000 MUR (£1,803), and a group of Chagossians put cash together to get a house. When she was 14, she started working in a factory. She said that over the years, life got better with help from friends and work colleagues, but it remained difficult with considerable discrimination against Chagossians. They found it very hard to get employment with the government, and she said that Mauritians resented the Chagossians coming there.⁸⁹

Bertin also described life in Mauritius as “misery.” She said her family did not have enough food, and when her baby was ill, she had to walk 30 kilometers to the hospital as she could not afford the bus fare. She worked as a maid and cleaner, but had to get food from dustbins, and a little butter and milk each day from a convent for her baby. Without that she said, her baby would not have survived.⁹⁰

Marie Jeanette Sabrie, born in Salomon in 1956, said that “life in Mauritius was harsh and tough for my family. We lived in abject poverty and were constantly objects of laughter to the locals here.”⁹¹

Chagossians described discrimination that they and their parents and grandparents experienced in Mauritius. Louis Elyse, born in Mauritius in 1981, said that growing up, people would write on walls “You’re not welcome, go back to your islands,” and people would make fun of him for being Chagossian, but that he is very proud to be Chagossian.⁹²

⁸⁸ Human Rights Watch interview with Olivier Bancoult, December 1, 2021.

⁸⁹ Human Rights Watch interview with Iline Talate Louis, March 31, 2022.

⁹⁰ Human Rights Watch interview with Rosemone Bertin, March 31, 2022.

⁹¹ Human Rights Watch interview with Marie Jeanette Sabrie, March 31, 2022.

⁹² Human Rights Watch interview with Louis Elyse, September 9, 2022.

A March 2021 report on the situation of Chagossians in Mauritius by the UN Working Group of Experts on People of African Descent and the UN special rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance states that “information received indicates a specific experience of racial discrimination against the exiled Chagossian population.”⁹³

Discrimination and Loss of Identity in Seychelles

Bernadette Dugasse, born Bernadette Nourrice in Diego Garcia in 1956, described life in Seychelles as “really hard,” with their family of six living in one room, and her mother forced to work all day and late into the evening. She said her family as Chagossians were told they did not belong in Seychelles, and they were foreigners. As she did not have her birth certificate, she found it “very hard” to be accepted when she attended school.⁹⁴ Her brother, Bernard Nourrice, also born on Diego Garcia, said that he never got a passport in Seychelles, just an ID with a number that means, he said, “you are not Seychellois.”⁹⁵

Laurenzia Piron, 77, who was born on Diego Garcia to parents and grandparents also born in Chagos but was deported to Seychelles because she had married a Seychellois contractor in Chagos, said, “when we arrived in the Seychelles, people called us ‘*anara*’ meaning ‘unvaccinated’ because we were not vaccinated in Chagos. They told people not to mingle with ‘disease-ravaged’ people like us.”⁹⁶

Family members were separated both before and during the deportations when traveling Chagossians were disallowed from returning to the islands. Cyril Bertrand was 21 when he was refused passage to rejoin his parents and siblings in Peros Banhos in 1969 after a medical operation in Seychelles. He said:

⁹³ UN Human Rights Council, Mandates of the Working Group of Experts on People of African Descent and the Special Rapporteur on contemporary forms of racism, racial intolerance, racial discrimination, xenophobia and related intolerance, AL MUS 3/2020, March 30, 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25799> (accessed January 4, 2023), p. 4.

⁹⁴ Human Rights Watch interview with Bernadette Dugasse, September 1, 2022.

⁹⁵ Human Rights Watch interview with Bernard Nourrice, November 24, 2021.

⁹⁶ Human Rights Watch interview with Laurenzia Piron, Seychelles, August 30, 2022.

My entire family was still in PB [Peros Banhos]. I was left to wander about and to fend for myself, but I didn't have any identification documents that would allow me to live and work legally in Seychelles I couldn't even get married until my Seychellois fiancée managed to trace my family, who had been deported to Mauritius in 1970, to send my documents.⁹⁷

Due to the stigma, several Chagossians in Seychelles said they deliberately try to mask their identity. Diego Garcia-born Ginette Charles said, "We have suffered discrimination. People call us '*anarah*' or 'Mazambique' meaning 'uncivilized.' Even our national ID card, bears a distinctive number 5 that identifies us as being born in Chagos to distinguish us from Seychellois born here."⁹⁸

A Seychellois anthropologist, Jean Claude Mahoune, who has worked to highlight the issues Chagossian people face in Seychelles, said:

You will hardly find a Seychellois with a Chagossian Creole accent because they try to hide it to avoid being picked on. They are discriminated against in housing, access to finance, loans, land and jobs. They basically have refugee status in Seychelles where they continue to be insulted in public places and told to go home and eat coconuts.⁹⁹

Discrimination and Abuse in the UK

Following the UK's granting of citizenship to some Chagossians in 2002, many of them came to live in the UK. But those interviewed by Human Rights Watch describe facing several challenges. Louis Elyse came to the UK in 2003, saying in Mauritius they had been promised housing and jobs in the UK. In reality, no one was there to receive them and address their immediate concerns. He said he slept at Gatwick Airport in London for a week, and then outside a government social security office in Crawley, near the airport, for another week. He was eventually given accommodation in a lodge and has since remained in the UK.¹⁰⁰

⁹⁷ Human Rights Watch interview with Cyril Bertrand, Seychelles, August 30, 2022.

⁹⁸ Human Rights Watch interview with Ginette Charles, September 1, 2022.

⁹⁹ Human Rights Watch interview with Jean Claude Mahoune, September 1, 2022.

¹⁰⁰ Human Rights Watch interview with Louis Elyse, September 9, 2022.

Rosy Leveque’s grandmother was not allowed to return home to Peros Banhos in Chagos in 1968 after giving birth in Mauritius to her mother. Her mother came by herself to the UK at the same time as Louis Elyse. She described a similar experience of having to sleep at Gatwick Airport for days as they had no housing or jobs for them. Eventually, her mother got a job cleaning toilets (she had been a tailor in Mauritius) and saved money for Leveque’s father, and then her and her brother, to come to the UK.¹⁰¹

In 2022, the UK Parliament passed the Nationality and Borders Act,¹⁰² which provides for anyone of Chagossian descent to apply to become a British citizen or a British Overseas Territories citizen, if they are not one already.¹⁰³

Elyse described this law as significant but said Chagossians in the UK were still living very difficult lives, with the UK government creating more barriers to them living in the UK through “life in the UK” and language tests that it applies to non-UK citizens. He said that Chagossians “always have to fight and never have it easy.”¹⁰⁴ Leveque, who campaigned for this law, said the “right of return and nationality are two completely different things. It is a victory in terms of those families who are separated, and they can be reunited, but it doesn’t stop there.”¹⁰⁵

Chagossians said they faced discrimination and bigotry in the UK. Dugasse, who moved to the UK in 2005, described “horrible comments” she receives in the UK when she does interviews on British TV, with commentators telling her to go back to where she came from. But, she noted, she cannot “go back” because of the policies of the UK and US governments.¹⁰⁶

¹⁰¹ Human Rights Watch interview with Rosy Leveque, September 9, 2022.

¹⁰² Nationality and Borders Act 2022, *UK Public General Acts*, c. 36, <https://www.legislation.gov.uk/ukpga/2022/36/contents/enacted> (accessed February 1, 2023).

¹⁰³ “UK government support for Chagossians,” *Foreign, Commonwealth & Development Office and Home Office*, September 1, 2022, https://www.gov.uk/government/collections/uk-government-support-for-chagossians?utm_medium=email&utm_campaign=govuk-notifications-topic&utm_source=45dcaf40-2ec3-491a-bad3-f7bcf54c2814&utm_content=daily (accessed August 25, 2022).

¹⁰⁴ Human Rights Watch interview with Louis Elyse, September 9, 2022.

¹⁰⁵ Human Rights Watch interview with Rosy Leveque, September 9, 2022.

¹⁰⁶ Human Rights Watch interview with Bernadette Dugasse, September 1, 2022.

Loss, “Derasine,” and “Sagren”

Although some of the Chagossians interviewed by Human Rights Watch described their material conditions having improved from the extreme poverty they endured in the 1970s,¹⁰⁷ their sense of loss of being forced to leave their homeland persisted.

Chagossians use the word “*derasine*” to describe this. Minority Rights Group International¹⁰⁸ described this term, quoting David Vine’s “*Dérasiné: The Expulsion and Impoverishment of the Chagossian People*”:

The Kreol word the Chagossian people most often use to describe their removal from the archipelago is “*derasine*” which derives from *deraciner* in French and is related to “*deracinate*” in English. The Derasine Report suggests that the choice of this word has two facets for the Chagossian people. It is capable of meaning “to uproot” or “to tear away from one’s native land” evidencing the Chagossian people’s deep psychological attachment to the Chagos Islands. Further, the word can also be defined as “to eradicate”, a reference to the threat that expulsion poses to their communal survival.¹⁰⁹

Vine, a professor of political anthropology who has studied the Chagossians for many years, described how many Chagossians died at an early age, with one group recording at least 44 deaths by 1975 in Mauritius “because of unhappiness, poverty and lack of medical care” and with at least 11 other Chagossians committing suicide.¹¹⁰ Another report said that by 1975, at least 1 in 40 Chagossians in Mauritius had died of starvation and disease.¹¹¹ Vine described a World Health Organization (WHO)-funded study that looked at

¹⁰⁷ Other Chagossians continue to live in extreme poverty in Mauritius. See UN HRC, Mandates of the Working Group of Experts on People of African Descent and the Special Rapporteur on contemporary forms of racism, racial intolerance, racial discrimination, xenophobia and related intolerance, AL MUS 3/2020, March 30, 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25799> (accessed January 4, 2023), p. 3.

¹⁰⁸ An international human rights organization working to secure rights for ethnic, national, religious, linguistic minorities and Indigenous peoples around the world.

¹⁰⁹ Minority Rights Group International, “Submission from MRG to Select Committee on Foreign Affairs,” Written Evidence, October 12, 2007, <https://publications.parliament.uk/pa/cm200708/cmselect/cmffaff/147/147we26.htm> (accessed November 17, 2022), para. 35.

¹¹⁰ Vine, *Island of Shame*, p. 130.

¹¹¹ Vine, *Island of Shame*, p. 131, quoting John Madeley, *Diego Garcia: A Contrast to the Falklands*.

the concept of “*sagren*,” which explains illness and death among Chagossians. Sagren, according to this WHO study, is “nostalgia for the Chagos Islands. It is the profound sadness of facing the impossibility of being unable to return to one’s home in the archipelago.”¹¹²

UK and US Prevention of Chagossians’ Return to Chagos

For 50 years, successive UK governments, with US involvement, have continued to prevent the Chagossians from returning home. For at least the last 20 years, UK ministers and officials have claimed financial cost as one of the main reasons for opposing their return.

The one exception was for a few years following a 2000 court ruling when the UK government acknowledged that Chagossians could return to most of the islands and removed the laws legally preventing their return.¹¹³ However, even then, the UK government (through the BIOT administration) commissioned a “feasibility study” that claimed that long-term return would be prohibitively expensive.¹¹⁴ A UK House of Commons Briefing Paper described this 2002 study as being “viewed by many as seriously flawed.”¹¹⁵

The UK’s brief acceptance in principle of the Chagossians’ right to return to some of the islands ended in 2004. That year, Queen Elizabeth II, acting on behalf of the UK government, issued two “Orders in Council,” declaring that no one had the right to live in BIOT or enter and remain there without authorization. The UK government had, yet again, not consulted Chagossians about this.¹¹⁶ The UK government claimed in 2004 that although it may be feasible to resettle the islands in the short term, resettlement is “likely to become less feasible over time,” due to what it claimed where the risk of flooding

¹¹² *Ibid.*, p. 155.

¹¹³ The Immigration Ordinance 2000 came into force on November 3, 2000.

¹¹⁴ ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, February 25, 2019, <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf> (accessed November 9, 2022), para. 124.

¹¹⁵ Claire Mills, “Disputes over the British Indian Ocean Territory: February 2021 update,” House of Commons Library, Briefing Paper Number 9134, February 8, 2021, <https://commonslibrary.parliament.uk/research-briefings/cbp-9134/> (accessed January 4, 2023), p. 6.

¹¹⁶ Letter to the Chairman of the Committee from the Secretary of State for Foreign and Commonwealth Affairs [Jack Straw], Annex 1 – Written Ministerial Statement by Mr. Bill Rammell, col 32WS, June 15, 2004, <https://publications.parliament.uk/pa/cm200405/cmselect/cmfa/115/115we05.htm> (accessed November 17, 2022).

events due to increase in sea levels.¹¹⁷ However, there has been no suggestion from the US nor the UK that the military base on Diego Garcia will become “less feasible” due to this supposed risk of flooding of the Chagos islands.

In April 2010, the UK announced the creation of a marine protected area (MPA) around the Chagos Archipelago.¹¹⁸ However, a document published by *The Guardian* and Wikileaks suggested that the UK’s motivation was to make it impossible for Chagossians to return home.¹¹⁹ It contained a record of what was said at a meeting on May 12, 2009, between a US political counselor and three senior UK officials. The record includes a note of the UK officials pressing the US to continue to say it “requires” the entire BIOT for defense purposes.

The US official who authored the note headlined a section describing the views of UK officials as “Je Ne Regrette Rien” (I regret nothing):

[The UK official] observed that BIOT has “served its role very well,” advancing shared U.S.-UK strategic security objectives for the past several decades. The BIOT “has had a great role in assuring the security of the UK and U.S. – much more than anyone foresaw” in the 1960s, [the UK official] emphasized. “We do not regret the removal of the population,” since removal was necessary for the BIOT to fulfill its strategic purpose, he said. Removal of the population is the reason that the BIOT’s uninhabited islands and the surrounding waters are in “pristine” condition.”¹²⁰

[Another UK official] stressed that the exchange of notes governed more than just the atoll of Diego Garcia but expressly provided that all of the BIOT was “set aside for defense purposes.” (Note: This is correct. End Note.) She urged Embassy officers in discussions with advocates for the Chagossians, including with members of the “All Party Parliamentary Group

¹¹⁷ European Court of Human Rights (ECHR), *Chagos Islanders v. United Kingdom*, no. 35622/04, Judgment of 11 December 2012, ECHR 2012, available at www.echr.coe.int, para. 23.

¹¹⁸ Foreign and Commonwealth Office, “New Protection for the Marine Life of the British Indian Ocean Territory,” Statement, April 1, 2010, <http://www.ukotcf.org/pdf/News/MPA100401FCOStatementonBIOT.pdf> (accessed January 25, 2023).

¹¹⁹ Reproduced in the *Guardian*, “US Embassy cables: Foreign Office does not regret evicting Chagos islanders,” December 2, 2010, <https://www.theguardian.com/world/us-embassy-cables-documents/207149> (accessed November 17, 2022).

¹²⁰ *Ibid.*, para. 8.

on Chagos Islands (APPG),” to affirm that the USG [US government] requires the entire BIOT for defense purposes. Making this point would be the best rejoinder to the Chagossians' assertion that partial settlement of the outer islands of the Chagos Archipelago would have no impact on the use of Diego Garcia. She described that assertion as essentially irrelevant if the entire BIOT needed to be uninhabited for defense purposes.¹²¹

The 2009 cable concludes with the US official expressing support for using a marine reserve to prevent any of the Chagossians returning to live in the BIOT:

Establishing a marine reserve might, indeed, as the FCO [official] stated, be the most effective long-term way to prevent any of the Chagos Islands' former inhabitants or their descendants from resettling in the BIOT.¹²²

In 2015, a tribunal under the UN Convention on the Law of the Sea (UNCLOS) ruled that the UK had breached its obligations under UNCLOS in establishing the Marine Protected Area (MPA).¹²³ A case brought by Olivier Bancoult of the Chagos Refugees Group (CRG) in the UK courts challenged the UK's creation of the MPA, on the basis the real reason was to make it impossible for Chagossians to return to live in the islands. The UK Supreme Court dismissed the case.¹²⁴

In 2012, the UK government announced a review of BIOT policy, including the possibility of allowing Chagossians to return. Through the BIOT administration, it commissioned a further feasibility study by KPMG International Ltd. on resettlement of Chagossians in Chagos. In January 2015, KPMG released its study, which concluded that resettlement was possible although costs could vary significantly.¹²⁵

¹²¹ Ibid., para. 11.

¹²² Ibid., para. 15.

¹²³ Permanent Court of Arbitration, *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, March 18, 2015, <https://files.pca-cpa.org/pcadocs/MU-UK%2020150318%20Award.pdf> (accessed January 24, 2023).

¹²⁴ ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, February 25, 2019, <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf> (accessed November 9, 2022), para. 130.

¹²⁵ KPMG, “Feasibility study for the resettlement of the British Indian Ocean Territory,” January 31, 2015, <https://www.gov.uk/government/speeches/policy-review-of-resettlement-of-the-british-indian-ocean-territory> (accessed November 15, 2022).

KPMG estimated costs of resettlement ranging from £32 million to £420 million over several years, depending on the extent of the resettlement. It concluded that “[t]here are no insurmountable legal obstacles that would prevent a resettlement on BIOT,”¹²⁶ and that “many environmental and logistic problems can be overcome with sufficient technical and financial resources (as witnessed by artificial shore defenses on Diego Garcia, protecting the Naval Support Facility, and costing many millions of US dollars).”¹²⁷

The study summarized consultations with Chagossians in Mauritius, Seychelles, and the UK. Its key findings were that “[a]ttendees at all consultations expressed a preference for returning to BIOT permanently [including Diego Garcia]. It was clear that temporary visits to BIOT is not an acceptable option for the Chagossians” and that Chagossians wish to have “[a] modern standard of living.”¹²⁸

A briefing to the UK prime minister by his national security adviser on resettlement of the Chagossians in February 2015 suggested that the main issue for the UK government was cost:

As for my advice, this really does come down to the balance between righting what was unquestionably a serious historic wrong, and the on-going costs and liabilities Where I do think there are significant problems, however, is around costs. It is easy to imagine the whole thing escalating and our getting involved in building runways and harbours and accommodation blocks, while struggling to attract hotels and tourism, and finding ourselves committed to indefinite social security support because of lack of job opportunities. In short, it can be done, but it would almost certainly turn out a great deal more expensive than even the highest estimates in the feasibility study.¹²⁹

¹²⁶ *Ibid.*, p. 20.

¹²⁷ *Ibid.*, p. 39.

¹²⁸ *Ibid.*, p. 16.

¹²⁹ EWHC, *R (Hoareau and Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs [Bancoult (No 5)]*, [2019] EWHC 221 (Admin), Judgment, February 8, 2019, <https://www.judiciary.uk/wp-content/uploads/2019/02/judgment-hoareau-bancoult-v-ssfca-final-8-feb-19.pdf> (accessed November 9, 2022), para. 66.

Despite the clear evidence that return of the Chagossians was feasible, the UK government on November 16, 2016, said it would continue to oppose return of Chagossians on the grounds of “feasibility, defence and security interests and cost to the British taxpayer.”¹³⁰ Bancoult said this amounted to “putting the KPMG report in the bin.”¹³¹ The 2016 statement by the UK government appears to still represent its position, having been repeated almost word for word by Dominic Raab, then foreign secretary, in a letter in November 2020.¹³²

The UK government also said—at the same time it announced it continued to oppose the return of Chagossians in 2016—that it would allocate funding that “addresses the most pressing needs of the community by improving access to health and social care and to improved education and employment opportunities. Moreover, this fund will support a significantly expanded programme of visits to BIOT for native Chagossians.” The promised funding amounted to £40 million over 10 years.¹³³ In 2023, the UK government website states that “[t]he government has funded a number of community projects in the UK and Mauritius and is working to make more support available.”¹³⁴ Speaking in 2021, Bancoult said there has been one heritage visit, and nothing has been done to improve conditions for the Chagossians by the UK government since the announcement of the plan.¹³⁵

In a letter to Human Rights Watch in January 2023 on behalf of the UK government, minister Lord Goldsmith said: “Disbursing these funds has been challenging, but they have supported several Heritage Visits to the islands for Chagossians and a number of projects in the UK and Mauritius. We remain committed to delivering on this commitment and have

¹³⁰ Statement of Alan Duncan to UK House of Commons, “Update on the British Indian Ocean Territory,” UIN HCWS260, November 16, 2016, <https://questions-statements.parliament.uk/written-statements/detail/2016-11-16/HCWS260> (accessed November 17, 2022).

¹³¹ Human Rights Watch interview with Olivier Bancoult, December 1, 2021.

¹³² Letter from Dominic Raab to Margaret Beckett MP, November 12, 2020.

¹³³ Statement of Alan Duncan to UK House of Commons, “Update on the British Indian Ocean Territory,” UIN HCWS260, November 16, 2016, <https://questions-statements.parliament.uk/written-statements/detail/2016-11-16/HCWS260> (accessed January 24, 2023).

¹³⁴ Foreign, Commonwealth & Development Office and Home Office, “UK government support for Chagossians,” Collection, December 9, 2022, <https://www.gov.uk/government/collections/uk-government-support-for-chagossians> (accessed January 3, 2023).

¹³⁵ Human Rights Watch interview with Olivier Bancoult, December 1, 2021.

recently launched new projects in the UK and Mauritius. We regularly engage with different Chagossian groups to seek their views.”¹³⁶

The US base on Diego Garcia continues to employ nationals from around the world, including from the Philippines and Mauritius. But Chagossians said they do not believe they can work there, originally because of an outright ban and currently due to the prohibition on families joining them on Diego Garcia or even residing on the outer islands.

In 2021 and 2022, 173 Sri Lankan asylum seekers were brought to Diego Garcia by UK forces who had rescued them in the Indian Ocean. They are, according to media reports, housed in a fenced camp on the military base. As of September 2022, 116 remained, and others had requested to return to Sri Lanka. One of the lawyers said that the UK government’s position is that the UN Refugee Convention does not apply to Diego Garcia. This illustrates, first, that it is possible for civilians to live in Diego Garcia, even on the base, but also that the UK continues to assert that its international obligations concerning the protection of people do not apply to Chagos, thus effectively treating the Chagos Archipelago as an international law-free zone when it comes to the protection of people.¹³⁷

Bancoult said that while visiting Diego Garcia on a “heritage visit,” he and fellow Chagossians had seen how the graves of their relatives had been allowed to decay, in comparison to another cemetery for US military dogs, whose graves were well-maintained. He concluded that dogs get better treatment than Chagossians.¹³⁸

Some other members of the Chagos Refugees Group said that they have never been opposed to the existence of the US base on Diego Garcia—they want to live on the islands with it. They asked why, if foreigners are brought in to work on the base, such as from the Philippines, it is not possible for Chagossians to live on the islands.¹³⁹

¹³⁶ Letter from Lord Goldsmith, Minister of State for Overseas Territories, Commonwealth, Energy, Climate & Environment, to Human Rights Watch, January 23, 2023.

¹³⁷ See Jacob Goldberg, “Diego Garcia: Where the Refugee Convention doesn’t apply,” *The New Humanitarian*, September 15, 2022, <https://www.thenewhumanitarian.org/news-feature/2022/09/15/Diego-Garcia-UK-island-Refugee-Convention>.

¹³⁸ Human Rights Watch interview with Olivier Bancoult, December 1, 2021.

¹³⁹ *Ibid.*

The justifications canvassed by the UK government for the forced displacement and prevention of return of the Chagossians do not stand up to scrutiny. The UK initially hid its real motivation for forced deportation and lied that there was no permanent Chagossian population. For the last 20 years, it has claimed security and cost as justification for preventing return. But neither the UK nor the US have ever explained why it is necessary to keep the Chagossians from returning to their homes on the islands across the entire archipelago, when they permitted them in law to do so for four years between 2000 and 2004, and the Chagossian representatives have repeatedly said that they are not calling for a closure of the base on Diego Garcia (which only occupies part of one island). Neither can cost be a reason to prevent the return of a population when the UK was responsible for their displacement and owes them reparations. The UK has been responsible for a deliberate and cynical infliction of serious harm against Chagossians that spans generations.

The Right to Return

Chagossians interviewed by Human Rights Watch had different views on key issues affecting them, including which country should govern Chagos, but they expressed overwhelming support for the right to return to Chagos. These included members of different Chagossian groups in different parts of the world, notably the Chagos Refugees Group, Chagos Asylum People, Seychelles Chagossian Committee, and Chagossian Voices.¹⁴⁰

The Chagos Refugees Group in 2008 published “Returning Home: A Proposal for the Resettlement of the Chagos Islands,” which included a costed proposal for resettlement from a former director of the Overseas Development Institute, estimating this at £25 million over a period of five years.¹⁴¹

Virtually all Chagossians born on Chagos whom Human Rights Watch interviewed said that in addition to an acknowledgment of their right to return, they actually want to return, not just for brief visits, but to live permanently on the islands. Furcy said, “I want to return to

¹⁴⁰ Human Rights Watch interview with Bernadette Dugasse, September 1, 2022, and Jean-Francois Nellan, September 2, 2022.

¹⁴¹ Chagos Refugees Group, UK Chagos Support Association, “Returning Home: A Proposal for the Resettlement of the Chagos Islands,” March 2008, <https://drive.google.com/file/d/1EsjxolnMKkGonqUBbQWTAjLlh3DcV7iM/view> (accessed January 26, 2023), p. 33.

Chagos, even if I can't work. Chagos is my land.”¹⁴² Marie Brigitte Ernest, who was born on Peros Banhos, said, “I want to return to my country and compensation for all the moral troubles.”¹⁴³ Iline Talate Louis said, “my dream is always to return to my island,” where she lived for her first 10 years.¹⁴⁴

“It would be more simple, more beautiful to be at home. We are not at home [in Mauritius],” Bertin said. “When I left, I was 17, now I'm 67. We lived our life quietly ... I don't understand why they did this.” She said that recent UK offers of citizenship were not of any use to her. “Now they say they will give passports, but for the first generation of Chagossians, what is there? They are building a building without a base.” She said she wants to return to her island. “It is my land.”¹⁴⁵

Marie Jeanette Sabrie, born in Salomon in 1956, said, “Salomon is still in my heart. I want to go back there—my siblings and my five children also want to go live there. It would be enough for me to open my windows and see the sea. I am a pensioner now and would be happy to live out my retirement there.”¹⁴⁶

According to Lefade, “there is a nostalgia in our heart about when we will get back to our country. I come to Mauritius because this is where I am allowed to go, and this is where my family was forced to live. But I would love to go back to Chagos.”¹⁴⁷

Solange Hoareau, who was deported to Seychelles with her Seychellois husband in 1971, said, “I want to go back to live in Diego Garcia where I was born, even with the military base there. It is the land of my birth and I want the right to live there.”¹⁴⁸

Chagossians who worked on the coconut plantations say they do not receive pensions from the UK government, which bought out the companies, unless they live in the UK.¹⁴⁹

¹⁴² Human Rights Watch interview with Marie Mimose Furcy, April 1, 2022.

¹⁴³ Human Rights Watch interview with Marie Brigitte Ernest, August 30, 2022.

¹⁴⁴ Human Rights Watch interview with Iline Talate Louis, March 31, 2022.

¹⁴⁵ Human Rights Watch interview with Rosemone Bertin, March 31, 2022.

¹⁴⁶ Human Rights Watch interview with Marie Jeanette Sabrie, March 31, 2022.

¹⁴⁷ Human Rights Watch interview with Claudette Paline Lefade, August 29, 2022.

¹⁴⁸ Human Rights Watch interview with Solange Hoareau, Victoria, Seychelles, August 31, 2022.

¹⁴⁹ Human Rights Watch interview with Louis Elyse, September 9, 2022.

Some younger generations of Chagossians, born after the deportations, told Human Rights Watch they share similar views about the right to return. Jean-Francois Nellan, whose grandparents were forced to leave Chagos and who has lived in Mauritius and now the UK, said he is proud to call himself Chagossian. He said if given the right to return “I would leave everything and go back.”¹⁵⁰

Louis Elyse, whose parents were forced to leave Peros Banhos and now lives in the UK, said he would be on the first plane or ship back to Chagos if given the right to return.¹⁵¹ Leveque, whose grandparents were prevented from returning to Chagos, also said if someone told her to “pack your bags, you can return,” that she would.¹⁵²

¹⁵⁰ Human Rights Watch interview with Jean-Francois Nellan, September 2, 2022.

¹⁵¹ Human Rights Watch interview with Louis Elyse, September 9, 2022.

¹⁵² Human Rights Watch interview with Rosy Leveque, September 9, 2022.

Responsibility for Abuses

Primary responsibility for the abuses against the Chagossians lies with the UK, the colonial power that forced the entire population to leave the Chagos islands and has since prevented their return. Underlying this discriminatory treatment of the Chagossians has been systematic racism that manifested itself in various ways, including treating the Chagossians as a people not worthy of consideration.

From the start, the US played a key role by demanding the removal of Chagossians from Diego Garcia, for which it still denies responsibility. Since then, the US has played a significant role supporting the UK's efforts to prevent their return, although its exact involvement over the years is murky due to the limited publication of official documents. The countries where Chagossians currently live—Mauritius, Seychelles and now the UK—have obligations to ensure they can live in dignity and without discrimination. In particular, Mauritius, in its struggle to return Chagos to its control, needs to ensure that all Chagossians, whatever their citizenship, can return.

Discrimination and Racism by UK Officials

The UK government and its officials have treated the Chagossian people over the decades with demonstrable racism, including in language in official documents, and through racial and ethnic discrimination.¹⁵³ They have violated the basic rights of the Chagossians as a people, notably to their lands and territories, because of their race and ethnicity.

The underlying racism of UK officials toward the Chagossians was illustrated in confidential documents from the 1960s that were published in the 1990s, which contain explicitly racist language from very senior UK officials.

¹⁵³ The UNESCO 1978 Declaration on Race and Racial Prejudice states in article 2 that racism “includes racist ideologies, prejudiced attitudes, discriminatory behavior, structural arrangements and institutionalized practices resulting in racial inequality.” See Declaration on Race and Racial Prejudice, adopted by the General Conference of UNESCO, November 27, 1978, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-race-and-racial-prejudice> (accessed January 4, 2023), art. 2.

For instance, a UK government memorandum dated August 24, 1966, from PRH Wright,¹⁵⁴ states that the permanent under-secretary, the most senior official in the ministry, had minuted that:

We must surely be very tough about this. The object of the exercise is to get some rocks which will remain ours; there will be no indigenous population except seagulls who have not yet got a Committee (the Status of Women Committee does not cover the rights of Birds).¹⁵⁵

A handwritten note that DA Greenhill¹⁵⁶ added to this says:

Unfortunately along with the Birds go some few Tarzans or Man Fridays whose origins are obscure, and who are being hopefully wished on to Mauritius etc. When this has been done I agree we must be very tough and a submission is being done accordingly.¹⁵⁷

Similar racist language may have been repeated by UK officials in 2009. A cable from the US State Department concerning a meeting between US and UK officials was published by Wikileaks and the *Guardian* in 2010. The cable states:

However, [the UK official] stated that, according to the HGM,s [sic].¹⁵⁸ current thinking on a reserve, there would be "no human footprints" or "Man Fridays" on the BIOT's uninhabited islands. He asserted that establishing a marine park would, in effect, put paid to resettlement claims of the archipelago's former residents. Responding to Polcouns' observation that the advocates of Chagossian resettlement continue to vigorously press

¹⁵⁴ Patrick Wright, later head of the diplomatic service.

¹⁵⁵ EWHC, *Bancoult (No. 1)*, [2000] EWHC 413 (Admin), Judgment, November 3, 2000, <https://www.bailii.org/ew/cases/EWHC/Admin/2000/413.html> (accessed November 16, 2022), para. 13.

¹⁵⁶ Denis Greenhill, who became permanent under-secretary of state for foreign affairs (the highest civil service position in the Foreign and Commonwealth Office) and head of the diplomatic service in 1969.

¹⁵⁷ EWHC, *Bancoult (No. 1)*, [2000] EWHC 413 (Admin), Judgment, November 3, 2000, <https://www.bailii.org/ew/cases/EWHC/Admin/2000/413.html> (accessed November 16, 2022), para. 13.

¹⁵⁸ Original spelling and punctuation. The author meant "HMG" [Her Majesty's Government.]

their case, [the UK official] opined that the UK's "environmental lobby is far more powerful than the Chagossians' advocates."¹⁵⁹

In subsequent UK court hearings, two of the UK officials named in the cable denied having used the term "Man Fridays."¹⁶⁰ However, the underlying approach to denying the basic rights of the Chagossians over many decades displays racist assumptions and discriminatory intent.

Underlying racial and ethnic discrimination is also evident in the way that successive UK governments have sought to deny the Chagossians human rights protections. In particular, they have denied that international and regional human rights treaties that the UK has ratified apply to Chagos, including the European Convention on Human Rights (and the UK's domestic Human Rights Act), UN treaties on human rights, the Rome Statute of the International Criminal Court, and the 1951 Refugee Convention, although the UK claims Chagos as its territory.

The UK authorities have continued to claim, in echoes of the 1960s, that the BIOT does not have a permanent population, using this to assert that the human rights treaties are not applicable to the UK in its actions there, despite strong disagreement from UN human rights treaty bodies.¹⁶¹ The effect of this is that the UK authorities have created different standards of rights that apply in their territories, affecting different people, around the world. At the bottom in terms of protection of rights are the Chagos islands—the UK's last colony in Africa—where the UK government considers that few if any human rights treaties apply.¹⁶²

¹⁵⁹ Reproduced in the *Guardian*, "US Embassy cables: Foreign Office does not regret evicting Chagos islanders," December 2, 2010, <https://www.theguardian.com/world/us-embassy-cables-documents/207149> (accessed November 17, 2022), para. 7.

¹⁶⁰ United Kingdom Supreme Court, *R (on the application of Bancoult No 3) v. Secretary of State for Foreign and Commonwealth Affairs*, [2018] UKSC 3, Judgment, February 8, 2018, <https://www.bailii.org/uk/cases/UKSC/2018/3.html> (accessed November 17, 2022), para. 76.

¹⁶¹ See Committee on the Elimination of Racial Discrimination (CERD), "Concluding Observations on the combined twenty-first to twenty-third periodic reports of the United Kingdom of Great Britain and Northern Ireland," CERD/C/GBR/CO/21-23, October 3, 2016, <https://undocs.org/Home/Mobile?FinalSymbol=CERD%2FC%2FGBR%2FCO%2F21-23&Language=E&DeviceType=Desktop&LangRequested=False> (accessed January 3, 2023), paras. 40-41.

¹⁶² See Island Rights Initiative, "Mapping the UK's responsibilities for human rights in Crown Dependencies and Overseas Territories," June 7, 2019, <https://islandrights.org/mapping-the-uks-responsibilities-for-human-rights-in-uk-overseas-territories-and-crown-dependencies-update/updated-mapping-document-on-uk-constitutional-responsibilities-for-human-rights-in-cdots-june-2019/> (accessed January 3, 2023), p. 12.

The UK's treatment of the Chagossians has long been compared to that of the inhabitants of other islands it still controls, including the Falklands—where several thousand islanders are of European descent, and the UK has strongly defended their rights. In 1985, Minority Rights Group International made the explicit comparison between the UK authorities' treatment of Chagossians and of Falkland Islanders, stating that “[i]t is difficult to escape the conclusion that the chief reason for the ‘paramount’ treatment offered to the Falkland islanders is simply that their skin is white.”¹⁶³ In a 2019 UN General Assembly debate on Chagos, the UK representative referred to “the right of islanders to self-determination, as well as to freely determine their political status and pursue their economic and cultural development.” But she was referring only to the inhabitants of the Falklands, South Georgia, and South Sandwich Islands, not the Chagossians.¹⁶⁴

The UK's differing treatment of European inhabitants of other islands under its control is evident with its military bases in Cyprus. After Cyprus obtained independence from the UK in 1960, the UK insisted on retaining military bases on the island, and the Cyprus independence treaty created two “Sovereign Base Areas” where the UK retained sovereignty. Unlike Chagos, however, it did not deport the inhabitants of the island to maintain the security of its bases. Nor has it denied their human rights—it has explicitly extended the application of the European Convention on Human Rights to the military base areas it controls and allows inhabitants to bring cases to the European Court of Human Rights.¹⁶⁵

Role of the United States

The United States was instrumental in the forced displacement of the Chagossians from the mid-1960s to 1973. Since then, it has backed the UK's efforts to block the Chagossians' return, even to the islands that the US has never used for military purposes. Currently, the

¹⁶³ Minority Rights Group International, “Diego Garcia: A Contrast to the Falklands.” August 1, 1985, <https://minorityrights.org/publications/diego-garcia-a-contrast-to-the-falklands-august-1985/> (accessed November 16, 2022), p. 3.

¹⁶⁴ UN, “General Assembly Welcomes International Court of Justice Opinion on Chagos Archipelago, Adopts Text Calling for Mauritius' Complete Decolonization,” press release, GA/12146, May 22, 2019, <https://www.un.org/press/en/2019/ga12146.doc.htm> (accessed November 17, 2022).

¹⁶⁵ See Andreas Gross, “Situation of the inhabitants of the Sovereign Base Areas of Akrotiri and Dhekelia,” Report to Committee on Legal Affairs and Human Rights, Doc. 11232, April 4, 2007, <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=11651&lang=EN#1> (accessed November 17, 2022), para. 10.

US is unwilling to provide financial support for the return of Chagossians or to provide them compensation.

The US approached the UK over the possibility of acquiring Diego Garcia for a base possibly as early as 1960.¹⁶⁶ The US authorities told the UK in 1964 that it wanted a base or military facility on Diego Garcia without any inhabitants on the island. In the years that followed, the US pushed for Diego Garcia to be cleared of its inhabitants. The UK eventually decided to displace the population of all the Chagos Archipelago as the US would not guarantee it would never want to use any of the other islands, and if it ever wanted such military use, it had said it would want the islands with no inhabitants.

A January 1971 memorandum from John Stevenson, legal adviser at the Department of State, to Admiral Elmor Zumwalt, chief of naval operations, says, concerning the Chagossians, that “their removal is to accommodate US needs, and the USG will, of course, be considered to share the responsibility with the UK by the inhabitants and other nations if satisfactory arrangements are not made.”¹⁶⁷

In December 1971, a cable from the US embassy in Port Louis, Mauritius about the Chagossians now living there, said “[t]he USG has a moral responsibility for the well-being of these people who were involuntarily moved at our request,” especially as the US government had resisted efforts by the Mauritius and UK governments to “permit Ilois [Chagossians] to remain [on Diego Garcia] as employees of the facility.”¹⁶⁸

In a 2006 brief to the US Supreme Court, the US Department of Justice stated that “the Executive Branch determined that critical national security considerations – including the spread of Soviet influence in the Indian Ocean region – required the US to pursue the BIOT Agreement with Britain and build a military facility in the Indian Ocean notwithstanding the potential need for relocation of the local people.”¹⁶⁹

¹⁶⁶ Vine, *Island of Shame*, p. 69.

¹⁶⁷ Quoted in Vine, *Island of Shame*, p. 108.

¹⁶⁸ Vine, *Island of Shame*, p. 115.

¹⁶⁹ US Supreme Court, *Bancoult v. McNamara*, No. 06-502, Brief for the Respondents in Opposition, December 2006, <https://www.justice.gov/sites/default/files/osg/briefs/2006/01/01/2006-0502.resp.pdf> (accessed November 17, 2022), p. 10.

In 1975, the US government requested that Congress authorize an expansion of the base, with President Gerald Ford stating such facilities were “essential to the national interest of the United States.”¹⁷⁰

The US Congress, in almost 50 years since the expulsion of Chagossians from their homes, has seemingly held hearings only once concerning Chagos. In 1975, the US House of Representatives Special Subcommittee on Investigations of the Committee on International Relations held hearings on Diego Garcia, including “on the circumstances under which the former inhabitants of Diego Garcia left or were forced from Diego Garcia” and “the role of the United States and its responsibility for what happened to these people and their poor condition today.”¹⁷¹

In testimony at these hearings, George Vest, the director of the Bureau of Politico-Military Affairs at the State Department, said the US had no “intention to station permanently operational units” on the island, which he called “uninhabited.”¹⁷² Later, Sen. John Culver described this testimony about the Chagossians as “either based on ignorance or was deliberately misleading.”¹⁷³

Introducing the discussion concerning the Chagossians on November 4, 1975, Congressman Lee Hamilton, chair of the subcommittee, stated:

It is evident that despite whatever efforts are made to pass responsibility for these islanders to Great Britain or Mauritius, the United States has some responsibility for the removal of over 1,000 islanders from Diego Garcia and surrounding islands and that, as an accomplice in this venture, we along with Great Britain and Mauritius bear a moral obligation to help these people find some sense of their former feeling of community elsewhere.¹⁷⁴

¹⁷⁰ Ibid., p. 3.

¹⁷¹ “Special Subcommittee on Investigation of the Committee on International Relations. Hearings. Diego Garcia 1975 The Debate over the Base and the Islands Former Inhabitants. 1975.pdf,” Chagos Archive Documents Collection, <https://thechagosarchive.omeka.net/items/show/3211> (accessed November 4, 2022), p. V-VI.

¹⁷² Ibid., p. 4 (roughly paras. 3 & 5).

¹⁷³ Ibid., p. 40.

¹⁷⁴ Ibid., p. 37.

A report provided to this committee by the US Departments of State and Defense about the Chagossians stated:

There were several reasons for desiring uninhabited islands for military use. Security was a factor considered by both governments. The United States was concerned about the social problems that could be expected when placing a military detachment on an isolated tropical island alongside a population with an informal social structure and a prevalent cash wage of less than \$4.00 per month. It appears that the United Kingdom also was concerned with the problems involved in establishing civil administration for islands it was considering developing for military purposes.¹⁷⁵

Over the subsequent decades, the US authorities, regardless of which party was in power, have generally continued to oppose any return of the Chagossians to any of the islands, although they have made very few public statements.¹⁷⁶ They also have, over the years, effectively blocked Chagossians working at the Diego Garcia base. Currently the key problem for Chagossians wanting to work on the base is that the US authorities do not allow them to live on Diego Garcia with their families.¹⁷⁷

In 2000, a US official stated:

[i]f a resident population were established on the Chagos Archipelago, that could well imperil Diego Garcia's present advantage as a base from which it is possible to conduct sensitive military operations that are important for

¹⁷⁵ Ibid., p. 42.

¹⁷⁶ In a letter from Eric Newsom (US Assistant Secretary of State for Political-Military Affairs) to Richard Wilkinson (Director for the Americas at the UK Foreign and Commonwealth Office) on June 21 2000: "If a resident population were established on the Chagos Archipelago, that could well imperil Diego Garcia's present advantage as a base from which it is possible to conduct sensitive military operations that are important for the security of both our governments but that, for reasons of security, cannot be staged from bases near population centers Settlements on the outer islands would also immediately raise the alarming prospect of the introduction of surveillance, monitoring and electronic jamming devices that have the potential to disrupt, compromise or place at risk vital military operations." The letter also outlined the US government's plans to develop the base "as a forward operating location for expeditionary air force operations."

Reproduced in Ewan MacAskill and Rob Evans, "US blocks return home for exiled islanders," *Guardian*, August 31, 2000, <https://www.theguardian.com/world/2000/sep/01/ewenmacaskill.robevens> (accessed November 17, 2022).

¹⁷⁷ US officials have sometimes said that they have no objection to Chagossians working at the base, but Chagossians say their opposition to family members accompanying workers means it is impossible for them to work there.

See letter from Andrew Rosindell, M.P., Chairman of Chagos Islands All-Party Parliamentary Group, to Mira Resnick, Deputy Assistant Secretary of State for Political Military Affairs with the United States Department of State, May 25, 2021.

the security of both our governments but that, for reasons of security, cannot be staged from bases near population centers.¹⁷⁸

In the 2009 State Department cable, a US official agreed that the marine protection zone would stop the Chagossians from returning. A UK official urged the US to say it “require[d]” the entire BIOT for defense purposes, to counter Chagossians’ arguments that they could return to the islands apart from Diego Garcia.¹⁷⁹

In 2015-2016, the US government expressed its views on the resettlement proposals then being considered by the UK government concerning Chagossians with parts of these documents being quoted in subsequent litigation in UK courts. In these quotes, the US government appeared not to oppose, in principle, resettlement on the islands apart from Diego Garcia, and even to consider trial resettlement on Diego Garcia itself. On July 6, 2016, President Barack Obama stated in a letter to UK Prime Minister David Cameron that the US would not financially support a development assistance package for the Chagossians.¹⁸⁰

The current position of the US authorities is that resettlement and reparations, including financial compensation, are a matter for the UK only.¹⁸¹

The US military establishment on Diego Garcia has expanded over the years. Initially it was described as a communications base. Since 1975, Congress has authorized its expansion, and it is now a major naval and air base used by US forces in the wars in Afghanistan and

¹⁷⁸ Letter from Eric Newsom, Assistant Secretary of State for Political-Military Affairs, June 21, 2000. Reproduced in Ewan MacAskill and Rob Evans, “US blocks return home for exiled islanders,” *Guardian*, August 31, 2000, <https://www.theguardian.com/world/2000/sep/01/ewenmacaskill.robevens> (accessed November 17, 2022).

¹⁷⁹ “[UK official] urged Embassy officers in discussions with advocates for the Chagossians...to affirm that the USG requires the entire BIOT for defense purposes. Making this point would be the best rejoinder to the Chagossians’ assertion that partial settlement of the outer islands of the Chagos Archipelago would have no impact on the use of Diego Garcia.”

Reproduced in *Guardian*, “US Embassy cables: Foreign Office does not regret evicting Chagos islanders,” December 2, 2010, <https://www.theguardian.com/world/us-embassy-cables-documents/207149> (accessed November 17, 2022), para. 11.

¹⁸⁰ EWHC, *Bancoult (No. 5)*, [2019] EWHC 221 (Admin), Judgment, February 8, 2019, <https://www.judiciary.uk/wp-content/uploads/2019/02/judgment-hoareau-bancoult-v-ssfca-final-8-feb-19.pdf> (accessed November 9, 2022), paras. 63, 76.

¹⁸¹ In a letter from Andrew Rosindell, M.P., Chairman of the APPG, to Mira Resnick, Deputy Assistant Secretary of State for Political-Military Affairs for the US Department of State, dated May 25, 2021: “You mention resettlement as a decision for the U.K....You say that the U.S. has welcomed those Chagossians who would like to pursue employment on Diego Garcia but the feedback we have received from Chagossian groups is that the prohibition of accompanied families and the low wages are a strong disincentive.”

Iraq.¹⁸² The base on the island was also used during the so-called “Global War on Terror,” including in the unlawful rendition by the US and UK of opponents of the late Libyan president, Muammar Gaddafi.¹⁸³ UK Foreign Secretary David Miliband admitted to parliament in 2008 that “[c]ontrary to earlier explicit assurances that Diego Garcia had not been used for rendition flights, recent US investigations have now revealed two occasions, both in 2002, when this had in fact occurred.”¹⁸⁴

Over the past six decades, successive US administrations have kept the US role in the prevention of return of the Chagossians largely hidden. The US has avoided public statements on the rights of the Chagossians to return and other forms of reparations. But when its positions have become public, the US has opposed the presence of any Chagossians on Diego Garcia while generally supporting, if less strongly, the UK’s opposition to the return of Chagossians to live on any of the islands. In short, the US wanted a base at a location without any permanent inhabitants and were willing to have the local, African population forcibly removed to attain that. This contrasts with many US military bases around the world where the inhabitants live in the vicinity.¹⁸⁵

Role of Mauritius

Mauritius has played a critical role in the treatment of Chagossians since their deportation from Chagos. The Chagossians who were forcibly moved to Mauritius spent many years in poverty and experienced discrimination. The agreements reached by the UK and Mauritius provided Chagossians with inadequate compensation. Mauritian authorities initially took several years to hand over the compensation to the Chagossians after demonstrations and hunger-strikes led by Chagossian women.

¹⁸² See US Supreme Court, *Bancoult v. McNamara*, No. 06-502, Brief for the Respondents in Opposition, December 2006, <https://www.justice.gov/sites/default/files/osg/briefs/2006/01/01/2006-0502.resp.pdf> (accessed February 3, 2022), p. 4.

¹⁸³ See Human Rights Watch, *Delivered Into Enemy Hands: US-Led Abuse and Rendition of Opponents to Gaddafi’s Libya*, (New York: Human Rights Watch, 2012), https://www.hrw.org/report/2012/09/05/delivered-enemy-hands/us-led-abuse-and-rendition-opponents-gaddafis-libya#_ftnref290.

¹⁸⁴ See David Miliband’s Statement, reproduced in *Guardian*, February 21, 2008, <https://www.theguardian.com/politics/2008/feb/21/foreignpolicy.davidmiliband> (accessed November 17, 2022).

¹⁸⁵ See United States Department of Defense, “Base Structure Report – Fiscal Year 2015 Baseline,” https://kritisches-netzwerk.de/sites/default/files/us_department_of_defense_-_base_structure_report_fiscal_year_2015_baseline_-_as_of_30_sept_2014_-_a_summary_of_the_real_property_inventory_-_206_pages.pdf (accessed January 3, 2023).

The government of Mauritius has played a very active role in the ICJ litigation and in pressing the UK for the return of the Chagos islands. The 2019 ICJ ruling refers to the resettlement in Chagos of “Mauritian nationals, including those of Chagossian origin.”¹⁸⁶ Should Mauritius obtain control over Chagos, it will have the responsibility to ensure that all Chagossians, regardless of current citizenship, have, and can exercise, the right to permanently return to live in Chagos. Mauritius will also be required under international human rights law to promote and protect the human rights of all Chagossians who return.

In a letter to Human Rights Watch in January 2023, the government of Mauritius said that “all individuals of Chagossian origin, wherever they live in the world, who wish to resettle in the Chagos Archipelago will be able to do so in accordance with the laws of Mauritius.”¹⁸⁷

Prime Minister Pravind Kumar Jugnauth of Mauritius has affirmed his government’s commitment to the return of Chagossians. He told Human Rights Watch in March 2022 that, “We have reiterated that we can continue to lease Diego Garcia to the US for its military base – as long as they allow the people to return and resettle on the unoccupied islands.”¹⁸⁸ However, Chagossians also have a right to return to Diego Garcia itself, where many formerly lived.

UK-Mauritius Chagos Negotiations

On November 4, 2022, the UK government announced it would begin negotiations with the government of Mauritius over the sovereignty of Chagos.¹⁸⁹ The statement said the government’s intention is “to secure an agreement on the basis of international law to resolve all outstanding issues, including those relating to the former inhabitants of the Chagos archipelago.” The statement said that the UK government recognizes the interests of the US, and for unexplained reasons, India, both of which will be kept informed of

¹⁸⁶ ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, February 25, 2019, <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf> (accessed November 9, 2022), para. 181.

¹⁸⁷ Letter from N.K. Ballah, Secretary to Cabinet and Head of the Civil Service, on behalf of the government of Mauritius, to Human Rights Watch, January 10, 2023.

¹⁸⁸ During a meeting with Human Rights Watch, Port Louis, March 31, 2022.

¹⁸⁹ James Cleverly, “British Indian Ocean Territory/Chagos Archipelago,” Statement UIN HCWS354, November 3, 2022, <https://questions-statements.parliament.uk/written-statements/detail/2022-11-03/hcws354> (accessed December 15, 2022).

progress. It made no commitment to recognizing the interests of and meaningful consultations with the Chagossian people. Nor did it commit to the recognition of the rights of the Chagossians to full and effective reparations, including the right of return, in the final settlement.¹⁹⁰

The government of Mauritius has subsequently stated:

While the negotiations are between the Governments of Mauritius and the UK, the Government of Mauritius has since the very beginning engaged with Chagossians in Mauritius, and has associated them in the various initiatives and proceedings to complete the decolonization of Mauritius. It continues to do so, and will take into account their views and ensure that their rights are respected in the negotiations. Mauritius is open to the views of Chagossians in other places also being taken into account, while ensuring full respect for the requirements of international law.¹⁹¹

The government of the United Kingdom has stated:

While the ongoing sovereignty negotiations are between the UK and Mauritius, we will engage with Chagossian groups as negotiations progress. We are holding an engagement event in February to allow representatives of Chagossian communities to share their views.¹⁹²

¹⁹⁰ See Human Rights Watch letter to James Cleverly, December 15, 2022. Available at <https://www.hrw.org/news/2022/12/15/negotiations-between-uk-and-mauritian-governments-exercise-sovereignty-over-chagos>.

¹⁹¹ Letter from government of Mauritius, January 10, 2023.

¹⁹² Letter from Lord Goldsmith, January 23, 2023.

Inadequate Remedy Efforts

At no time in the last 60 years have the UK or the US attempted to provide full and effective reparations to the Chagossian people for the harms inflicted on them by their forced displacement. Instead, without effective consultation, the UK paid relatively small amounts of financial compensation to some Chagossians in the 1970s and 1980s.

Compensation

Originally, the US government paid compensation for the separation of Chagos and construction of the US base to the UK government, which in turn paid compensation to the Mauritian government and to the owners of the coconut company on the islands. No funds were initially paid to the Chagossians. In a deal, the US agreed that the UK would receive a \$14 million discount on purchasing Polaris nuclear missiles, in return for the UK effectively handing over Diego Garcia.¹⁹³ In 1965 the UK agreed to pay the government of Mauritius £3 million for its agreement to detach Chagos.¹⁹⁴ In March 1967, the UK government paid the owners of the coconut company £660,000 to buy them out.¹⁹⁵

Payment to some of the Chagossians came later, and only by agreement between the UK and Mauritius, not the Chagossians themselves. The amount was small, especially when compared to the considerable financial benefit the UK government had received from the US. There was no indication the amount paid reflected any attempt to remedy the harms that had been inflicted on the Chagossians.

¹⁹³ See the agreement: “US-UK Exchange of Notes Diego Garcia 1966.pdf,” The Chagos Archive Documents Collection, <https://thechagosarchive.omeka.net/items/show/3268> (accessed January 4, 2023).

See the Polaris discount (2 pages): “US-UK Exchange of Notes Diego Garcia 1966 Secret Side Note Polaris. p. 1. 1966-12-30.png,” The Chagos Archive Documents Collection, <https://thechagosarchive.omeka.net/items/show/3266> (accessed January 4, 2023); “US-UK Exchange of Notes Diego Garcia 1966 Secret Side Note Polaris. p. 2. 1966-12-30.png,” The Chagos Archive Documents Collection, <https://thechagosarchive.omeka.net/items/show/3267> (accessed January 4, 2023).

¹⁹⁴ ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Volume III of Annexes to the Written Statement of the Republic of Mauritius, March 1, 2018, <https://www.icj-cij.org/public/files/case-related/169/169-20180301-WRI-05-02-EN.pdf> (accessed November 9, 2022), Annexes 71 & 65.

¹⁹⁵ Vine, *Island of Shame*, p. 92. Also included in ICJ Advisory Opinion, Volume V of Annexes to the Written Statement of the Republic of Mauritius, <https://www.icj-cij.org/public/files/case-related/169/169-20180301-WRI-05-04-EN.pdf> (accessed February 3, 2023), Annex 151.

In September 1972, Mauritius and the UK agreed that the UK would pay Mauritius £650,000 for the cost of resettlement of the Chagossians. According to the International Court of Justice, this payment was intended to be the “full and final discharge” of the UK’s undertaking to pay the costs of resettlement.¹⁹⁶ No payment was made to Chagossians until several years later by which time inflation had reduced its real value.¹⁹⁷ The Mauritius government said the funds were “initially intended to be used for the implementation of a resettlement scheme in favour of the Chagossians,” but it paid funds, with accrued interest, to Chagossians in March 1978.¹⁹⁸ It said the then government of Mauritius paid a further sum of about MUR 3.5 million in compensation to Chagossians in 1981 and 1982.¹⁹⁹

Chagossians in Mauritius told Human Rights Watch that the first payment they received from Mauritian authorities was in 1978. Adults received MUR 7945 (\$1289) while children got MUR 1000 (\$162) each.

In 1975, Michel Vencatassen, a Chagossian, brought a lawsuit against the UK claiming damages. In 1982, as part of an out-of-court settlement of the case, the governments of Mauritius and the UK agreed that the UK would pay Mauritius £4 million “for and on behalf” of the Chagossian community in Mauritius. Mauritius was to provide land to the value of £1 million for the Chagossians from this £4 million. The UK did not admit any liability and insisted the payment was a “full and final settlement” of any claims by Chagossians against it.²⁰⁰ The agreement required Mauritius to use its “best endeavours to procure from each member of the Ilois community in Mauritius a signed renunciation of the claims.”²⁰¹

¹⁹⁶ ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, February 25, 2019, <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf> (accessed November 9, 2022), para. 117.

¹⁹⁷ EWHC, *Chagos Islanders v. The Attorney General Her Majesty’s British Indian Ocean Territory Commissioner*, [2003] EWHC 2222 (QB), Judgment, October 9, 2003, <https://www.bailii.org/ew/cases/EWHC/QB/2003/2222.html> (accessed November 10, 2022), para. 51.

¹⁹⁸ Letter from government of Mauritius, January 10, 2023.

¹⁹⁹ *Ibid.*

²⁰⁰ United Nations Permanent Court of Arbitration, *The Republic of Mauritius v. The United Kingdom of Great Britain and Northern Ireland*, Case No. 2011-03, Award, March 18, 2015, <https://files.pca-cpa.org/pcadocs/MU-UK%2020150318%20Award.pdf> (accessed November 10, 2022), para. 92.

²⁰¹ EWHC, *Chagos Islanders v. The Attorney General Her Majesty’s British Indian Ocean Territory Commissioner*, [2003] EWHC 2222 (QB), Appendix A, October 9, 2003, <https://www.bailii.org/ew/cases/EWHC/QB/2003/2222.html> (accessed November 10, 2022), para. 580.

The Mauritius government said that the government of India donated 1 million Indian rupees (\$103,950) for the Chagossians in 1983.²⁰²

This money was paid out to Chagossians in Mauritius between 1982 and 1986 by Mauritian authorities. To receive the funds, Chagossians were required to sign or place a thumbprint on a form renouncing the right to return to Chagos. The form was written in English, using legal terms, without a Creole translation.²⁰³ This meant that many of the Chagossians, who could not read English, were not aware of what they were signing. The Mauritian government offered land as an alternative to cash. A typical payment to Chagossians was MUR 36,000, about \$2,609, according to Chagossians interviewed by Human Rights Watch. The government of Mauritius says that each Chagossian adult was paid MUR 60,122 and each child MUR 30,061.²⁰⁴

Furcy said she was told to sign a paper to get a house, but she did not know what was written on it.²⁰⁵ Bertin said she first received MUR 7,000, about \$1,136, which she could only use to pay debt. In the 1980s, she received MUR 36,000, about \$2,609, from the Mauritian government for a house.²⁰⁶

Paul Bérenger, the finance minister of Mauritius in 1982, recalled a town hall meeting with some Chagossians to discuss the compensation and the document they were required to sign. He said the Chagossians there were so financially desperate they signed “under duress because they had little or no options.”²⁰⁷

A UK court in 2003 dismissed Chagossian claims for compensation, partly ruling that too much time had elapsed, but also appearing to say no tort (legal wrong) was committed under UK law.²⁰⁸ The court ruling represented a serious failure by the UK justice system to

²⁰² Letter from government of Mauritius, January 10, 2023.

²⁰³ ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, February 25, 2019, <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf> (accessed November 9, 2022), para. 120.

²⁰⁴ Letter from government of Mauritius, January 10, 2023.

²⁰⁵ Human Rights Watch interview with Marie Mimose Furcy, April 1, 2022.

²⁰⁶ Human Rights Watch interview with Rosemone Bertin, March 31, 2022.

²⁰⁷ Human Rights Watch interview with Paul Bérenger, Mauritius, April 1, 2022.

²⁰⁸ EWHC, *Chagos Islanders v. The Attorney General Her Majesty's British Indian Ocean Territory Commissioner*, [2003] EWHC 2222 (QB), Judgment, October 9, 2003, <https://www.bailii.org/ew/cases/EWHC/QB/2003/2222.html> (accessed January 3, 2023).

address the harms committed by UK authorities in one of its colonies. The court, in the name of protecting the interests of the UK government, endorsed the mass forced displacement of Chagossians:

The defence needs of the UK, and of its colonies as parts of the world which shared its security and defence interests, entitled the Sovereign to permit the creation of the US defence facilities and to evict the entire population of BIOT in order to advance their effectiveness in protecting the interests of the UK.²⁰⁹

The UK Court of Appeal in 2004, while acknowledging the abuses against the Chagossians, still dismissed the claim for compensation:

The deliberate misrepresentations of the Ilois' history and status, designed to deflect any investigation by the United Nations; the use of legal powers designed for the governance of the islands for the illicit purpose of depopulating them; the uprooting of scores of families from the only way of life and means of subsistence that they knew; the want of anything like adequate provision for their resettlement: all of this and more is now part of the historical record.²¹⁰

The court refused to give any remedy to the Chagossians on the grounds that they should have brought their case earlier.²¹¹ However, in referring to “the quest of the displaced inhabitants of the Chagos Islands and their descendants for legal redress against the state directly responsible for expelling them from their homeland,” the Court of Appeal said: “They have not gone without compensation, but what they have received has done little to repair the wrecking of their families and communities, to restore their self-respect or to

²⁰⁹ EWHC, *Chagos Islanders v. The Attorney General Her Majesty's British Indian Ocean Territory Commissioner* [2003] EWHC 2222 (QB), Judgment, October 9, 2003, <https://www.bailii.org/ew/cases/EWHC/QB/2003/2222.html> (accessed November 10, 2022), para. 266.

²¹⁰ UK Court of Appeal (Civil Division) (EWCA), *Chagos Islanders v. The Attorney General Her Majesty's British Indian Ocean Territory Commissioner*, [2004] EWCA Civ 997, Judgment, July 22, 2004, <https://www.bailii.org/ew/cases/EWCA/Civ/2004/997.html> (accessed November 10, 2022), para. 6.

²¹¹ *Ibid.*, para. 53.

make amends for the underhand official conduct now publicly revealed by the documentary record.”²¹²

In 2022, the UK government said:

In 2016, the UK government announced the Chagossian Support Package, to improve the lives of Chagossians where they now live. The government committed to provide approximately 40 million GBP of support over 10 years. The government has funded a number of community projects in the UK and Mauritius and is working to make more support available.²¹³

It is clear, however, that this “support package” was not intended to be any form of compensation or reparations to the Chagossians for the abuses they suffered from their forced displacement. The UK government has not stated that this package is intended as reparations.²¹⁴

The Chagossians who were forcibly displaced by UK authorities to the Seychelles were left out even from the limited compensation payments. No compensation whatsoever has been paid to the Chagossians in Seychelles as a group.²¹⁵ A UK court found that in 1997 the British High Commission in the Seychelles rejected their claims alleging that “those who returned to the Seychelles were mostly contract labourers, the conditions and the scale of the economic problems in Mauritius, which the compensation addressed, did not exist in the Seychelles; there was no scope for a return to the islands.”²¹⁶

²¹² Ibid., para. 54.

²¹³ “UK government support for Chagossians,” *Foreign, Commonwealth & Development Office and Home Office*, September 1, 2022, https://www.gov.uk/government/collections/uk-government-support-for-chagossians?utm_medium=email&utm_campaign=govuk-notifications-topic&utm_source=45dcaf40-2ec3-491a-bad3-f7bcf54c2814&utm_content=daily (accessed August 25, 2022).

²¹⁴ See Katie McQue, “£40m for islanders exiled from British territory goes unspent,” *The Observer*, May 3, 2020, <https://www.theguardian.com/world/2020/may/03/40m-for-islanders-exiled-from-british-territory-goes-unspent> (accessed January 4, 2023).

²¹⁵ EWHC, *Bancoult (No. 5)*, [2019] EWHC 221 (Admin), Judgment, February 8, 2019, <https://www.judiciary.uk/wp-content/uploads/2019/02/judgment-hoareau-bancoult-v-ssfca-final-8-feb-19.pdf> (accessed November 9, 2022), para. 19.

²¹⁶ EWHC, *Chagos Islanders v. The Attorney General Her Majesty’s British Indian Ocean Territory Commissioner*, [2003] EWHC 2222 (QB), Judgment, October 9, 2003, <https://www.bailii.org/ew/cases/EWHC/QB/2003/2222.html> (accessed November 10, 2022), para. 90.

Charles said:

I have worked with other Chagossians here to get compensation, but the Mauritius government didn't fulfill their promise to respond to our formal letter requesting for compensation. I even joined the April 2006 trip to Chagos from Mauritius. We believe they are deliberately leaving us out of the support for political reasons. Those [in Seychelles] born on Chagos islands after 1972 who couldn't leave Chagos with those documents have their birth records in Mauritius, which makes things difficult for us.²¹⁷

Bernadette Dugasse said that a judge told her they did not get compensation due to the politics of the Seychelles government. She questioned why the Chagossians in Seychelles should be responsible for the politics of Seychelles; when, at the time they were deported from Chagos, Seychelles was still a UK colony.²¹⁸

Chagossian Struggle, Legal Victories and Defeats

Chagossians have struggled for their rights since their forced displacement. Their protest on arrival in Mauritius in 1973 resulted in some housing being provided for them.

Chagossian women led a series of hunger strikes and demonstrations beginning in 1978 concerning the payment of the initial compensation, which was delayed and inadequate. The strikers also demanded housing and a return to Chagos. Mauritian authorities attempted to suppress their demonstrations, including through violence and arrests.²¹⁹

Furcy said, "We women had to protest and go on hunger strikes before we got anything. The police beat and harassed us, using batons to hit people on the head."²²⁰

²¹⁷ Human Rights Watch interview with Ginette Charles, September 1, 2022.

²¹⁸ Human Rights Watch interview with Bernadette Dugasse, September 1, 2022.

²¹⁹ Vine, *Island of Shame*, p. 166.

²²⁰ Human Rights Watch interview with Marie Mimose Furcy, April 1, 2022.

Baptiste recalled: “When the Chagossian protests started, my mom took me there to see what was happening. I was disturbed by the way the Mauritian authorities were treating these Creole women of African origin who were protesting on the streets.”²²¹

Bancoult began proceedings in the UK courts in 1998 challenging the lawfulness of legislation that denied him the right to live in Chagos. Bancoult was 4 years old in 1968 when he and his family were denied returning to Peros Banhos, where they had lived for several generations, after a medical trip to Mauritius. The courts ruled in his favor in 2000.²²² Following this ruling, the UK government did not appeal and instead repealed the 1971 law that prohibited Chagossians from returning to Chagos, allowing, in law, return to all of Chagos except Diego Garcia.²²³ But the government reversed this decision in 2004 and, through Queen Elizabeth II, issued Orders In Council to prevent Chagossians returning to any part of Chagos.²²⁴

Bancoult brought new cases to challenge the 2004 UK orders. He won in the High Court and Court of Appeal on the basis that the orders were an “abuse of power” by the UK government, and that the permanent exclusion of an entire population from its homeland for reasons unconnected with their collective well-being could not be a valid act of governance.²²⁵ However, in 2008 the UK House of Lords (then the highest UK court) ruled in favor of the UK government and upheld the ban on the Chagossians returning. Its ruling suggested that the Queen, acting “in Council” could prefer the interests of the “United Kingdom” (that is, the UK government) to the interests of the Chagossians, and therefore could issue an order preventing their return. The ruling also said that “[t]he United States

²²¹ Human Rights Watch interview with Suzelle Baptiste, April 2, 2022.

²²² EWHC, *Bancoult (No 1)*, [2000] EWHC 413 (Admin), Judgment, November 3, 2000, <https://www.bailii.org/ew/cases/EWHC/Admin/2000/413.html> (accessed November 9, 2022).

²²³ See Richard Gifford, Chagos Refugees Group, “Memorandum Concerning British Indian Ocean Territory,” Submission to The Foreign Affairs Select Committee of the House of Commons, October 12, 2007, <https://publications.parliament.uk/pa/cm200708/cmselect/cmfaff/memo/147/ucm5402.htm> (accessed January 4, 2023), para. 7.

²²⁴ See Letter to the Chairman of the Committee from the Secretary of State for Foreign and Commonwealth Affairs [Jack Straw], Annex 1 – Written Ministerial Statement by Mr. Bill Rammell, col 32WS, June 15, 2004, <https://publications.parliament.uk/pa/cm200405/cmselect/cmfaff/115/115we05.htm> (accessed November 17, 2022).

²²⁵ See EWHC, *The Queen on the Application of Louis Olivier Bancoult and the Secretary of State for Foreign and Commonwealth Affairs*, [2006] EWHC 1038 (Admin), Judgment, May 11, 2006, <https://www.bailii.org/ew/cases/EWHC/Admin/2006/1038.html> (accessed February 3, 2023).

See England and Wales Court of Appeal (EWCA), *Secretary of State for the Foreign and Commonwealth Affairs and The Queen (on the Application of Bancoult)*, [2007] EWCA Civ 498, Judgment, May 23, 2007, <https://www.bailii.org/ew/cases/EWCA/Civ/2007/498.html> (accessed February 3, 2023).

had expressed concern that any settlement on the outer islands would compromise the security of its base on Diego Garcia” in a letter about possible “terrorism threats”— although one judge described some of these US concerns as “fanciful speculations.”²²⁶

In 2012, the European Court of Human Rights ruled that a case brought by Chagos islanders against the UK was inadmissible, partly because the court determined that the 1982 Mauritius and UK agreement had supposedly settled the claims.²²⁷

This ruling was widely criticized, especially for dismissing the claims of new generations of Chagossians and the large number of Chagossians who did not receive any compensation. A judge at the ICJ described the ruling as reflecting a “colonial mentality” in comparison with the approach to reparations of the African and Inter-American regional human rights tribunals.²²⁸

Bancoult and other Chagossians have brought other cases in UK courts, including one challenging the UK government’s decision in 2016 to again refuse the return of the Chagossians. In that ruling, the court said that “[w]e do not consider that the present case concerns fundamental rights at common law This is not a case where fundamental rights are affected ... This is because this Court has to proceed on the basis that the legal rights which existed previously have been extinguished at least by the 2004 Orders.”²²⁹

These cases highlight the English legal system’s failure to adequately address severe rights violations committed by the UK government in the context of colonialism, the forced displacement of an entire people from an overseas territory. Under English law as upheld by UK courts, an Order issued by the Queen of the United Kingdom on behalf of the UK

²²⁶ UK House of Lords (UKHL), *R (On The Application of Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs, known as Bancoult (No 2)*, [2008] UKHL 61, Judgment, October 22, 2008, <https://publications.parliament.uk/pa/ld200708/ldjudgmt/jdo81022/banc-1.htm> (accessed November 10, 2022), para. 57.

²²⁷ ECHR, *Chagos Islanders v. United Kingdom*, no. 35622/04, Judgment of 11 December 2012, ECHR 2012, available at www.echr.coe.int (accessed February 3, 2023).

²²⁸ ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, separate opinion of Judge Cançado Trindade, February 25, 2019, <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-04-EN.pdf> (accessed November 10, 2022), para. 274.

²²⁹ EWHC, *Bancoult (No. 5)*, [2019] EWHC 221 (Admin), Judgment, February 8, 2019, <https://www.judiciary.uk/wp-content/uploads/2019/02/judgment-hoareau-bancoult-v-ssfca-final-8-feb-19.pdf> (accessed November 9, 2022), paras. 103-104.

government can extinguish the fundamental rights of the Chagossian people to live in their homeland.

In June 2017, the UN General Assembly adopted resolution 71/292, in which it requested the ICJ give an advisory opinion on the decolonization of Mauritius and the separation of Chagos, and the consequences in international law of the inability of Mauritius to implement resettlement on Chagos of Mauritian nationals, “in particular those of Chagossian origin.”²³⁰ In its February 2019 advisory opinion, the ICJ stated that, considering the right to self-determination, the “detachment [of the Chagos Archipelago from Mauritius] was not based on the free and genuine expression of the will of the people concerned” and that therefore the UK’s “continued administration of the Chagos Archipelago constitutes a wrongful act,” and that the UK “is under an obligation to bring an end to its administration of the Chagos Archipelago as rapidly as possible.”²³¹

The ICJ stated that the resettlement of Chagossians on Chagos is an issue “related to the protection of human rights of those concerned, which should be addressed by the General Assembly during the completion of the decolonisation of Mauritius.”²³²

The UK did not comply with the ICJ ruling nor the General Assembly resolutions. In a response to the ruling, a member of the House of Lords, Lord Ahmad of Wimbledon, stated in Parliament that “the defence facilities in the British Indian Ocean Territory help to protect people in Britain and around the world from terrorist threats, organised crime and piracy.”²³³

The UN General Assembly adopted a resolution in May 2019 concerning the ICJ ruling, which stated that the resettlement of Mauritian nationals on Chagos, including those of

²³⁰ UN General Assembly, “Request for an advisory opinion of the International Criminal Court on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965,” A/RES/71/292, June 22, 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/181/95/PDF/N1718195.pdf?OpenElement> (accessed February 1, 2023), p. 2.

²³¹ ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, February 25, 2019, <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf> (accessed November 9, 2022), paras. 172, 177, 178.

²³² *Ibid.*, para. 181.

²³³ UK Parliament, “Ilois: Resettlement, Question for Foreign and Commonwealth Office,” UIN HL14332, March 7, 2019, <https://questions-statements.parliament.uk/written-questions/detail/2019-03-07/HL14332> (accessed November 17, 2022).

Chagossian origin, needs to be addressed as a matter of urgency during the completion of the decolonization process.²³⁴

In 2021, a Special Chamber of the International Tribunal for the Law of the Sea (ITLOS), addressing a dispute between Mauritius and the Maldives concerning their maritime boundary, found that “[t]he determinations made by the ICJ with respect to the issues of the decolonization of Mauritius in the Chagos advisory opinion have legal effect and clear implications for the legal status of the Chagos Archipelago,” and that “[t]he United Kingdom’s continued claim to sovereignty over the Chagos Archipelago is contrary to those determinations.”²³⁵ Also, in 2021 the Universal Postal Union voted to recognize Chagos as part of Mauritius, not a British overseas territory.²³⁶

UK Apologies: Regrets but no Redress

Since 2000, successive UK governments have apologized for the treatment of the Chagossians in the 1970s. But, apart from the first apology in 2000, nothing in terms of concrete remedies and reparation, including Chagossians’ right to return, has resulted from these apologies.

Following the UK court ruling on November 3, 2000, UK Foreign Secretary Robin Cook said:

I have decided to accept the Court’s ruling and the Government will not be appealing. The work we are doing on the feasibility of resettling the Ilois now takes on a new importance. We started the feasibility work a year ago and are now well under way with phase 2 of the study. Furthermore, we will put in place a new Immigration Ordinance which will allow the Ilois to return to the outer islands while observing our Treaty obligations. This Government has not defended what was done or said 30 years ago. As Lord

²³⁴ “General Assembly Welcomes International Court of Justice Opinion on Chagos Archipelago, Adopts Text Calling for Mauritius’ Complete Decolonization,” UN press release, GA/12146, May 22, 2019, <https://www.un.org/press/en/2019/ga12146.doc.htm> (accessed November 17, 2022).

²³⁵ “Dispute Concerning Delimitation of the Maritime Boundary Between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives),” International Tribunal For the Law of the Sea Press Release, ITLOS/Press 313, January 28, 2021, https://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_313_EN.pdf (accessed November 17, 2022), p. 3-4.

²³⁶ “Press Release: UPU adopts UN resolution on Chagos Archipelago,” Universal Postal Union Press Release, August 27, 2021, <https://www.upu.int/en/Press-Release/2021/Press-release-UPU-adopts-UN-resolution-on-Chagos-Archipelago> (accessed November 17, 2022).

Justice Laws recognized, we made no attempt to conceal the gravity of what happened.²³⁷

This appears to have been a genuine apology, with some important, but temporary, consequences. The UK followed this up by enacting a law permitting the return of Chagossians to the “outer islands,”²³⁸ and in 2001 told the UN Human Rights Committee it accepted that the Chagossians could return to these islands.²³⁹ Following the passing of the British Overseas Territories Act (2002), some Chagossians born on Chagos and their children became British citizens and moved to the UK. But in 2004, the UK went back on this commitment to permit return and has refused to accept the return of Chagossians to live in their homeland ever since.

In recent years, UK ministers and officials have repeated public regrets about what happened to the Chagossians 50 years ago, but without any concrete acts to redress these abuses, including acknowledging their right to return and other reparations and engaging in meaningful consultations with the Chagossians. For example, in November 2016, when announcing that yet again UK policy would oppose the return of the Chagossians, then minister for Europe and the Americas, Alan Duncan, when asked in Parliament, said the British government would apologize for as well as “regret” the forced eviction of the Chagossians from their homeland.²⁴⁰

²³⁷ Quoted in Memorandum Concerning British Indian Ocean Territory submitted by Richard Gifford on behalf of Chagos Refugees Group to Foreign Affairs Committee of House of Commons.

See Richard Gifford, Chagos Refugees Group, “Memorandum Concerning British Indian Ocean Territory,” Submission to the Foreign Affairs Select Committee of the House of Commons, October 12, 2007, <https://publications.parliament.uk/pa/cm200708/cmselect/cmcaff/memo/147/ucm5402.htm> (accessed January 4, 2023), para. 7.

²³⁸ *Ibid.*, para. 8.

²³⁹ UN HRC, “Consideration of reports submitted by States parties under article 40 of the Covenant : concluding observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland and Overseas Territories of the United Kingdom of Great Britain and Northern Ireland: addendum: Comments by the Government of the UK on the reports of the UK (CCPR/CO/73/UK) and the Overseas Territories (CCPR/CO/73/UKOT),” CCPR/CO/73/UK/Add.2 and CCPR/CO/73/UKOT/Add.2, December 4, 2002, <https://digitallibrary.un.org/record/483913?ln=en> (accessed January 26, 2023), para. 86.

See UN HRC, “Concluding Observations of the HRC: United Kingdom and UK Overseas Territories,” CCPR/CO/73/UKOT, December 6, 2001, <https://www.refworld.org/docid/3cbbec3d2.html> (accessed January 3, 2023), para. 38.

²⁴⁰ Hansard UK Parliament, “Chagos Islands Debate,” Volume 617, November 17, 2016, <https://hansard.parliament.uk/Commons/2016-11-17/debates/DF14B27E-3DEF-4D46-917D-33E93DDDoC5C/ChagosIslands?highlight=chagos#contribution-DF2FA539-1664-4D50-9E07-FAB98EF745CA> (accessed November 17, 2022).

During oral hearings at the ICJ, the UK stated that it “fully accepts that the manner in which the Chagossians were removed from the Chagos Archipelago, and the way they were treated thereafter, was shameful and wrong, and it deeply regrets that fact.”²⁴¹ Similarly, the UK acknowledged its regret “over the manner in which Chagossians were removed from the area in the 1960s and 1970s,” but continued to oppose their return to their homeland, during the UN General Assembly debate on the resolution on the ICJ Chagos ruling.²⁴²

In 2020, the UK minister for overseas territories and sustainable development, Baroness Sugg, stated in parliament that:

The UK Government has expressed sincere regret about the manner in which Chagossians were removed from BIOT in the 1960s and 1970s. While it has decided not to support resettlement, the UK Government is determined to address the aspirations of Chagossians which make them seek to resettle, which are the desire for better lives, and the desire to maintain a connection to the Territory.²⁴³

In 2022, the UK government’s website says that: “Between 1968 and 1973 the UK government removed people from BIOT and relocated them to Mauritius and Seychelles.”²⁴⁴

In a letter to Human Rights Watch in January 2023, Lord Goldsmith, minister of state, said: “The remaining Chagossians were removed from BIOT in the late 1960s and early 1970s and the UK has made clear its deep regret about the manner in which this happened.”²⁴⁵

²⁴¹ ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, February 25, 2019, <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf> (accessed November 9, 2022), para. 116.

²⁴² “General Assembly Welcomes International Court of Justice Opinion on Chagos Archipelago, Adopts Text Calling for Mauritius’ Complete Decolonization,” UN press release, GA/12146, May 22, 2019, <https://www.un.org/press/en/2019/ga12146.doc.htm> (accessed November 17, 2022).

²⁴³ Baroness Sugg, “British Indian Ocean Territory: Crimes against Humanity,” Question for Foreign, Commonwealth and Development Office, UIN HL10143, November 18, 2020, <https://questions-statements.parliament.uk/written-questions/detail/2020-11-09/HL10143/> (accessed January 4, 2023).

²⁴⁴ “UK government support for Chagossians,” *Foreign, Commonwealth & Development Office and Home Office*, September 1, 2022, https://www.gov.uk/government/collections/uk-government-support-for-chagossians?utm_medium=email&utm_campaign=govuk-notifications-topic&utm_source=45dcaf40-2ec3-491a-bad3-f7bcf54c2814&utm_content=daily (accessed August 25, 2022).

²⁴⁵ Letter from Lord Goldsmith, January 23, 2023.

Applicable Law

International Human Rights Law

Article 73 of the UN Charter states that:

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses.²⁴⁶

Mauritius, the UK, and the Seychelles are states parties to the core UN human rights treaties, 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 United States is a state party to the ICCPR and ICERD.

Under the ICCPR, each state party undertakes to “respect and ensure to all individuals within its territory and subject to its jurisdiction” all the ICCPR rights, without distinction of any kind.²⁴⁷

The UK is a state party to the European Convention on Human Rights (ECHR), which it ratified in 1951. It extended the application of the convention to many of its colonial territories in 1953, including Mauritius—and therefore including Chagos. Under the system

²⁴⁶ Repertory of Practice of the United Nations Organs, Charter of the United Nations, Chapter XI – Declaration regarding Non-Self-Governing Territories, August 23, 2016, <https://legal.un.org/repertory/art73.shtml> (accessed November 17, 2022), art. 73.

²⁴⁷ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 2(1).

set up by European states—including many that were colonial powers at the time—states need to choose to “extend” the ECHR to their overseas territories.

Mauritius and Seychelles are states parties to the African Charter on Human and Peoples’ Rights (ACHPR). Under article 20(3) of that treaty, “[a]ll peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.”²⁴⁸

The UK has persistently opposed or tried to minimize the application of international human rights law to the acts of its armed forces and state officials outside the territory of the UK, and in other territory it controls or occupies. With respect to the ICCPR and the BIOT, it has apparently claimed that the human rights treaty has no application to a territory without a permanent population—disregarding that the reason the territory currently has no permanent population is because the UK forced the entire population to leave.

The UN Human Rights Committee, the international expert body that monitors state compliance with the ICCPR, has repeatedly rejected this argument by the UK, and continued to examine the UK’s responsibility for human rights violations against the Chagossians. For example, the committee stated in 2008:

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.²⁴⁹

²⁴⁸ African [Banjul] Charter on Human and Peoples’ Rights (ACHPR), adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, art. 20(3).

²⁴⁹ UN Human Rights Committee (HRC), “Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding Observations, United Kingdom,” CCPR/C/GBR/CO/6, July 30, 2008, , <https://www.ohchr.org/en/documents/concluding-observations/ccprcgbrc06-concluding-observations> (accessed November 16, 2022), para. 22.

Right to Return

The right of return is set out in article 13(2) of the Universal Declaration of Human Rights, which states: “Everyone has the right to leave any country, including his own, and to return to his country.”²⁵⁰ It is given legal force in numerous human rights treaties, including article 12(4) of the ICCPR,²⁵¹ article 5(d)(ii) of the ICERD,²⁵² and article 12(2) of the ACHPR.²⁵³

The Human Rights Committee General Comment on article 12 of the ICCPR states that the right to return:

Includes not only the right to return after having left one's own country; it may also entitle a person to come to the country for the first time if he or she was born outside the country (e.g., if that country is the person's state of nationality). The right to return is of the utmost importance for refugees seeking voluntary repatriation. It also implies prohibition of enforced population transfers or mass expulsions to other countries.²⁵⁴

“Peoples” under International Human Rights Law

Certain rights—such as the right to return—can be held both by individuals and by peoples. The ACHPR, the primary African human rights treaty, includes both individual and peoples’ rights.

The African Commission on Human and Peoples’ Rights has set out criteria for categorizing a group as a “people” entitled to collective human rights under the African Charter. It described an:

²⁵⁰ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 13(2).

²⁵¹ ICCPR, art. 12(4).

²⁵² International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, art. 5(d)(ii).

²⁵³ ACHPR, art. 12(2). See Tomer Levinger, “Denying the Right of Return as a Crime Against Humanity,” *Israel Law Review*, 54(2), October 1, 2021.

²⁵⁴ UN HRC, General Comment 27, Freedom of Movement (Article 12), CCPR/C/21/Rev.1/Add.9, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev.1%2FAdd.9&Lang=en (accessed February 3, 2023), para. 19.

... [E]merging consensus on some objective features that a collective of individuals should manifest to be considered as “peoples,” viz: a common historical tradition, racial or ethnic identity, cultural homogeneity, linguistic unity, religious and ideological affinities, territorial connection, and a common economic life or other bonds, identities and affinities they collectively enjoy – especially rights enumerated under Articles 19 to 24 of the African Charter – or suffer collectively from the deprivation of such rights.²⁵⁵

UNESCO has also set out a definition of “peoples”:

A group of individual human beings who enjoy some or all of the following common features: (a) a common historical tradition; (b) racial or ethnic identity; (c) cultural homogeneity; (d) linguistic unity; (e) religious or ideological affinity; (f) territorial connection; (g) common economic life. (2) The group must be of a certain number which need not be large ... but which must be more than a mere association of individuals within a State; (3) the group as a whole must have the will to be identified as a people or the consciousness of being a people ... (4) The group must have institutions or other means of expressing its common characteristics and will for identity.²⁵⁶

Indigenous Peoples

The rights of Indigenous peoples are addressed in UN and African standards. The African Commission on Human and Peoples’ Rights has addressed who are Indigenous peoples, including in its landmark ruling on the Endorois people of Kenya. It set out four key criteria for identifying Indigenous peoples: “the occupation and use of a specific territory; the

²⁵⁵ African Commission on Human and Peoples’ Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya*, 276/03, Decision, <https://www.achpr.org/sessions/descions?id=193> (accessed November 17, 2022), para. 151.

²⁵⁶ UNESCO, “International Meeting of Experts on further study of the concept of the rights of peoples – Final Report and Recommendations,” SHS-89/CONF.602/7, February 22, 1990, <https://unesdoc.unesco.org/ark:/48223/pf0000085152> (accessed February 1, 2023), para. 22.

See Minority Rights Group International, “Submission from MRG to Select Committee on Foreign Affairs,” Written Evidence, October 12, 2007, <https://publications.parliament.uk/pa/cm200708/cmselect/cmffaff/147/147we26.htm> (accessed November 17, 2022), para. 49.

voluntary perpetuation of cultural distinctiveness; self-identification as a distinct collectivity, as well as recognition by other groups; an experience of subjugation, marginalisation, dispossession, exclusion or discrimination.”²⁵⁷ It stated that “a common thread that runs through all the various criteria that attempts to describe indigenous peoples – that indigenous peoples have an unambiguous relationship to a distinct territory and that all attempts to define the concept recognise the linkages between people, their land, and culture.”²⁵⁸

The UN Declaration on the Rights of Indigenous Peoples states that:

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.²⁵⁹

Racial Discrimination and Racism

Under article 5 of ICERD, states parties “undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights,” which include: “[t]he right to leave any country, including one's own, and to return to one's country.”²⁶⁰

The 1978 UNESCO Declaration on Race and Racial Prejudice has stated that:

Racism includes racist ideologies, prejudiced attitudes, discriminatory behavior, structural arrangements and institutionalized practices resulting in racial inequality as well as the fallacious notion that discriminatory

²⁵⁷ African Commission on Human and Peoples’ Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya*, 276/03, Decision, <https://www.achpr.org/sessions/descions?id=193> (accessed November 17, 2022), para. 150.

²⁵⁸ *Ibid.*, para. 154.

²⁵⁹ UN Declaration on the Rights of Indigenous Peoples, A/RES/61/295, adopted September 13, 2007, <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> (accessed November 17, 2022), art. 10.

²⁶⁰ ICERD, art. 5.

relations between groups are morally and scientifically justifiable; it is reflected in discriminatory provisions in legislation or regulations and discriminatory practices as well as in anti-social beliefs and acts; it hinders the development of its victims, perverts those who practice it, divides nations internally, impedes international co-operation and gives rise to political tensions between peoples; it is contrary to the fundamental principles of international law and, consequently, seriously disturbs international peace and security...²⁶¹

Forced Evictions

The UN Committee on Economic, Social and Cultural Rights treats “forced evictions” as a violation of the right to adequate housing and other basic human rights. It defines forced evictions as “[t]he permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.” It says that “[s]tates parties shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders.”²⁶²

International Criminal Law

Crimes Against Humanity

The prohibition of crimes against humanity is among the most fundamental in international criminal law. The concept, which dates back more than a century, refers to a small number of the most serious crimes under international law. It became a clear part of international criminal law in the 1945 Charter of the International Military Tribunal that

²⁶¹ Declaration on Race and Racial Prejudice, Adopted by the General Conference of UNESCO on November 27, 1978, <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-race-and-racial-prejudice> (accessed January 4, 2023), article 2(2).

²⁶² UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 7: The right to adequate housing (Art. 11.1): forced evictions, E/1998/22, May 20, 1997, <https://www.refworld.org/docid/47a70799d.html> (accessed November 17, 2022), paras. 3, 13.

created the court that prosecuted the leadership of Nazi Germany in Nuremberg following the Second World War and is part of customary international law.²⁶³

The statutes of the International Criminal Tribunals for the former Yugoslavia and for Rwanda, both set up by the UN Security Council in the 1990s, gave each tribunal the power to prosecute crimes against humanity, which included the crimes of deportation and persecutions on racial grounds.²⁶⁴

The 1998 Rome Statute of the International Criminal Court (ICC), which came into force in 2002, sets out 11 crimes that can amount to a crime against humanity when “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”²⁶⁵ The statute defines “attack” as a “course of action involving the multiple commission of acts ... pursuant to or in furtherance of a State or organizational policy.”²⁶⁶ “Widespread” refers to the scale of the acts or number of victims,²⁶⁷ whereas “systematic” indicates a “pattern or methodological plan.”²⁶⁸ Crimes against humanity can be committed during peacetime or armed conflict.

The Elements of Crimes of the ICC, explaining each crime, describes crimes against humanity as “among the most serious crimes of concern to the international community as a whole, warrant and entail individual criminal responsibility, and require conduct which is

²⁶³ Antonio Cassese and Paola Gaeta, *Cassese’s International Criminal Law*, 2nd edition, (Oxford University Press, 2008), p. 101, 104.

²⁶⁴ Statute of the International Tribunal for the Former Yugoslavia, adopted May 25, 1993, annex to the Secretary Report S/25704, art. 5; Statute of the International Criminal Tribunal for Rwanda, adopted November 8, 1994, S/RES/955, art. 3.

²⁶⁵ Rome Statute, art. 7(1).

²⁶⁶ Rome Statute, art. 7(2)(a).

²⁶⁷ The International Criminal Tribunal for Rwanda (ICTR) defined “widespread” as “massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims.”

See ICTR, *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment (Trial Chamber I), September 2, 1998, <https://ucr.irmct.org/LegalRef/CMSDocStore/Public/English/Judgement/NotIndexable/ICTR-96-04/MS15217R0000619817.PDF> (accessed February 3, 2023), para. 580.

See also International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Kordić and Čerkez*, Case No. IT-92-14/2, Judgment (Trial Chamber III), February 26, 2001, para. 179; ICTR, *Prosecutor v. Kayishema and Ruzindana*, Case No. ICTR-95-1-T, Judgment (Trial Chamber II), May 21, 1999, para. 123.

²⁶⁸ ICTY, *Prosecutor v. Duško Tadić*, Case No. IT-94-1-T, Opinion and Judgment (Trial Chamber), May 7, 1997, para. 648.

In *Prosecutor v. Kunarac, Kovač and Vuković*, the Appeals Chamber stated that “patterns of crimes – that is the non-accidental repetition of similar criminal conduct on a regular basis – are a common expression of [a] systematic occurrence.” ICTY, *Prosecutor v. Kunarac, Kovač and Vuković*, Case No. IT-96-23 and IT-96-23-1A, Judgment (Appeals Chamber), June 12, 2002, para. 94.

impermissible under generally applicable international law, as recognized by the principal legal systems of the world.”²⁶⁹

Among the 11 distinct crimes against humanity are the crimes of deportation or forcible transfer of population; persecution on the grounds of race and other grounds; and other inhumane acts. There is no hierarchy among crimes against humanity; they are of the same gravity and lead to the same consequences under the Rome Statute.

Deportation or forcible transfer of population

Deportation was listed as a crime against humanity in the 1945 Charter of the International Military Tribunal.²⁷⁰ It was also listed as a crime in the statutes of the ICTY and the ICTR.²⁷¹ The ICTY in a ruling referred to the status of this crime in customary international law.

According to the ICTY:

Both deportation and forcible transfer relate to involuntary and unlawful evacuation of individuals from the territory in which they reside. Yet the two are not synonymous in customary international law. Deportation presumes transfer beyond State borders, whereas forcible transfer relates to displacement within a State.²⁷²

Deportation or forcible transfer of population are listed as distinct crimes against humanity in the Rome Statute, defined as the “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.”²⁷³ The ICC Pre-Trial Chamber, in a 2018 ruling

²⁶⁹ ICC, *Elements of Crimes*, 2013, <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf> (accessed January 3, 2023), p. 3.

²⁷⁰ UN, Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (“London Agreement”), August 8, 1945, 82 U.N.T.C. 280, available at: https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.2_Charter%20of%20IMT%201945.pdf (accessed November 17, 2022), art. 6(c).

²⁷¹ Statute of the International Tribunal for the Former Yugoslavia, art. 5; Statute of the International Criminal Tribunal for Rwanda, art. 3.

²⁷² ICTY, *Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Judgment, August 2, 2001, para. 521.

Quoted in Cassese and Gaeta, *Cassese's International Criminal Law* (2008), p. 95.

²⁷³ Rome Statute, art. 7(1)(d); art. 7(2)(d).

concerning ethnic Rohingya in Myanmar, said deportation and forcible transfer are two distinct crimes against humanity, the difference being that:

[t]he displacement of persons lawfully residing in an area to another State amounts to deportation, whereas such displacement to a location within the borders of a State must be characterised as forcible transfer.²⁷⁴

Crimes against humanity have no time limit for prosecution. Its application to the denial of the right to return has been recently summarized by a legal expert as: “Those who had a sufficient connection with the place to which they were denied return are to be regarded as victims of a crime against humanity even if a long period has passed, and even if they currently no longer have a physical place to which to return.”²⁷⁵

Continuous forced displacement

The forced displacement of a population will by its nature continue as long as those displaced are prevented from returning to their homeland. It should therefore be treated as a continuous crime, especially if the same state or entity responsible for the displacement remains responsible for the denial of the right of return. The UN expert on addressing serious abuses committed in colonial contexts has stated that “it should be noted that there are also crimes that by their nature are continuous.”²⁷⁶

However, international courts have not appeared to address when and how forced displacement amounts to a continuous crime. In the Rohingya case at the ICC, an amicus brief submitted by Global Rights Compliance argued that “[d]eportation must be assessed as a continuous crime,” and that “the aggravated harm that deportation prohibits, namely the removal into another State, persists until the victims are permitted to return.”

It concluded:

²⁷⁴ ICC, *Situation in Bangladesh/Myanmar*, Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute,” Pre-Trial Chamber I, September 6, 2018, para. 55.

²⁷⁵ Tomer Levinger, “Denying the Right of Return as a Crime Against Humanity,” *Israel Law Review*, 54(2), October 1, 2021, p. 229.

²⁷⁶ UN General Assembly, Report of the Special Rapporteur on Promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, Transitional justice measures and addressing the legacy of gross violations of human rights and international humanitarian law committed in colonial contexts, A/76/180, July 19, 2021, <https://www.ohchr.org/en/documents/thematic-reports/a76180-promotion-truth-justice-reparation-and-guarantees-non-recurrence> (accessed November 17, 2022), para. 30.

[T]he harm caused to the victims continues to be inflicted upon them and accumulates over time. The victims often end up living in significantly worse conditions than they enjoyed before their enforced displacement across a State border. Accordingly, the actus reus of the crime of deportation is prolonged through the continuing conduct of the perpetrator that maintains the forced removal of the victims from their homelands. As long as the victims are prevented from returning to their homes, through acts contingent upon the will of the perpetrator, the crime continues.²⁷⁷

The legal commentator Michael Kearney said that the ICC prosecutor's response to the amicus briefs was:

... sympathetic to the general philosophy of continuing crimes yet chose to recalibrate the framing of conduct preventing the return of deported populations: “Potential harms resulting from denial of any ‘right to return’ need not be addressed only by construing deportation as a ‘continuing’ crime. For example, the possibility cannot be excluded that such conduct might, in appropriate circumstances, potentially be prosecuted as an aspect of persecution or other inhumane acts, if the requisite elements were met.”²⁷⁸

With respect to forced displacement as a crime in domestic laws, the Supreme Court of Colombia has stated that this crime should be a continuing offense as long as the victims are displaced due to continued threats by the perpetrator that force the inhabitants to stay away from their property.²⁷⁹

Other inhumane acts

Under the Rome Statute, a further distinct crime against humanity is “Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to

²⁷⁷ ICC, *Situation in Bangladesh/Myanmar*, “Submissions on Behalf of the Victims Pursuant to Article 19(3) of the Statute,” Global Rights Compliance, Pre-Trial Chamber 1, May 30, 2018, paras. 81, 87.

²⁷⁸ Michael G. Kearney, “The Denial of the Right to Return as a Rome Statute Crime,” *Journal of International Criminal Justice*, 2020, p. 2.

²⁷⁹ See for example Corte Suprema de Justicia [Supreme Court], Sala de Casación Penal, Marzo 26, 2014, M.P: José Luis Barceló Camacho, Expediente SP3742-2014, Radicación No. 38.795. (Colom.)

mental or physical health.”²⁸⁰ The ICC Pre-Trial Chamber in 2018 found with respect to the Rohingya that preventing people from returning to their home can amount to the crime against humanity of other inhumane acts. It stated:

The Chamber notes that, following their deportation, members of the Rohingya people allegedly live in appalling conditions in Bangladesh and that the authorities of Myanmar supposedly impede their return to Myanmar. If these allegations were to be established to the required threshold, preventing the return of members of the Rohingya people falls within article 7(1)(k) [other inhumane acts] of the Statute. Under international human rights law, no one may be arbitrarily deprived of the right to enter one's own country. Such conduct would, thus, be of a character similar to the crime against humanity of persecution, which “means the intentional and severe deprivation of fundamental rights contrary to international law”. Furthermore, preventing a person from returning to his or her own country causes “great suffering, or serious injury [...] to mental [...] health”. In this manner, the anguish of persons uprooted from their own homes and forced to leave their country is deepened. It renders the victims' future even more uncertain and compels them to continue living in deplorable conditions.²⁸¹

Persecution on racial and other grounds

The crime of persecution traces back to the 1945 International Military Tribunal in Nuremberg. The tribunal’s charter recognizes “persecutions on political, racial or religious grounds” as crimes against humanity.²⁸²

The Rome Statute also identifies persecution as a distinct crime against humanity, defining it as “the intentional and severe deprivation of fundamental rights contrary to international

²⁸⁰ Rome Statute, art. 7(1)(k).

²⁸¹ ICC, *Situation in Bangladesh/Myanmar*, Decision on the “Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute,” Pre-Trial Chamber I, September 6, 2018, para. 77.

²⁸² UN, Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (“London Agreement”), August 8, 1945, 82 U.N.T.C. 280, available at: https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.2_Charter%20of%20IMT%201945.pdf (accessed November 17, 2022), art. 6(c).

law by reason of the identity of the group or collectivity.”²⁸³ The statute broadened the scope of the crime to encompass “any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law.”²⁸⁴ The statute limits the crime to applying only “in connection with” other crimes identified under it.²⁸⁵

The customary international law definition of persecution, though, includes no such limitation.²⁸⁶ International criminal lawyer Antonio Cassese, who served as a judge in the leading ICTY case that examined persecution within international criminal law (*Prosecutor v. Kupreškić*), identified the crime against humanity of persecution as a crime under customary international law.²⁸⁷ He defined persecution under customary international law as referring to acts that a) result in egregious or grave violations of fundamental human rights, b) are part of a widespread or systematic practice, and c) are committed with discriminatory intent.²⁸⁸

The ICTY, in discussing the meaning of discriminatory intent in this crime, has said: “While the intent to discriminate need not be the primary intent with respect to the act, it must be a significant one. There is no requirement under persecution that a discriminatory policy exist.”²⁸⁹

Prosecution of Crimes Against Humanity

The commission of crimes against humanity can serve as the basis for individual criminal liability not only in the domestic courts where the crimes are committed, but also in international courts and tribunals, as well as in domestic courts outside the country in question under the principle of universal jurisdiction. Individual criminal liability can extend beyond those who carry out the acts to those who order, assist, facilitate, aid, and abet the offense. Under the principle of command responsibility, military and civilian officials up to the top of the chain of command can be held criminally responsible for

²⁸³ Rome Statute, art. 7(2)(g).

²⁸⁴ Rome Statute, art. 7(1)(h).

²⁸⁵ *Ibid.*

²⁸⁶ ICTY, *Prosecutor v. Kupreškić et al.*, Case No. IT-95-16-T, Judgment, (January 14, 2000, paras. 580-581).

²⁸⁷ Cassese and Gaeta, *Cassese's International Criminal Law* (2008), p. 125.

²⁸⁸ *Ibid.*

²⁸⁹ ICTY, *Prosecutor v. Krnojelac*, Case No. IT-97-25-T, Judgment (Trial Chamber II), March 15, 2002, para. 435.

crimes committed by their subordinates when they knew or should have known that such crimes were being committed but failed to take reasonable measures to prevent the crimes or punish those responsible.

Mauritius ratified the Rome Statute on March 5, 2002, the United Kingdom on October 4, 2001, and Seychelles on August 10, 2010. The Rome Statute itself entered into force on July 1, 2002. The UK has not made any declaration extending its ratification of the Rome Statute to the BIOT, nor has it extended its own implementing law for the ICC to cover the BIOT, although it has made both such extensions to other overseas territories, including the base areas on Cyprus.²⁹⁰ This suggests the UK does not intend its courts to address international crimes committed in that territory.

The United States signed, but has not ratified, the Rome Statute and purported to have “withdrawn” its signature in 2002.²⁹¹

The issue of continuous crimes in international law has been examined in most detail concerning the crime of enforced disappearances. The UN Working Group on Enforced or Involuntary Disappearances has stated, in a general comment, that states should be held responsible for all violations that result from the enforced disappearance, even when that began “before the entry into force of the relevant legal instrument.” The working group said that in criminal law, “it is possible to convict someone for enforced disappearance on the basis of a legal instrument that was enacted after the enforced disappearance began ... The crime cannot be separated and the conviction should cover the enforced disappearance as a whole.”²⁹²

²⁹⁰ See International Criminal Court Act (Overseas Territories) Order 2009, ICC Statutory Instruments, 2009 No. 1738, Came into force September 1, 2009, https://www.bvifsc.vg/sites/default/files/uksi_20091738_en.pdf (accessed January 3, 2023).

For UK declarations on extension of the Rome Statute, see Note 11 at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&clang=_en#EndDec (accessed January 3, 2023).

²⁹¹ U.S. Department of State Archive, “President Clinton: Statement on Signature of the International Criminal Court Treaty, Washington, DC, December 31, 2000,” December 31, 2000, https://1997-2001.state.gov/www/global/swci/001231_clinton_icc.html (accessed January 26, 2023).

U.S. Department of State Archive, “International Criminal Court: Letter to UN Secretary General Kofi Annan,” Press Statement, May 6, 2002, <https://2001-2009.state.gov/r/pa/prs/ps/2002/9968.htm> (accessed January 26, 2023).

²⁹² Working Group on Enforced or Involuntary Disappearances, General Comment No. 9, Enforced Disappearance as a Continuous Crime, UN Doc A/HRC/16/48 (2011), <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F16%2F48&Language=E&DeviceType=Desktop&LangRequested=False> (accessed February 3, 2023), para. 39(5, 8).

State Responsibility for Internationally Wrongful Acts

Under the Articles of Responsibility for States for internationally wrongful acts, “A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so,” if it aids or assists with knowledge of the circumstances of the internationally wrongful act.²⁹³ It is also responsible when it “directs and controls” another state in the commission of the wrongful act.²⁹⁴

Under these articles, states are directly responsible for acts of any state organ and for persons acting under their instructions.²⁹⁵

The articles also set out the duties of states to address serious breaches of obligations under peremptory norms of general international law—which would include serious human violations and crimes against humanity. They require states to cooperate to end any such serious breach, to not recognize a situation created by a serious breach as lawful, nor render aid or assistance in maintaining that situation.²⁹⁶

²⁹³ International Law Commission, Responsibility of States for Internationally Wrongful Acts, adopted at 53rd session, 2001, art. 16.

²⁹⁴ *Ibid.*, article 17.

²⁹⁵ *Ibid.*, Chapter II.

²⁹⁶ *Ibid.*, Chapter III.

Human Rights Violations and International Crimes

The United Kingdom, with the United States, was responsible for forcibly displacing the entire population of Chagos over a period of years in the 1960s and 1970s, resulting in economic, physical, and psychological devastation to individuals and the community. The UK, with the involvement of the US, has prevented Chagossians from returning to their homeland ever since, violating their right to return.

The UK, in 2001, accepted before the UN Human Rights Committee that prohibiting Chagossians from returning to Chagos was unlawful. The committee, in its 2001 concluding observations, stated:

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.

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..²⁹⁷

The UK is also responsible for racial discrimination that violates the ICERD in its treatment of the Chagossians. It has disregarded clear recommendations from the UN committee that monitors state compliance with the ICERD to withdraw all discriminatory restrictions on Chagossians entering the Chagos islands; to ensure that the convention is applicable in all territories under its control, including the BIOT; and “to hold full and meaningful

²⁹⁷ UN HRC, “Concluding Observations of the HRC: United Kingdom and UK Overseas Territories,” CCPR/CO/73/UKOT, December 6, 2001, <https://www.refworld.org/docid/3cbbec3d2.html> (accessed November 17, 2022), para. 38.

consultations with the Chagossians to facilitate their return to their islands and to provide them with an effective remedy, including compensation.”²⁹⁸

The US government also bears responsibility for the forced displacement of the Chagossians, with their officials having instigated and requested their removal from Diego Garcia. The role of the US since the 1970s in preventing the return of the Chagossians has been less clear, as few documents concerning its role have been published. However, the documents available have shown that the US aided and assisted the UK in preventing the return of the Chagossians, having done so with knowledge of the circumstances of this internationally wrongful act. At least since the adoption of the Articles of State Responsibility in 2001, the US has also been responsible for having rendered aid and assistance to the UK in maintaining the forced displacement of the Chagossians.

The Chagossians meet the definitions of a people as set out by UNESCO and the African Commission, as noted above. Minority Rights Group International set this out in 2007 to the UK Parliament, referring to the UNESCO definition of peoples mentioned above:

The Chagos Islanders satisfy all four of the above conditions. As to the first condition, several scholars have noted that the Chagos Islanders possess common cultural and linguistic characteristics distinct from that of other peoples in Mauritius and the Seychelles. Numbering in the thousands, and all originating from the same territory, they satisfy the requirements of characteristic two. The Chagossians, even in exile, generally self-identify as members of a distinct group, in compliance with the third characteristic. Finally, through the medium of oral history, songs, and advocacy organizations like the Chagos Refugee Group, the Chagossian people have established "institutions [and] other means for expressing its common characteristics and will for identity."²⁹⁹

²⁹⁸ UN CERD, “Concluding observations on the twenty-first to twenty-third period reports of United Kingdom,” CERD/C/GBR/CO/21-23, August 26, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/221/81/PDF/G1622181.pdf?OpenElement> (accessed November 17, 2022), paras. 40-41.

²⁹⁹ Minority Rights Group International, “Submission from MRG to Select Committee on Foreign Affairs,” Written Evidence, October 12, 2007, <https://publications.parliament.uk/pa/cm200708/cmselect/cmffaff/147/147we26.htm> (accessed November 17, 2022), para. 50.

The UN Human Rights Committee has also recognized Chagossians as a people. On this basis, the committee in its 2001 Concluding Observations on the United Kingdom of Great Britain and Northern Ireland, urged "the State Party ... to the extent still possible" to "seek to make exercise of the Ilois' right to return to their territory practicable."³⁰⁰

The UK government has referred to "the Chagossian people," including in its announcement in 2016 that they were once again refusing their resettlement. A UK court concluded in 2019 that the UK government view was that "the Chagossians were a historic community, defined by reference to their ethnic origins, which had spread around the world."³⁰¹

With respect to the right to self-determination, the ICJ concluded this was a right for the Mauritian people, including Chagossians.³⁰²

Chagossians as an Indigenous people

The Chagossians also meet the definition of an Indigenous people as set out by the African Commission on Human and Peoples' Rights, mentioned above. They "occupied and used" a specific territory, the Chagos Archipelago, they self-identify as a distinct community, and are recognized as such, they have cultural distinctiveness including in music, and have a "profound experience" over the last 50 years of subjugation, marginalization, dispossession, exclusion, and discrimination. The links between their identification as a community, to their specific territory, the Chagos islands, and with their subjugation and dispossession are profound and mark them as an Indigenous people.

The Chagossians were described as an Indigenous people by the UK court in the first case brought by Olivier Bancoult.³⁰³

³⁰⁰ UN HRC, "Concluding Observations of the HRC: United Kingdom and UK Overseas Territories," CCPR/CO/73/UKOT, December 6, 2001, <https://www.refworld.org/docid/3cbbec3d2.html> (accessed January 3, 2023), para. 38.

³⁰¹ EWHC, *Bancoult (No. 5)*, [2019] EWHC 221 (Admin), Judgment, February 8, 2019, <https://www.judiciary.uk/wp-content/uploads/2019/02/judgment-hoareau-bancoult-v-ssfca-final-8-feb-19.pdf> (accessed November 17, 2022), para. 191.

³⁰² ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, February 25, 2019, <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf> (accessed November 9, 2022), para. 160.

³⁰³ EWHC, *Bancoult (No 1)*, [2000] EWHC 413 (Admin), Judgment, November 3, 2000, <https://www.bailii.org/ew/cases/EWHC/Admin/2000/413.html> (accessed November 9, 2022), para. 1.

The UN Declaration on the Rights of Indigenous Peoples states that Indigenous peoples have a specific right to self-determination, including to autonomy or self-government in their internal or local affairs. It also says that states should provide effective mechanisms for the redress of any form of forced population transfer of Indigenous peoples or for acts which dispossessed them of land, territory, or resources. It sets out that Indigenous peoples have the right to participate in decision-making in matters that affect their rights, and the right to redress, including restitution and compensation for lands, territories, and resources that have been taken or occupied without their free, prior and informed consent.³⁰⁴

Crimes against humanity and other crimes committed against the Chagossians

For 50 years, state authorities of the UK and US governments deliberately forced all Chagossians to leave their homeland, resulting in a wide range of human rights violations, including the prevention of their return. Human Rights Watch believes these abuses amount to crimes against humanity that continue to the present. These crimes are both widespread, affecting the entire population of Chagossians, and systematic, being the result of deliberate state policy by both countries, originating at the highest levels. Both countries continue to hide their reasons for the displacement of Chagossians and the prevention of their return, for which there is no lawful justification.

The ICJ has determined that the “entire population of the Chagos Archipelago was either prevented from returning or forcibly removed and prevented from returning by the United Kingdom.”³⁰⁵

At least three crimes against humanity have been committed. The first is forced displacement, either deportation or forcible transfer (depending on whether the Chagossians were forced to a different country or within the same country), which here is a continuous crime. The UK and US governments carried out forced displacement in the

³⁰⁴ UN Declaration on the Rights of Indigenous Peoples, A/RES/61/295, adopted September 13, 2007, <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> (accessed January 4, 2023), arts. 3, 4, 18, 28.

³⁰⁵ ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, February 25, 2019, <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf> (accessed November 9, 2022), para. 43.

1970s and, ever since, the UK, with the involvement of the US, has continued, as a state policy, to prevent the Chagossians from returning to their homeland.

The prevention of return also amounts, separately, to the crime against humanity of “other inhumane acts,” using the standard set out by an ICC pre-trial chamber in the Bangladesh/Myanmar situation.

The forced displacement of the Chagossians also amounts to the crime against humanity of persecution on the grounds of race and ethnicity. The language of UK documents in the 1960s is indicative of racial discrimination and racism³⁰⁶. This treatment of the Chagossians as a people without basic human rights, has continued until this day. The treatment of the Chagossians, compared with the Falkland Islanders and the population in Cyprus under British rule, shows how the UK government applied and continues to apply a different standard to islanders under its rule depending on their origin and their race. The Chagossians have been intentionally and severely deprived of fundamental rights by reason of their identity as a group.

The UK and its officials have primary responsibility for the crimes committed against the Chagossians. US officials also bear responsibility for instigating and implementing the forced displacement and assisting and supporting the ensuing crimes against Chagossians that amount to crimes against humanity.

The United Kingdom and prosecution of international crimes by UK officials and personnel

The UK has a poor record of prosecuting government officials and members of its armed forces, especially at the senior level, who are implicated in serious international crimes, such as war crimes committed outside of the United Kingdom. This was evident most recently in Iraq, when despite extensive evidence of numerous war crimes committed by UK military personnel after 2003, only one domestic prosecution took place in 20 years. Instead, successive UK governments interfered in the justice system, ordering domestic criminal investigations to be shut down, and compromising the independence of

³⁰⁶ Although explicit evidence of racism is not necessary to prove the crime against humanity of persecution, which under the Rome Statute is defined as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.” See Rome Statute, art. 7(2)(g).

prosecution decision-making as the attorney general, a member of the government, is involved in decisions to prosecute international crimes.³⁰⁷ The UK government's refusal to extend its application of the Rome Statute, and domestic law implementing the ICC, to the BIOT strongly indicates that it would not pursue criminal investigations and prosecutions of international crimes committed against the Chagossians.

Rights of Chagossians to Remedies and Reparations

The UN General Assembly in 2005 adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (the "Basic Principles"). The Basic Principles state that victims of gross violations of international human rights law should be provided with full and effective reparation, which include restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. According to the Basic Principles:

- Restitution should, whenever possible, restore the victim to the original situation before the gross violations, including return to one's place of residence.
- Compensation should be appropriate and proportional to the gravity of the violation, including for physical or mental harm; material and moral damage; lost opportunities, and the cost of medical, psychological, and social services.
- Rehabilitation includes medical and psychological care, and legal and social services.
- Satisfaction includes effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth; public apology, including acknowledgement of the facts and acceptance of responsibility; judicial and administrative sanctions against persons liable for the violations; and commemorations and tributes to the victims.
- Guarantees of non-repetition include strengthening the independence of the judiciary and reviewing and reforming laws that allowed the gross violations of international human rights law.³⁰⁸

³⁰⁷ See Clive Baldwin (Human Rights Watch), "The ICC Prosecutor Office's Cop-Out on UK Military Crimes in Iraq," Op-Ed, *OpinioJuris*, December 18, 2020, <https://www.hrw.org/news/2020/12/18/icc-prosecutor-offices-cop-out-uk-military-crimes-iraq>.

³⁰⁸ UN Office of the High Commissioner for Human Rights, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International

The Articles of State Responsibility provide that states responsible for international wrongful acts are under an obligation to make full reparation for the injury caused by the act, including any damage, material and moral.³⁰⁹

Article 28(1) of the UN Declaration on the Rights of Indigenous Peoples states that:

Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.³¹⁰

The UN special rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence has stated:

For a measure to count as reparation, it must be accompanied by recognition of responsibility, be aimed at remedying the harm suffered by the victims and be linked specifically to truth, justice and guarantees of non-recurrence.³¹¹

In submissions to the ICJ, the African Union stated that resettlement alone “would not be sufficient to repair the damage caused to the Chagossians and their property” by their forced displacement and the prevention by the UK and US of their return. The AU called for

Humanitarian Law, adopted by General Assembly resolution 60/147, December 16, 2005, <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation> (accessed November 17, 2022), paras. 19-23

³⁰⁹ International Law Commission, Responsibility of States for Internationally Wrongful Acts, adopted at 53rd session, 2001, art. 31.

³¹⁰ United Nations, Declaration on the Rights of Indigenous Peoples, A/RES/61/295, adopted September 13, 2007, <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> (accessed November 17, 2022), art. 28(1).

³¹¹ UN General Assembly, Report of the Special Rapporteur on Promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, Transitional justice measures and addressing the legacy of gross violations of human rights and international humanitarian law committed in colonial contexts, A/76/180, July 19, 2021, <https://www.ohchr.org/en/documents/thematic-reports/a76180-promotion-truth-justice-reparation-and-guarantees-non-recurrence> (accessed November 17, 2022), para. 55.

“an additional measure of compensation, covering both the material and moral damage suffered.”³¹²

In a separate opinion in the ICJ’s opinion on Chagos, Judge Cançado Trindade set out the forms of reparations due to the Chagossians: restitution, appropriate compensation, satisfaction (including public apology), rehabilitation of the victims, and guarantee of non-repetition of the harm.³¹³

The UK and the US are under a duty to provide reparations to the Chagossians, both individually and as a people, for the gross human rights violations and crimes against humanity committed against them. Other states, including Mauritius, should assist in implementing these reparations, in particular the right to return for all Chagossians.

Reparations to the Chagossian people should consist of three key elements to right the wrongs of the last 50 years. The first is for the UK and the US to accept and make possible the right of every Chagossian to return and live in dignity in the islands, including Diego Garcia. This would necessitate a lifting of all legal and other barriers to their return to their homeland. But it also requires the UK and US to ensure that the islands are fit for human habitation again, so that the Chagossians are able to live and prosper there.

The second key element will be financial and other compensation, in full, to every Chagossian for the harms done to them, to Chagossians who return to their homeland, and those who do not. This compensation should be agreed with the Chagossians.

Finally, the UK and US authorities should fulfill their obligation to provide satisfaction to the Chagossian people, as agreed to by the Chagossians. This could include acknowledging the crimes and other harms done to the Chagossian people in the last 50 years, making an apology, adopting other measures after discussions with the Chagossian people, and guaranteeing that such crimes and other abuses will not take place in the future. For the latter, it would be crucial for the UK and US to publish all material related to

³¹² ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Written Statement of the African Union, March 1, 2018, <https://www.icj-cij.org/public/files/case-related/169/169-20180301-WRI-07-00-EN.pdf> (accessed November 16, 2022), para. 244.

³¹³ ICJ, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Separate Opinion of Judge Cançado Trindade, February 25, 2019, <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-04-EN.pdf> (accessed November 16, 2022), para. 262.

Chagos and the forced displacement of its people and for the UK, in particular, to ensure a full and independent criminal investigation into all crimes committed, with the appropriate prosecution of those responsible.

An Ongoing Colonial Crime

The forced expulsion of the Chagossians by the UK and US, and the refusal to allow them to return for the last 50 years is a stark example of an ongoing colonial crime, one that began in the 1960s, but which has continued into 2023. The colonial power, the UK, forcibly displaced an entire people, and has largely failed to acknowledge responsibility and provide an adequate remedy ever since. Its public justifications for the expulsion were at first based on untruths, such as that there was no permanent population of Chagossians, and designed to avoid being held responsible by the UN for the people under its control. Its more recent justifications for preventing return, in particular its claims that this would be overly costly, are a stark indication of the UK government's failure to take responsibility for the consequences of its abuses. The US instigated and has benefited from the displacement of the Chagossian people and for decades has attempted to evade and deny responsibility.

Racism has been at the heart of the treatment of the Chagossians, as is evident in the 1960s documents described above. The Chagossians were treated as a people who were not entitled to fundamental human rights—which in practice they were repeatedly denied.

The UK's colonial approach to international human rights and international criminal law, which entails applying different standards within the UK and in the rest of the world, continues to this day. Its refusal to accept the application of human rights law to what it considers to be its own territory in the BIOT, is compounded by successive attempts by UK governments to deny or restrict the application of UK human rights and criminal law to the acts of its officials and armed forces outside the UK. This approach of the UK government denying responsibility for crimes by UK officials and military personnel overseas has its origins in UK colonial atrocities.³¹⁴ The UK government's approach of trying to restrict the application of law to its officials and military personnel around the world shows that

³¹⁴ See Clive Baldwin, "UK: A Century After the Amritsar Massacre, London Still Kicks Its Atrocities Under the Rug," Human Rights Watch news release, April 12, 2019, <https://www.hrw.org/news/2019/04/12/uk-century-after-amritsar-massacre-london-still-kicks-its-atrocities-under-rug>.

people in places under UK control are treated as less entitled to protection of rights by the UK government than those in the UK, and that the UK government acts as if its officials and armed forces can commit abuses and crimes with impunity in other parts of the world.³¹⁵

The failure to end and remedy the crimes against the Chagossians is also a failure of the international and UK justice systems. Some courts have ruled to uphold the rights of the Chagossians, but others, notably some UK courts and the European Court of Human Rights, refused to award compensation, treating the 1980s payments to Chagossians in Mauritius as final, despite acknowledging that they had been wholly inadequate in addressing the harms caused.

UK and European courts have not addressed these ongoing colonial harms by acknowledging rights violations and enforcing reparations. On at least one occasion, a court has even claimed that the Chagossian case was not about human rights. These courts have rarely acknowledged and many have outright denied the Chagossians their right to return or to be entitled to full compensation for the harms they suffered.

Perhaps most damning is that despite the clear and public evidence that senior UK and US officials planned and implemented the forced displacement of an entire people, demonstrating discrimination based on race and an utter disregard for basic rights, and continued to commit abuses for decades, there has scarcely been a public discussion, let alone any actual investigations, into whether these atrocities are international crimes and serious violations of human rights law. When compared with the attention given to grave violations committed by other governments, these double standards are perhaps not surprising. As the UN expert on truth, justice and reparations, quoting Wolfgang Kaleck, said in 2021:

There have never been serious efforts to investigate colonial crimes before national or international courts, nor to punish any of the surviving

³¹⁵ Clive Baldwin, “UK Seeks to Stop Justice for War Crimes,” Human Rights Watch news release, September 23, 2020, <https://www.hrw.org/news/2020/09/23/uk-seeks-stop-justice-war-crimes>.

perpetrators, nor sanction the governments involved or to compensate the victims for the ongoing health problems triggered by the crimes.³¹⁶

The 50th anniversary of the final forced displacement of the Chagossians will be commemorated in 2023. This should finally be the year that the wrongs committed against the Chagossians are ended. This can only be done if a commitment to full reparations to Chagossians is at the heart of any agreement about the future of Chagos.

³¹⁶ UN General Assembly, Report of the Special Rapporteur on Promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, Transitional justice measures and addressing the legacy of gross violations of human rights and international humanitarian law committed in colonial contexts, A/76/180, July 19, 2021, <https://www.ohchr.org/en/documents/thematic-reports/a76180-promotion-truth-justice-reparation-and-guarantees-non-recurrence> (accessed January 24, 2023), para. 25.

Full Recommendations and Key Actors

These recommendations stem from Human Rights Watch's findings that the forced displacement of the Chagossians from their homes, the ongoing refusal to allow them to return to their homeland, and the persecution on racial and ethnic grounds amount to crimes against humanity.

To the United Kingdom government

- Provide full, unconditional, and effective reparations to the Chagossian people based on meaningful and effective consultation with them:
 - As part of full restitution, recognize their immediate and unconditional right to permanently return to Chagos, including to Diego Garcia.
 - Ensure that the Chagos islands are restored so that the Chagossians can return to live permanently in dignity and prosperity, at a minimum standard equivalent to how they would live today had they not been expelled over 50 years ago.
 - Provide full compensation to all Chagossians, everywhere in the world, for all the harms caused to them since 1965.
 - Provide free and adequate rehabilitative and trauma-informed care services to Chagossians affected by the expulsion.
 - Guarantee the non-repetition of similar abuses and crimes. Publish all material, including all government orders, confidential agreements, notes, and instructions on removal and prevention of return concerning the Chagossians and their displacement and make this available on a free and accessible database.
 - Hold individuals responsible for crimes against humanity against the Chagossians accountable through fair trials, consistent with the United Kingdom's obligations under international law and its standing as a state party to the International Criminal Court. Ensure the UK criminal justice system is fully independent of government, including reforming the role of the attorney general, so it can investigate and prosecute crimes committed anywhere in the world by the most senior members of UK government. End any form of interference by UK government and ministers in investigations

and prosecutions into crimes against humanity and other international crimes.

- End differing treatment of persons under UK rule, including by ensuring that all UK law and international treaties implementing international human rights, criminal, and refugee law are fully applied to British territories everywhere in the world. Immediately declare the full application of all human rights and international criminal law treaties ratified by the UK to Chagos (BIOT).
- Hold a full and independent public inquiry into the crimes and violations committed against the Chagossians, and in particular the specific acts of racism shown by officials at the highest levels of the UK government and ensure this is not repeated. Do not delay any of the above measures to hold this inquiry or await its outcome.
- Cooperate with and comply with the findings and recommendations of UN bodies and human rights mechanisms.
- Ensure that all Chagossians who worked on Chagos, including for the plantations, are paid pensions, and these pensions are backdated for those who did not yet receive them.

To the United Kingdom government and King Charles III (head of state of the United Kingdom and head of the Commonwealth)

- King Charles III should issue a full and unreserved apology to the Chagossian people for the crimes and other abuses committed against them by the United Kingdom, as called for by Chagossians, and reiterate that the UK government will guarantee full reparations for the harms they suffered and that such abuses will never be repeated.

To the United States government

- Provide full, unconditional, and effective reparations to the Chagossian people based on meaningful and effective consultation with them.
- Issue a full and complete apology and acknowledgement of all the harms done from 1965 until today, including the crimes committed, as called for by

Chagossians. Publish all material, including all government orders, concerning the Chagossians and their displacement.

- Contribute, with the UK, to the full reparations to the Chagossian people, including their right to permanently return, ensuring they can live in dignity and prosperity in Chagos, including on Diego Garcia, and receive full financial compensation for the harms inflicted on them.
- Guarantee such abuses will never happen again. Publish all material, including all government orders, confidential agreements, notes, and instructions on removal and prevention of return concerning the Chagossians and their displacement and make this available on a free and accessible database.
- Allow the use of the airfield in Diego Garcia for civilian flights to assist Chagossians in resettling.
- Immediately allow, lift any remaining legal restrictions, and publicly encourage Chagossians to work on the military base, and allow them to bring their families to live there.
- Commit to not allowing renditions, detentions, and interrogations on Chagos, and allow inspections of all detention facilities by impartial humanitarian organizations.

To the US Congress

- Hold hearings into international crimes and other human rights abuses committed against the Chagossians and the responsibility of successive US administrations.
- Adopt legislation implementing crimes against humanity into US criminal law, including providing for universal jurisdiction.

To the Government of Mauritius

- Repeat its public declaration that it fully supports the right of all Chagossians to return, wherever in the world they live and whatever their nationality.
- Publicly express its support for full and effective reparations by the UK and US governments to the Chagossian people.
- Publicly call for effective accountability for those responsible for crimes against humanity against the Chagossian people.

To the Government of Seychelles

- Publicly express its support for full and effective reparations by the UK and US governments to the Chagossian people.
- Publicly call for effective accountability for those responsible for crimes against humanity against the Chagossian people.

To the Governments of the UK and Mauritius, with the Governments of the US and India

- In the context of the current negotiations between the UK and Mauritius over the Chagos Archipelago, ensure that the Chagossian people are centered in this process, that effective and meaningful consultations are conducted with them, and that any agreement provides for binding commitments by the UK and US Government to provide full and effective reparations and a commitment by all governments to honor the right of unfettered permanent return of the Chagossian people, to all the islands of Chagos. The commitment to an unfettered right of return applies equally to the Mauritian government should control over the Islands pass to them.
- With respect to reparations, in addition to the right to return without restrictions, including to live on Diego Garcia, the agreement should also include restitution of Chagos so Chagossians can live there in dignity and prosperity; full compensation to all Chagossians for the harms suffered as a result of the forced displacement; and a guarantee that such atrocities will not be repeated.
- Recognize the Chagossians as an Indigenous people.

To Member States of the United Nations

- As stated by the International Court of Justice, the General Assembly should address the resettlement of the Chagossians, as part of the protection of their human rights, during the “completion of the decolonization of Mauritius” that is during current the Mauritius-UK negotiations. It should adopt a resolution addressing the Mauritius-UK negotiations and the need for Chagossians to be at the center of these, they should be meaningfully consulted, and that any final

agreement should guarantee them full and effective reparations, including the right to return.

- The UN should establish an international inquiry to investigate systematic discrimination and repression based on race, ethnicity, or national origin, including the group identity of the Chagossians. The inquiry should be mandated to establish and analyze the facts, and, where applicable, identify those responsible for serious crimes, including the crime against humanity of persecution, with a view to ensure that the perpetrators of violations are held accountable, as well as collect and preserve evidence related to abuses for future use by credible judicial institutions. The inquiry's mandate should be sufficiently broad to cover the role of other actors, including officials of other states.
- Given the improbability of the UN Security Council taking action against the UK and the US, given their veto power as Permanent Members, member states should subject agreements, cooperation schemes, and all forms of trade and dealing with the UK and the US to enhanced due diligence to screen for those directly contributing to the commission of crimes against humanity against the Chagossians, mitigate the human rights impacts, and, where not possible, end those activities and funding found to contribute to facilitating these serious crimes.
- Establish through the UN a position of UN global envoy for the crimes of persecution and apartheid with a mandate to advocate for their end and identify steps that states, and judicial institutions, including the International Criminal Court, should take to prosecute these crimes. Once established, request the UN Security Council to invite the envoy to participate in quarterly open briefings on the situation in Chagos.

To All States

- Issue individual and collective public statements expressing concern about the UK and US authorities committing crimes against humanity against the Chagossians and call on the parties to the current negotiation over the future of the Chagos Archipelago to center, effectively consult, and provide binding, full, and effective reparations to the Chagossians, including their unfettered permanent return to all the Islands that make up Chagos.
- Subject agreements, cooperation schemes, and all forms of trade and dealing with the United Kingdom to enhanced due diligence to screen for those directly

contributing to the commission of crimes against humanity against the Chagossians, mitigate the human rights harms, and, where not possible, end the activities and funding found to directly contribute to facilitating these serious crimes.

- Accede to the Rome Statute of the International Criminal Court and incorporate crimes against humanity into national criminal law, including providing for universal jurisdiction to enable the investigation and prosecution of individuals credibly implicated in these crimes wherever they are committed.

To the African Union, to the European Union and their Member States

- Issue public statements of concern regarding the UK and US authorities' commission of crimes against humanity against the Chagossian people.
- Issue individual and collective public statements expressing concern about the UK and US authorities committing crimes against humanity against the Chagossians and call on the parties to the current negotiation over the future of the Chagos Archipelago to center, meaningfully consult, and provide binding, full, and effective reparations to the Chagossians, including their unfettered permanent return to all the Islands that make up Chagos.
- Conduct a holistic assessment of the implications for AU/EU and member states' relations with the UK and the US arising from the commission of crimes against humanity and other serious human rights abuses against the Chagossians, identifying in particular the legal consequences and obligations under international law that apply to AU/EU institutions, member states, and AU/EU-based private businesses, and the steps that should be taken accordingly, and make such assessment public.
- Subject all AU/EU and member states' bilateral agreements, cooperation schemes, and all forms of trade and dealing with UK and US to enhanced due diligence to screen for those directly contributing to the commission of crimes against humanity against the Chagossians, mitigate the human rights harms, and, where not possible, end the activities and funding found to directly contribute to facilitating these serious crimes.
- Support the establishment of a Commission of Inquiry by the UN.
- Support the establishment of a UN envoy on the crimes of apartheid and persecution.

To businesses active in the Chagos Archipelago, including on the military base on Diego Garcia.

- Cease business activities that directly contribute to the crimes against humanity against the Chagossian people, including the prevention of their return.
- Assess whether their goods and services contribute to the crimes against humanity against the Chagossian people, and cease providing goods and services that will likely be used for such purposes, in accordance with the UN Guiding Principles on Business and Human Rights.

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Babatunde Olugboji, deputy program director at Human Rights Watch, and James Ross, legal and policy director at Human Rights Watch, provided programmatic and legal review, respectively. Bruno Stagno, chief advocacy officer, contributed to the development of the recommendations in the report.

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Aoife Croucher, senior associate in the Africa division, Vincent Sima Olé, associate in the Africa division, Peter Huvos, web editor, and Travis Carr, publications officer at Human Rights Watch, prepared the report for publication. Fitzroy Hepkins, Senior Administrative Manager, prepared the report for printing. H el ene Tagand translated this report into French.

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Most importantly, we wish to thank the Chagossians and other human rights defenders and activists who for years have documented and courageously spoken out against the serious abuses documented in this report.

Annex I: Human Rights Watch Letter to the United Kingdom Foreign, Commonwealth and Development Office

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December 7, 2022

The Rt Hon Lord Goldsmith of Richmond Park
Minister of State in the Foreign, Commonwealth
and Development Office

King Charles Street
London SW1A 2AH

Via email



HRW.org

Re: Forced displacement of Chagossian People

Dear Lord Goldsmith,

We are writing on behalf of Human Rights Watch to share with you the summary of findings from our research into the forced displacement and other human rights violations committed against the Chagossian people, starting in the 1960s. We also have a series of questions regarding the situation to clarify certain issues and provide you with an opportunity to respond.

Human Rights Watch is an independent, nongovernmental organization that reports on human rights conditions in over 100 countries.

Human Rights Watch has since November 2021 conducted research on the forced displacement of the Chagossians through interviews with Chagossians in Mauritius, the UK, and Seychelles, and current and former government officials and other experts in Mauritius, the UK, US, and Seychelles. We have also conducted extensive research of public documents, including the findings of various domestic and international courts. Our findings are based on this research and the application of international human rights law and international criminal law.

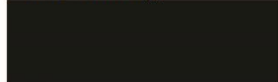
In the interest of thorough and objective reporting, it is Human Rights Watch's practice to seek comments and give relevant authorities the opportunity to provide information on our ongoing research. Due to our publication deadlines, we kindly request that you provide responses to the attached questions and any other information you wish to provide by January 18, 2023. In addition, we would welcome

an opportunity to discuss these and other related issues with you, or your representatives either in person or virtually at your convenience.

Attached as appendices are I) Human Rights Watch's preliminary findings and II) questions for the UK government.

We are looking forward to hearing from you.

Yours sincerely,



Mausi Segun
Executive Director, Africa Division
Human Rights Watch



Clive Baldwin
Senior Legal Advisor, Legal & Policy Office
Human Rights Watch

Copying to Lord Ahmad of Wimbledon, Minister for the Middle East, South Asia and the United Nations.

Appendix I

Preliminary findings

Our key findings are:

1. The United Kingdom secretly agreed with the United States in the 1960s that Diego Garcia Island would be made available for a military base. The UK agreed to remove the existing population of Diego Garcia and later decided to remove the population of other Chagos islands.
2. The UK decided to remove the entire population of Chagos, primarily to avoid reporting to the United Nations about its continued colonial rule over a permanent population. UK officials made statements, including to the UN, they knew to be false claiming that there was no permanent population on Chagos.
3. From approximately 1965 (the creation of British Indian Ocean Territories, or BIOT) to 1973, the UK, with the assistance and support of the US, forced the entire population of Chagos to leave. This was done through the BIOT authorities, and the managers of the coconut plantations acting on UK instructions. Chagossians who left the archipelago for temporary visits elsewhere were prevented from returning to their homes and families; and in the early 1970s, officials acting on behalf of the UK ordered the remaining Chagossians in Diego Garcia, Peros Banhos, and Salomon Island to leave, on boats that dropped them off in Mauritius or the Seychelles. UK officials ordered the Chagossians' dogs left on the islands to be killed.
4. Racial discrimination was a key component of UK officials' treatment of the Chagossians. This is made explicit in some of the private notes from senior UK officials that are now public. Such language may have been repeated in 2009 according to a leaked US State Department cable. The racial discrimination is also apparent in that the Chagossians, being predominately of African origin, are treated significantly differently from residents of other islands where the UK retains significant military bases, including Cyprus and the Falkland Islands. The UK has refused to recognize basic rights for Chagossians, refusing to extend the European Convention on Human Rights, and the UK's Human Rights Act, to the BIOT, or recognize the application there of UN human rights treaties ratified by the UK.
5. The UK's forced removal of Chagossians from their homes and islands caused them considerable hardship and distress. Some were initially housed in a former prison in Seychelles (then a UK colony). They lived for many years in extreme poverty in Mauritius and Seychelles after the displacement—some still do—and have suffered considerable material, mental, and emotional harms, which have been passed on through succeeding generations.
6. The UK received a significant payment from the US in the form of a discount of \$14 million on its purchase of the Polaris missile system. The UK did not pass on any of these funds to the Chagossian people whereas in the 1960s the UK paid compensation both to the government of Mauritius and to the owners of the coconut plantation company for their "loss" of Chagos. The UK only agreed with the

government of Mauritius belatedly to pay relatively small amounts to assist Chagossians in Mauritius with resettlement. The first agreement, in 1972, was for the total amount of £650,000, which the UK said was a “full and final settlement” and was only paid out to some of the Chagossians in Mauritius some years later. The second and final agreement with Mauritius in 1982, was for the UK to pay £4 million to Mauritius to pay to Chagossians, and for the Mauritius government to provide £1 million of land. The UK insisted that individual Chagossians who received payments as a result had to sign or thumbprint a form saying they renounced their right to return. Chagossians have told Human Rights Watch they were not aware what they were signing – the form was only in English.

7. The Chagossians have continued to struggle for the right to return to Chagos, including bringing cases in UK, US, and international courts since the 1970s, demonstrating, and participating in short visits to their homeland.

8. In 2016 the UK announced a £40 million “support package” for Chagossians when announcing its refusal to provide for their return to Chagos. However, Chagossians say they are not aware of how, if at all, this money has been spent. It does not appear to be intended as compensation or reparations for the Chagossians. As of August 2022, the UK government website stated that the government “has funded a number of community projects in the UK and Mauritius and is working to make more support available.”

9. From 1973-2022 successive UK governments have—with one exception—refused to recognize the Chagossians’ right to return, and to live on Chagos in dignity and prosperity. The one exception was after the High Court ruling in 2000, when the UK government of Prime Minister Tony Blair lifted the legal restriction on Chagossians living in the “outer islands,” but did not provide the financial support necessary for their return. In 2004, Orders in Council issued by Queen Elizabeth II on behalf of the government once more prohibited Chagossians from returning to their homes. In 2016 the UK announced a new decision to continue to refuse Chagossians to return to live in Chagos.

10. The UK has since 2004 publicly expressed three broad reasons for its refusal to allow the Chagossians to return: 1) security – without setting out why Chagossians cannot live near a military base, when Cypriots do, or live on the other outer Islands such as Peros Banhos; 2) financial – although the UK caused this harm; and 3) practicalities and risk to the islands from climate change, although there are no plans to abandon the base on Diego Garcia.

11. Since 2000, successive UK ministers and officials have repeatedly acknowledged that the treatment of the Chagossians was wrong. But, apart from the decision in 2000 to lift the legal ban (for four years), none of these apologies has been accompanied by any decision to address these wrongs, including through reparations to the Chagossians, particularly providing for their right to return and restitution, which would give practical effect to this right.

12. Some Chagossians came to the UK in the 2000s, and more will be entitled to UK citizenship as result of the recently passed Nationality and Borders Act 2022. Chagossians who came to the UK in the 2000s said they arrived to find no housing or

work, and faced, especially in their first years, severe difficulties with UK immigration and other officials, especially in reuniting their families, and racist abuse telling them to go back “home.”

13. UK governments have actively sought to deny that Chagossians’ rights are protected under international law – specifically through refusing to extend the European Convention on Human Rights or apply the Human Rights Act in the BIOT, and in statements to UN treaty bodies seeking to deny that UN human rights treaties should apply in the BIOT, claiming there is no permanent population.

14. The UK foreign secretary announced the intention to negotiate the handover of Chagos with the government of Mauritius in a November 3, 2022 statement that states, *inter alia*, that “it is our intention to secure an agreement on the basis of international law to resolve all outstanding issues, including those relating to the former inhabitants of the Chagos Archipelago.” It says nothing further about ensuring the Chagossians’ right to reparations, including the right to return, restitution, and compensation.

15. Any agreement between the UK and Mauritius over the Chagos Islands that does not: 1) involve consultation with all Chagossian communities; 2) provide for an unfettered right of return of all Chagossians to the Chagos Islands including Diego Garcia; 3) provide for adequate restitution by the UK government so that Chagossians can resume a life on the islands in a manner as close to the conditions they would have lived in had they not been forcibly expelled four decades ago; 4) recognize and provide for full compensation owed to the Chagossian people by the UK for the harms committed against them; and 5) provide a guarantee of non-repetition, will be a serious breach of the rights of Chagossians and serve to perpetuate the harms caused by the UK government against them.

16. The UK’s forced displacement of the Chagossians, the continued refusal to allow them to return, the harm they experienced without full compensation and restitution amount to serious violations of human rights. Human Rights Watch is also reviewing whether these abuses are part of a widespread or systematic attack on a civilian population and thus amount to crimes against humanity – including forced displacement as an ongoing crime, persecution on the grounds of race or ethnicity, and the crime of prevention of return as another inhumane act. The Chagossians are entitled to reparations for the harms inflicted on them, including the right to return.

Appendix II

Questions to the UK Government

In addition to your answering the following questions, we would welcome any relevant additional information and supporting documents.

1. Does the UK government consider the removal of the Chagossians from the Chagos islands to be unjustified and unlawful, and therefore needs to be rectified?
2. Does the UK intend to lift legal restrictions on Chagossians returning to Chagos? If so, when? If not, why not?
3. Does the UK intend to or has it taken any steps to consult with the Chagossian people for their views about reparations? Who does it intend to consult, and where?
4. How and when does the UK intend to provide full reparations to the Chagossian people for the harms they caused them? Will the UK extend the European Convention on Human Rights to the British Indian Ocean Territories (BIOT) and all its overseas territories? What steps will the UK government take to avoid any further differential treatment of persons and denial of rights in UK territories, including those based on geography, race, or ethnicity? Will it commit to fully applying international human rights law and international criminal law to all its territory, and to all actions by its officials and armed forces, wherever in the world these take place?
5. Does the UK acknowledge that forced displacement and prevention of return of a population can amount to crimes against humanity? Will the UK government support an investigation into alleged crimes against humanity against the Chagossian people?
6. Will the UK government support full investigations, including criminal investigations, into alleged abuses? What steps will the government take to ensure that its police and the Crown Prosecution Service are fully independent of the government so that it can investigate potential crimes by UK ministers without government interference, including by the Attorney General of England and Wales as a member of the government?
7. Given the significant public interest in the matter, will the government commit to publishing all documents on the removal and refusal to permit the return of the Chagossian people?
8. Does the UK accept that the US State Department cable dated May 12, 2009, published by *The Guardian* and Wikileaks is an accurate account of UK policy towards the Chagossians at that time?
9. Can the UK confirm that it received a significant payment from the US for the lease of Diego Garcia in the form of a discount of \$14 million on its purchase of the Polaris missile system? Has the UK received any other payment or

- benefit from the US for the use of the Diego Garcia base, including at the time of the renewal of the agreement in 2016?
10. Has the UK used any of the payments received from the US to provide compensation or other benefits to the Chagossian people? Can the UK confirm that in the 1960s it paid money to the government of Mauritius and to the owners of the coconut plantations as a result of their losses with respect to Chagos?
 11. Have the UK authorities ever provided financial compensation or other forms of reparations to the Chagossian people in Seychelles?
 12. Can the UK confirm that it made two payments to the Mauritius government for compensation to the Chagossian people: £650,000 in 1972, and £4 million in 1982 (with the Mauritian government in 1982 agreeing to provide £1 million worth of land to Chagossians)? Can the UK confirm these are the only two agreements with Mauritius to provide financial assistance to the Chagossians? Were these intended as compensation or other forms of reparations to the Chagossians? On what basis were the amounts calculated?
 13. Did the UK in 1982 require Chagossians who received payments of compensation to sign or thumbprint a form renouncing their right to return? Was the form provided only in English, which many of those signing could not read?
 14. What percentage of the support package of £40 million announced in 2016 has been spent on Chagossians and on what was the money spent? Was any part of this money intended as compensation or reparations for the Chagossians, how was it calculated and to what extent has provision been made for Chagossian people in the Seychelles? Was any consultation done with the Chagossians about spending this money?
 15. Apart from the money paid to the Mauritius government for Chagossians after the two agreements in 1972 and 1982 respectively, and the 2016 promise of a £40 million support package, has the UK provided or promised any other financial assistance to the Chagossians following their removal from Chagos? Was any of this intended as compensation or other forms of reparations?

Annex II: Response from the United Kingdom Foreign, Commonwealth and Development Office to Human Rights Watch



Foreign, Commonwealth
& Development Office

Rt Hon. Lord Goldsmith of Richmond Park
Minister of State for Overseas Territories,
Commonwealth, Energy, Climate & Environment

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Human Rights Watch
First Floor Audrey House
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EC1N 6SN

Our ref:

MC2022/31746

23 January 2023

Dear Ms Segun and Mr Baldwin,

Thank you for your letter of 7 December 2022 with details of your research into Chagossians and their circumstances relating to the British Indian Ocean Territory (BIOT)/Chagos Archipelago. I am replying as the Minister of State for Overseas Territories, Commonwealth, Energy, Climate & Environment.

BIOT was created on 8 November 1965. Earlier in 1965 the Mauritian Council of Ministers agreed to the detachment of the Chagos Archipelago in return for certain benefits, including a sum of £3 million (approximately £47 million today), and a UK commitment to cede the territory when no longer required for defence purposes.

At the time that BIOT was created, those living on the islands had been working on copra plantations, some of which had become run down or unviable; some Chagossians had already moved to different islands including Mauritius/Seychelles. The remaining Chagossians were removed from BIOT in the late 1960s and early 1970s and the UK has made clear its deep regret about the manner in which this happened.

In 1973, the UK paid the Mauritian government £650,000 (approximately £6.4 million today) to meet the costs of resettling those displaced from the islands. This was later distributed amongst Chagossian families living in Mauritius. In 1982, the UK paid a further £4 million (approximately £13 million today), through the Mauritian government, to settle all claims arising from the resettlement process. Again, this was later distributed amongst Chagossian families living in Mauritius. British courts and the European Court of Human Rights have confirmed that compensation has been paid in full and final settlement.

Successive UK governments have looked carefully and with an open mind at the prospects for resettlement of the islands. In 2016, following a full public consultation and independent feasibility study, the Government decided against resettlement on the grounds of feasibility, defence and security interests, and cost to the British taxpayer. There remains no right of abode in BIOT. In February 2019, the High Court dismissed a judicial review of HMG's decision not to support or permit resettlement on BIOT; this judgement was upheld on appeal. In announcing the conclusion of its review of the UK's resettlement policy in 2016, the Government also committed to fund a package of approximately £40 million over ten years to support improvements to the lives of Chagossians in the communities where they now live. Disbursing these funds has been challenging, but they have supported several Heritage Visits to the islands for Chagossians and a number of projects in the UK and Mauritius. We remain committed to delivering on this commitment and have recently launched new projects in the UK and

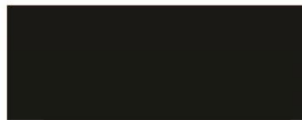
Mauritius. We regularly engage with different Chagossian groups to seek their views. I am attaching details of our spend to date for your information.

As you note, the UK Government is also supporting Chagossian communities through the creation of a bespoke British nationality route, which will allow anyone of Chagossian descent to become a British citizen free of charge, and to build their future in the UK should they wish to. I am pleased this route has now launched. I am working with Ministers from across Government to explore what additional support the Government might provide to support the successful integration of this group on arrival in the UK.

We recognise the diversity of views amongst Chagossians about the future of the islands, and we take those views seriously. While the ongoing sovereignty negotiations are between the UK and Mauritius, we will engage with Chagossian groups as negotiations progress. We are holding an engagement event in February to allow representatives of Chagossian communities to share their views.

My officials would be happy to meet with you to discuss these points.

Yours sincerely,



Rt Hon. Lord Goldsmith
Minister of State for Overseas Territories, Commonwealth, Energy, Climate & Environment

Annex III: Chagossian Support Package (CSP) Funded Projects

ANNEX A - CSP FUNDED PROJECTS

Recipient	Purpose	Start date	End date	Total value of agreement (£)	Spend to date (£)	Beneficiary location	Status
Sussex Community Foundation	To provide grants to non-profit organisations working for the benefit of the Chagossian community in the Sussex/Crawley area.	Nov 22	Mar 24	204,375	0	UK	Active
Middlesex University (Mauritius) Ltd	To provide bursaries for Chagossians studying at Middlesex University Mauritius.	Nov 22	Mar 24	130,000	0	Mauritius	Active
Ecctis Ltd	To fund the costs of statements of comparability for Chagossians with non-UK qualifications.	Nov 20	Mar 23	8,400	7,000	Various	Active
Chichester College Group	To provide free English language lessons to Chagossians living in the Crawley area.	Nov 20	Mar 23	16,368	16,368	UK	Active
TownsWeb Archiving Ltd	To digitise historical records relating to Chagossians with a view to making them more accessible.	N/A	N/A	N/A	7,562	Various	Active
Various (heritage visits)	To facilitate visits by Chagossians to BIOT.	N/A	N/A	N/A	574,809	Various	Paused
British Council	To provide English language lessons, entrepreneurship training, and cultural activities for Chagossians living in Mauritius.	Feb 21	Sep 22	156,465	151,406	Mauritius	Closed
Crawley Community Youth Service	To provide music clubs and activities to young Chagossians living in the Crawley area.	Feb 21	Jan 22	26,562	22,994	UK	Closed
Forever Manchester	To support Chagossian community organisations in the Manchester area through capacity building and small grants.	Feb 21	Sep 21	118,150	17,357	UK	Closed
Benchill Community Centre	To provide social and educational activities, including IT training, for Chagossians living in the Manchester area.	Feb 21	Sep 21	45,876	42,004	UK	Closed
Crawley Borough Council	To fund a support worker to provide practical support and advice to Chagossian community groups in the Crawley area.	Unknown	Unknown	Unknown	8,500	UK	Closed
British Council	To provide English language training and vocational training to Chagossians living in Mauritius.	Unknown	Unknown	Unknown	37,944	Mauritius	Closed
Total					885,944		

Annex IV: Human Rights Watch Letter to the United States Department of State

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Andrew Zolli



HRW.org

December 7, 2022

Ms. Toria Nuland
Undersecretary for Political Affairs
US Department of State
2201 C Street NW
Room 7250
Washington, DC 20520

Re: Forced displacement of Chagossian people

Dear Ms. Nuland,

We are writing on behalf of Human Rights Watch to share with you the summary of findings from our research into the forced displacement and other human rights violations committed against the Chagossian people, starting in the 1960s. We also have included here questions to the United States government given its role in those violations and provide you an opportunity to respond.

Human Rights Watch is an independent, nongovernmental organization that reports on human rights conditions in over 100 countries.

Human Rights Watch has since November 2021 conducted research on the forced displacement of the Chagossians through interviews with Chagossians in Mauritius, the UK, and Seychelles, and current and former government officials and other experts in Mauritius, the UK, US, and Seychelles. We have also conducted extensive research of public documents, including the findings of various domestic and international courts. Our findings are based on this research and the application of international human rights law and international criminal law.

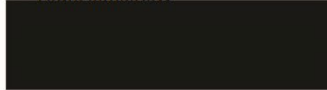
In the interest of thorough and objective reporting, it is Human Rights Watch's practice to seek comments and give relevant authorities the opportunity to provide information on our ongoing research. Due to our publication deadlines, we kindly request that you provide responses to the attached questions and any other information you

wish to provide by January 18, 2023. In addition, we would welcome an opportunity to discuss these and other related issues with you, or your representatives either in person or virtually at your convenience.

Attached as appendices are I) Human Rights Watch's preliminary findings and II) questions for the US government.

We are looking forward to hearing from you.

Yours sincerely,



Mausi Segun
Executive Director, Africa Division



Clive Baldwin
Senior Legal Advisor, Legal & Policy Office

cc: Mr. Judd Devermont, Senior Director for Africa, NSC
Mr. Rob Berschinski, Senior Director for Democracy and Human Rights, NSC
Ms. Amanda Sloat, Senior Director for Europe, NSC
Gen Michael E. Langley, Commander, U.S. Africa Command
Ms. Molly Phee, Assistant Secretary for African Affairs, US Department of State

Appendix I

Preliminary findings

Our key findings are:

1. The United States helped instigate and was responsible, together with the United Kingdom, for the removal of the Chagossians from the entire island of Diego Garcia and subsequently from the other inhabited Chagos islands.
2. The US apparently approached the UK as early as 1960 over the possibility of acquiring Diego Garcia for a military base. Documents, including UK government documents, referred to by UK courts and the International Court of Justice, suggest that the US authorities told the UK that it wanted a base or military facility on Diego Garcia without any inhabitants on the island. In the years that followed, the US pushed for Diego Garcia to be evacuated. UK government documents state that the UK authorities decided, in consultation with the US, that they would displace the population of all Chagos as the US could not guarantee it would never want to use any of the other islands, and if it ever wanted such military use, it would want the islands without inhabitants. According to UK official documents, the UK officials also wanted to avoid reporting to the United Nations about their continued colonial rule over a settled population, and claimed, knowing this to be false, that there was no permanent population on Chagos.
3. A January 1971 memorandum from John R. Stevenson, Legal Adviser at the Department of State, to Admiral Elmo Zumwalt, Chief of Naval Operations, said, concerning the Chagossians: “their removal is to accommodate US needs, and the USG will, of course, be considered to share the responsibility with the UK by the inhabitants and other nations if satisfactory arrangements are not made.”
4. In December 1971, a cable from the US embassy in Port Louis, Mauritius about the Chagossians now living there, said: “The USG has a moral responsibility for the well-being of these people who were involuntarily moved at our request,” especially as the US government had resisted efforts by the Mauritius and UK governments to “permit Ilois to remain [on Diego Garcia] as employees of the facility.”
5. From approximately 1965 (the creation of British Indian Ocean Territories - BIOT) to 1973, the UK, at the initial request of, and with the assistance and support of the United States, forced the entire population of Chagos to leave. This was done through the BIOT authorities, and the managers of the coconut plantations acting on UK instructions. Chagossians who left the archipelago for temporary visits elsewhere were prevented from returning to their homes and families; and in the early 1970s, officials acting on behalf of the UK ordered the remaining Chagossians in Diego Garcia, Peros Banhos, and Salomon Island to leave, on boats that dropped them off in Mauritius or the Seychelles.

6. During congressional hearings concerning the Chagossians on November 4, 1975, Rep. Lee Hamilton stated:

It is evident that despite whatever efforts are made to pass responsibility for these islanders to Great Britain or Mauritius, the United States has some responsibility for the removal of over 1,000 islanders from Diego Garcia and surrounding islands and that, as an accomplice in this venture, we along with Great Britain and Mauritius bear a moral obligation to help these people find some sense of their former feeling of community elsewhere.
7. Racial discrimination was a key element of UK officials' treatment of the Chagossians. This is made explicit in some of the private notes from senior UK officials that are now public. Such language may have been repeated in 2009 according to a leaked US State Department cable. The racial discrimination is also apparent in that the Chagossians, being predominately of African origin, are treated significantly differently from residents of the Falkland Islands or Cyprus, where the UK retains significant military bases, but has not evicted the population.
8. The forced removal of Chagossians from their homes and islands caused them considerable hardship and distress. Some were initially housed in a former prison in Seychelles (then a UK colony). They lived for many years in extreme poverty after the displacement—some still do—and have suffered considerable material, mental, and emotional harms, passing on through succeeding generations.
9. Since 2000, successive UK ministers and officials have repeatedly acknowledged that the treatment of the Chagossians was wrong. But, apart from the decision in 2000 to lift the legal ban (for four years), none of these apologies has been accompanied by any decision to address these wrongs, including through reparations to the Chagossians, particularly providing for their right to return and restitution, which would give practical effect to this right.
10. Some Chagossians came to the UK in the 2000s, and more will be entitled to UK citizenship as result of the recently passed Nationality and Borders Act 2022. Chagossians who came to the UK in the 2000s said they arrived to find no housing or work, and faced, especially in their first years, severe difficulties with UK immigration and other officials, especially in reuniting their families, and racist abuse telling them to go back “home.” As far as we understand, at no time has the United States provided any compensation, either directly or indirectly, to the Chagossians.
11. Chagossians state that for many years they understood they were prohibited from working on the base of Diego Garcia and have been refused when they apply to work there. The current situation is not clear as to whether Chagossians are formally banned from working on the base. However, Chagossians say the US prohibits them from living on Diego Garcia with their families, which in practice makes it very difficult for any to work on the base. There is no legal justification to

- deny Chagossians the right to return to Diego Garcia with their families, and for those who work on the base to have their families co-located on the Island.
12. From 1973-2022, successive UK governments have—with one exception—refused to recognize the Chagossians' right to return, and to live on Chagos in dignity and prosperity. The one exception was after the High Court ruling in 2000, when the UK government of Prime Minister Tony Blair lifted the legal restriction on Chagossians living in the “outer islands” but did not provide the financial support necessary for this to occur. In 2004, Orders in Council issued by Queen Elizabeth II on behalf of the government once more prohibited Chagossians from returning to their homes. In 2016 the UK announced a new decision to continue to refuse Chagossians to return to live in Chagos. The UK has since 2004 publicly expressed three broad reasons for its refusal to allow Chagossians to return: 1) security — without setting out why Chagossians cannot live near a military base, when Cypriots do; 2) financial — although the UK caused this harm; and 3) practicalities and risk to the islands from climate change, although there are no plans to abandon the base on Diego Garcia.
 13. The United States appears to have supported the UK in refusing the right to return of Chagossians since 1972 although it has been inconsistent. It stated its opposition to return in a letter in 2000. However, it also appeared to accept the UK's decision from 2000-2004 to reverse the legal ban on Chagossians returning to the outer islands. According to a UK court ruling, in 2015 the US indicated it would not oppose the return of Chagossians to the outer islands and even to Diego Garcia, but it would not pay anything to assist this. As far as we are aware, the US has not publicly acknowledged the violations committed against the Chagossians nor made any commitment to rectify them.
 14. Since 2000, successive UK ministers and officials have made repeated acknowledgments that the treatment of the Chagossians was wrong. The US government appears to have made no statement on this issue since the internal documents in the 1970s acknowledged its responsibility.
 15. A statement by the UK foreign secretary of November 3, 2022 states that “it is our intention to secure an agreement on the basis of international law to resolve all outstanding issues, including those relating to the former inhabitants of the Chagos Archipelago.” It says nothing further about ensuring the Chagossians' right to reparations, including the right to return. We are not aware of the United States expressing any views in public on this proposed agreement, including the rights of the Chagossians,
 16. The UK's forced displacement of the Chagossians, the continued refusal, without good reason, to allow them to return, the harm they experienced without full compensation and restitution amount to serious violations of human rights. Human Rights Watch is reviewing whether these abuses are part of a widespread or systematic attack on a civilian population and thus amount to crimes against humanity – including forced displacement as an ongoing crime, persecution on the grounds of race or ethnicity, and the crime of prevention of return as another

inhumane act. The Chagossians are entitled to reparations for the harms inflicted on them, including the right to return.

Appendix II

Questions to the US Government

In addition to your answering the following questions, we would welcome any relevant additional information and supporting documents.

1. Does the US government accept that the removal of the Chagossians from the Chagos islands was unjustified and unlawful, and therefore needs to be rectified?
2. Does the US government accept that all Chagossians, wherever in the world they live, have the right to return to live in Chagos, as part of the reparations owed to them, and that any previous claims that they could not were misleading or incorrect?
3. Does the US acknowledge that it shares responsibility for the abuses against the Chagossian people and should contribute to reparations to the Chagossian people? If so, what should these reparations entail?
4. To the extent that the US is involved in the negotiations, either formally or informally, will the US government ensure that such reparations are a key part of the negotiations with the government of Mauritius and that it will contribute to providing for such reparations?
5. What is the current annual cost to the US government of running the Diego Garcia base? Does the US have records of the total amount it has spent on building and maintaining the base in the last 60 years, and if so, how much?
6. Has the US paid, or provided any other benefit, to the UK government in return for its operation of the Diego Garcia base, since it discounted the cost of Polaris missiles? Was any further payment made in connection with the renewal of the agreement in 2016?
7. Will the US consider the amount it has spent on the Diego Garcia base, including any payment to the UK, in considering payment of compensation and other reparations to the Chagossians?
8. What is the position of the US regarding Chagossians working on the Diego Garcia base? When were Chagossians first permitted to work on the base, and how many Chagossians have so far been employed on the base? Can Chagossians working on the base live on Diego Garcia with their families?
9. Is the US government involved in the negotiations, either formally or informally, between the UK and Mauritius?
10. To the extent that the US is involved in the negotiations, what is the US position regarding consultation and representation by Chagossians? Does the US intend to make public its position on this issue?
11. Will the US cooperate in any investigation into alleged abuses committed against the Chagossians?
12. Separate from any reparations, what guarantees is the US government prepared to make to the Chagossian people upon a finding of forced

displacement? Will the US commit to full publication of all documents concerning the displacement of the Chagossians?

Annex V: Response from the United States Department of State to Human Rights Watch



United States Department of State

*Assistant Secretary for Democracy,
Human Rights, and Labor
Washington, D.C. 20520-7827*

January 19, 2023

Ms. Mausi Segun
Executive Director, Africa Division
Mr. Clive Baldwin
Senior Legal Advisor, Legal & Policy Office
Human Rights Watch
350 Fifth Avenue, 34th Floor
New York, NY 10118-3299

Dear Executive Director Segun and Senior Legal Advisor Baldwin:

Thank you for your December 7 letter to Under Secretary Nuland previewing Human Rights Watch's upcoming report concerning the treatment of Chagossians in the 1960s and 1970s. The Under Secretary asked that I respond on her behalf.

The United States acknowledges the challenges faced by Chagossian communities. We appreciate the United Kingdom's efforts to improve the livelihoods of Chagossians wherever they live, including its commitment to an approximately £40 million support package in 2016. Over the years, the UK has provided educational and community support, sponsored heritage trips by Chagossians to the islands, and revised nationality laws while assisting Chagossians pursuing British citizenship and opportunities to build a future in the United Kingdom should they wish to do so.

The United States remains steadfast in its commitment to the promotion of human rights and fundamental freedoms around the world. We appreciate our partnership with Human Rights Watch in support of these shared values.

Sincerely,

A black rectangular redaction box covering the signature of Erin M. Barclay.

Erin M. Barclay, Acting

Annex VI: Human Rights Watch Letter to the Prime Minister of Mauritius

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Steve Goose, Arms

Frederike Kaltheuner, Technology and Human Rights

Zama Neft, Children's Rights

Richard Pearthouse, Environment and Human Rights

Graeme Reid, Lesbian, Gay, Bisexual, and Transgender Rights

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December 7, 2022

Prime Minister Pravind Jugnauth
Port Louis, Mauritius

HUMAN
RIGHTS
WATCH

HRW.org

Re: Forced displacement of Chagossian people

Dear Honorable Prime Minister Jugnauth,

We are writing on behalf of Human Rights Watch to share with you the summary of findings from our research into the forced displacement and other human rights violations committed against the Chagossian people, starting in the 1960s. We also have a series of questions regarding the situation to clarify certain issues and provide you an opportunity to respond.

Human Rights Watch is an independent, nongovernmental organization that reports on human rights conditions in over 100 countries.

Human Rights Watch has since November 2021 conducted research on the forced displacement of the Chagossians, through interviews with Chagossians in Mauritius, the UK, and Seychelles, and current and former government officials and other experts in Mauritius, the UK, US, and Seychelles. We have also conducted extensive research of public documents, including the findings of various domestic and international courts. Our findings are based on this research and the application of international human rights law and international criminal law.

In the interest of thorough and objective reporting, it is Human Rights Watch's practice to seek comments and give relevant authorities the opportunity to provide information on our ongoing research. Due to our publication deadlines, we kindly request that you provide responses to the attached questions and any other information you wish to provide by January 18, 2023. In addition, we would welcome an opportunity to discuss these and other related issues with you, or your representatives either in person or virtually at your convenience.

AMMAN · AMSTERDAM · BEIRUT · BERLIN · BRUSSELS · CHICAGO · COPENHAGEN · GENEVA · GOMA · JOHANNESBURG · KIEV · KINSHASA · LONDON · LOS ANGELES · MIAMI ·
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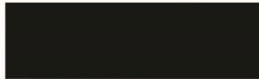
Attached as appendices are I) Human Rights Watch's preliminary findings and II) questions for the Mauritius government.

We are looking forward to hearing from you.

Yours sincerely,



Mausi Segun
Executive Director, Africa Division



Clive Baldwin
Senior Legal Advisor, Legal & Policy Office

cc: Martine Young Kim Fat, Adviser to the Prime Minister

Appendix I

Preliminary findings

Our key findings are:

1. The United Kingdom secretly agreed with the United States in the 1960s that Diego Garcia Island would be made available for a military base. The UK agreed to remove the existing population of Diego Garcia Island and later decided to remove the inhabitants of the other inhabited islands.
2. The UK decided to remove the entire population of Chagos primarily to avoid reporting to the United Nations about its continued colonial rule over a population. UK officials made statements, including to the UN, which according to UK official documents they knew to be false claiming that there was no permanent population on Chagos.
3. From approximately 1965 (the creation of British Indian Ocean Territories, or BIOT) to 1973, the UK, at the instigation and with the assistance and support of the United States, forced the entire population of Chagos to leave. This was done through the BIOT authorities, and the managers of the coconut plantations acting on the UK's instructions. Chagossians who left the archipelago for temporary visits elsewhere were prevented from returning to their homes and families; and in the early 1970s, officials acting on behalf of the UK ordered the remaining Chagossians to leave on boats that disembarked them in Mauritius or the Seychelles.
4. Racial discrimination was a key component of UK officials' treatment of the Chagossians. This is made explicit in some of the private notes from senior UK officials that are now public. Such language may have been repeated in 2009 according to a leaked US State Department cable. The racial discrimination is also apparent in that the Chagossians, being predominately of African origin, are treated significantly differently from other persons living under UK rule, including residents in parts of Cyprus or the Falkland Islands, where the UK retains significant military bases, but has not evicted the population.
5. The Chagossians had to leave their homes in considerable hardship and distress. They lived for many years in extreme poverty after the displacement and have suffered considerable material, mental, and emotional harms, passing on through generations.
6. Chagossians who were forced to live in Mauritius lived in abject poverty for many years, and some remain living in such conditions. Some remained on the quay in Port Louis on arrival for some days without any homes. Many describe their early homes in Mauritius as unfit for habitation.
7. Chagossians who live in Mauritius have described repeated incidents of discrimination against them as Chagossians, including in schools and workplaces.
8. The UK received a significant payment from the US in the form of a discount on its purchase of the Polaris missile system (its nuclear weapon system at the time). It did not transfer any of these funds to the Chagossian people.

9. Since 2000, successive UK ministers and officials have repeatedly acknowledged that the treatment of the Chagossians was wrong. But, apart from the decision in 2000 to lift the legal ban (for four years), none of these apologies has been accompanied by any decision to address these wrongs, including through reparations to the Chagossians, particularly providing for their right to return and restitution, which would give practical effect to this right.
10. Some Chagossians came to the UK in the 2000s, and more will be entitled to UK citizenship as result of the recently passed Nationality and Borders Act 2022. Chagossians who came to the UK in the 2000s said they arrived to find no housing or work, and faced, especially in their first years, severe difficulties with UK immigration and other officials, especially in reuniting their families, and racist abuse telling them to go back “home.”
11. The UK only agreed with the government of Mauritius belatedly to pay relatively small amounts to assist Chagossians in Mauritius with resettlement. The first agreement between the UK and Mauritius, in 1972, was for a total amount of £650,000, which the UK said was a “full and final settlement.” According to Chagossians, the Mauritian authorities only paid out this money to Chagossians in 1978, at which time inflation had reduced its real value.
12. The second and final agreement between the UK and Mauritius was in 1982, after litigation against the UK brought by a Chagossian. This agreement was for the UK to pay £4 million to Mauritius to pay to Chagossians, and for the Mauritius government to provide £1 million worth of land. The UK insisted that individual Chagossians who received payments as a result had to sign or thumbprint a form saying they renounced their right to return. The Mauritian authorities implemented this agreement, including requiring the Chagossians to sign or thumbprint the form. Chagossians have told Human Rights Watch they were not aware what they were signing – the form was only in English,
13. In recent years, and since the advisory opinion of the International Court of Justice in 2019, the government of Mauritius has referred to the abuses against the Chagossians as “crimes against humanity.” The government has spoken publicly of referring the situation to the International Criminal Court. It calls Chagos an occupied territory.
14. The statement by the UK foreign secretary on November 3, 2022 states that “it is our intention to secure an agreement on the basis of international law to resolve all outstanding issues, including those relating to the former inhabitants of the Chagos Archipelago.” It says nothing further about ensuring the Chagossians’ right to reparations, including the right to return, or the participation of Chagossians in the discussions.
15. As Human Rights Watch has previously stated, under international law, including African regional human rights law, the Chagossians appear to be a distinct people and an Indigenous people.
16. The UK’s forced displacement of the Chagossians, the continued refusal, without good reason, to allow them to return, the harm they experienced without full compensation and restitution amount to serious violations of human rights. Human

Rights Watch is also reviewing whether these violations are part of a widespread or systematic attack on a civilian population and thus amount to crimes against humanity – including forced displacement as an ongoing crime, persecution on the grounds of race or ethnicity, and the crime of prevention of return as another inhumane act. The Chagossians are entitled to reparations for the harms inflicted on them, including on the right to return.

Appendix II

Questions to the Mauritius Government

In addition to your answering the following questions, we would welcome any relevant additional information and supporting documents.

1. Does the government of Mauritius consider that the treatment of the Chagossians amounts to the international criminal offense of crimes against humanity, including forced displacement, persecution, and apartheid? Does the government consider that the UK and US may also be committing war crimes in occupied territory?
2. Does the government of Mauritius accept that all Chagossians, wherever in the world they live, have the right to return to live in Chagos, as part of the reparations owed to them? Will it publicly state this?
3. Can the government of Mauritius confirm the total amount it has received from the UK since the early 1970s as compensation for the Chagossian people? How much of this total amount was transferred to Chagossians, and when?
4. Does the government of Mauritius acknowledge that full reparations are owed, predominately by the UK and US to the Chagossian people? What should those reparations entail?
5. Will Mauritius agree to a discussion about the Chagossians as a people and an Indigenous people under international and African human rights law, separate from the territorial discussion, and what rights this means, to return to their homeland?
6. Will Mauritius commit publicly to ensuring that all Chagossians, including those in Mauritius, Seychelles, and the UK, are fully consulted and represented in the negotiations on Chagos, and that the process is transparent and respects the rights of the Chagossians?
7. Will the government of Mauritius commit to ensuring that full reparations to the Chagossian people, including the right to return, are a key part of the negotiations with the UK government as part of the final settlement, with full funding?
8. Will Mauritius continue to support accountability for the crimes and other abuses committed against the Chagossians, including through the International Criminal Court, and will continue to support this after any settlement about the territory?

Annex VII: Response from the Government of Mauritius to Human Rights Watch



REPUBLIC OF MAURITIUS
PRIME MINISTER'S OFFICE

*Office of the Secretary to Cabinet
and
Head of the Civil Service*

SEC/CHGOS/1


10 January 2023

Dear Ms Segun and Mr Baldwin,

I have been requested by Honourable Pravind Kumar Jugnauth, Prime Minister of Mauritius, to thank you for the letter which you have addressed to him on 7 December 2022 to share the preliminary findings of the research of Human Rights Watch into the forced displacement of the former inhabitants of the Chagos Archipelago.

I am transmitting to you the replies of the Government of Mauritius to your questions.

In case you need any further information or clarification, please do not hesitate to contact me.


N.K. Ballah, GOSK
Secretary to Cabinet
and Head of the Civil Service

Ms Mausi Segun
Executive Director, Africa Division
& Mr Clive Baldwin
Senior Legal Advisor, Legal & Policy Office
Human Rights Watch

REPLIES TO QUESTIONS FROM HUMAN RIGHTS WATCH

Note: The replies are in bold.

1. Does the government of Mauritius consider that the treatment of the Chagossians amounts to the international criminal offense of crimes against humanity, including forced displacement, persecution, and apartheid? Does the government consider that the UK and US may also be committing war crimes in occupied territory?

The forcible removal of the Chagossians by the UK from the Chagos Archipelago and the UK's continued denial of their right to return to the Chagos Archipelago could amount to a crime against humanity within the meaning of Article 7 of the Rome Statute of the International Criminal Court.

It is the understanding of the Government of Mauritius that war crimes can only occur in situations of armed conflict.

2. Does the government of Mauritius accept that all Chagossians, wherever in the world they live, have the right to return to live in Chagos, as part of the reparations owed to them? Will it publicly state this?

Since the Chagossians were forcibly removed from the Chagos Archipelago by the UK, it is the latter which owes reparations to the Chagossians.

The Advisory Opinion of the International Court of Justice (ICJ) of 25 February 2019, UN General Assembly Resolution 73/295 and the Judgment of the Special Chamber of the International Tribunal for the Law of the Sea of 28 January 2021 have made it clear that the Chagos Archipelago forms an integral part of the territory of Mauritius.

As stated by Mauritius in a written answer given to Judge Gaja in the context of the hearings held by the ICJ in September 2018 and which has been posted on the website of the ICJ, all individuals of Chagossian origin, wherever they live in the world, who wish to resettle in the Chagos Archipelago will be able to do so in accordance with the laws of Mauritius.

3. Can the government of Mauritius confirm the total amount it has received from the UK since the early 1970s as compensation for the Chagossian people? How much of this total amount was transferred to Chagossians, and when?

The Government of Mauritius received an amount of £650,000 (equivalent to Mauritian Rupees (MUR) 8,666,667) from the UK in 1973 to meet the cost of resettling the former inhabitants of the Chagos Archipelago in Mauritius. These funds were initially intended to be used for the implementation of a resettlement scheme in favour of the Chagossians who were moved to Mauritius. The resettlement scheme included the construction of houses for all the Chagossians, the provision of the necessary amenities such as access roads, water, electricity, schools, community centres and playing fields and the construction of animal sheds for pig breeding. However, the Chagossians were not happy with the proposed resettlement scheme.

With a view to finding an appropriate solution for the resettlement of the Chagossians who were moved to Mauritius, Mr. A.R.G. Prosser, CMG, MBE, Adviser on Social Development in the UK Ministry of Overseas Development, visited Mauritius from 24 January to 2 February 1976. The recommendations made by Mr. Prosser as a result of his visit included:

- (a) setting up of a Resettlement Committee comprising representatives of different Ministries and the Chagossian community;
- (b) earmarking of MUR 750,000 out of the amount of £650,000 for the training of unemployed Chagossians to turn them into semi-skilled labour;
- (c) earmarking of MUR 75,000 out of the amount of £650,000 for the employment of a Social Worker to assist Chagossians facing problems.

At the meeting of the Resettlement Committee held on 4 December 1976, representatives of the Chagossian community formally requested that the money made available by the UK for the resettlement of the Chagossians in Mauritius be distributed in cash to each of the Chagossians. It was agreed that before the question of distributing any money available could be examined further, a registration of all Chagossians settled in Mauritius would be carried out.

Following the conduct of a survey in January 1977, compensation from the amount of funds available with accrued interest (MUR 11,167,604) was paid in March 1978 to the Chagossians who were registered during that survey. The compensation which was paid amounted to MUR 9,862,590, leaving a balance of MUR 1,305,014.

In 1981, the Government of Mauritius advanced a sum of about MUR 3.5 million for the payment of compensation in 1981 and 1982 to Chagossians who had never received any compensation.

Under an agreement which was signed between Mauritius and the UK in 1982, the UK Government paid to the Government of Mauritius a sum of £4 million (equivalent to MUR 75,880,000). The Ilois Trust Fund, which was set up to receive that amount, registered 1,344 Chagossians, among whom 1,202 were adults and 142 were minors. The Government of India donated on 27 January 1983 Indian Rupees 1 million (equivalent to MUR 1,100,134.94) to the Government of Mauritius in favour of the Chagossians. Compensation was paid to the Chagossians from December 1982 to August 1983 and in December 1986. The total amount of compensation paid to each Chagossian adult amounted to MUR 60,122 and to each Chagossian child, MUR 30,061. The Ilois Trust Fund also allocated to each Chagossian land in Baie du Tombeau (45 acres and 80 perches) and Pointe aux Sables (22 acres) which was donated by the Government of Mauritius. 1,202 Chagossian adults received 40 toises each and 142 minors, 20 toises each.

In a spirit of compromise, the Ilois Trust Fund paid on 17 December 1986 the sum of MUR 1 million in full and final settlement of the claims of 237 persons who entered a case against the Fund before the Supreme Court of Mauritius.

As can be seen, not only has the Government spent all the money it received from the UK on the welfare of the Chagossians, but it also used its own funds as well as those donated by India to support the Chagossians.

4. Does the government of Mauritius acknowledge that full reparations are owed, predominantly by the UK and US to the Chagossian people? What should those reparations entail?

The country which holds primary responsibility for the situation of the Chagossians is the UK. Not only did it unlawfully excise the Chagos Archipelago from the territory of Mauritius prior to independence, but it also forcibly and unlawfully removed the former inhabitants of the Chagos Archipelago in inhumane conditions. Under international law the UK is responsible for making amends for the forcible removal of the Chagossians and their sufferings. This could include providing the necessary funds for the implementation of a resettlement plan in the Chagos Archipelago.

5. Will Mauritius agree to a discussion about the Chagossians as a people and an indigenous people under international and African human rights law, separate from the territorial discussion, and what rights this means, to return to their homeland?

In its Advisory Opinion of 25 February 2019, the ICJ affirmed that, in accordance with international law, the right to self-determination belonged to, and was meant to be exercised by, all the people of Mauritius as one territorial unit. This continues to be the case today. The ICJ also recognized that the resettlement of Mauritian nationals, including those of Chagossian origin, in the Chagos Archipelago is to be addressed as part of the process of decolonization of Mauritius. It follows that Mauritians of Chagossian origin or any of the former inhabitants of the Chagos Archipelago are not and cannot be considered as a “people” or an “indigenous people” in relation to the completion of the decolonization of Mauritius.

6. Will Mauritius commit publicly to ensuring that all Chagossians, including those in Mauritius, Seychelles and the UK, are fully consulted and represented in the negotiations on Chagos, and that the process is transparent and respects the rights of the Chagossians?

While the negotiations are between the Governments of Mauritius and the UK, the Government of Mauritius has since the very beginning engaged with Chagossians in Mauritius, and has associated them in the various initiatives and proceedings to complete the decolonization of Mauritius. It continues to do so, and will take into account their views and ensure that their rights are respected in the negotiations. Mauritius is open to the views of Chagossians in other places also being taken into account, while ensuring full respect for the requirements of international law.

7. Will the government of Mauritius commit to ensuring that full reparations to the Chagossian people, including the right to return, are a key part of the negotiations with the UK government as part of the final settlement, with full funding?

Mauritius and the UK have started negotiations on the exercise of sovereignty over the Chagos Archipelago. Through negotiations, taking account of relevant legal proceedings, Mauritius and the UK intend to secure an agreement on the basis of international law to resolve all outstanding issues, including those relating to the rights of former inhabitants of the Chagos Archipelago.

Resettlement in the Chagos Archipelago is a matter of Mauritius sovereignty and cannot per se be the subject of negotiations between Mauritius and the UK except to the extent that discussions with the UK may be necessary as regards certain aspects of the resettlement process. As the Government of Mauritius has already indicated, it is firmly committed to the implementation of a plan for resettlement in the Chagos Archipelago. It considers that the UK is required under international law to assist Mauritius in implementing such a plan.

8. Will Mauritius continue to support accountability for the crimes and other abuses committed against the Chagossians, including through the International Criminal Court, and will continue to support this after any settlement about the territory?

Mauritius is strongly committed to the protection and promotion of human rights and does not condone impunity for violation of any human rights, including those of the Chagossians.

“That’s When the Nightmare Started”

UK and US Forced Displacement of the Chagossians and Ongoing Colonial Crimes

Over 50 years ago, the governments of the United Kingdom and United States forcibly displaced an entire Indigenous people, the Chagossians, from the Chagos islands in the Indian Ocean so the US could build a military base on Diego Garcia. The UK kept control of the Chagos Archipelago, now its last colony in Africa, and, with the support and assistance of the US, has prevented the Chagossians from returning to their homeland to live.

“That’s When the Nightmare Started” is based on interviews with Chagossians in Mauritius, the Seychelles, and the UK, government officials and experts, and on legal and other documents. It details the forced displacement of the Chagossians, the prevention of their return, and their persecution by the UK on the grounds of race and ethnicity, which amount to crimes against humanity. These are colonial crimes that continue to this day.

The report documents UK authorities’ abandonment of Chagossians in Mauritius and the Seychelles to lives of poverty, their struggle for recognition, and obstacles to the realization of their rights, including the paltry compensation paid only to some Chagossians. The UK’s discriminatory treatment of the Chagossians was reflected early on in blatantly racist comments by senior UK officials planning their expulsion.

The report calls on the UK and US to give full reparations to the Chagossian people, in particular their right to return to live in Chagos in dignity, the restitution of the islands so they can live there, full and adequate compensation for the harms done, and guarantees that such crimes will never be repeated. It calls on the UK and Mauritius governments to ensure meaningful consultation with the Chagossian people in the ongoing negotiations over the islands and that any agreement is centered on the Chagossians’ rights.



The M/V Nordvaer departing East Point Plantation, Diego Garcia, Chagos Archipelago, circa April 1969.

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