



UK Mission Geneva

UK Mission Geneva
PO Box 6
Avenue Louis Casar 58
1216 Cointrin GE

Tel: 022 918 2453
Fax: 022 918 2333

Special Procedures Branch
Office of the United Nations High Commissioner for Human Rights
8-14 Avenue de la Paix
1211 Geneva 10
Switzerland

Note Verbale No. 136

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to submit the response to communication AL GBR 13/2020, further to the letter dated 30 March 2021 from the Working Group of Experts on People of African Descent; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.



Geneva, 28 May 2021

Special Procedures Branch
Office of the United Nations High Commissioner for Human Rights

ANNEX

RESPONSE FROM THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND TO THE JOINT COMMUNICATION FROM SPECIAL PROCEDURES AL GBR 13/2020

1. Please provide information regarding the steps and measures that are being taken by your Excellency's Government to ensure the decision of the 2019 ICJ Advisory Opinion is respected and, in turn, decolonization of Mauritius is lawfully completed following the secession of the Chagos Islands from Mauritius in 1965.

The United Kingdom (UK) does not accept the Special Procedures' characterisation of the issues involved in the bilateral dispute between the UK and Mauritius over the British Indian Ocean Territory (BIOT). The UK's position on BIOT is clear and has been set out through statements at the UN General Assembly (UNGA) and submissions to the International Court of Justice (ICJ), which are referenced in our responses. To avoid any doubt as to the UK position, this is set out below.

The UK has no doubt about its sovereignty over the territory of BIOT, which has been under continuous British sovereignty since 1814. Mauritius has never held sovereignty over the territory and we do not recognise its claim. However, we have a long-standing commitment, first made in 1965, to cede sovereignty of the territory to Mauritius when it is no longer required for defence purposes. We stand by that commitment. We were disappointed that this matter was referred to the International Court of Justice, contrary to the principle that the Court should not consider bilateral disputes without the consent of both States concerned. Nevertheless, the UK respects the ICJ and participated fully in the ICJ process, at every stage and in good faith. The UK has considered the content of the Advisory Opinion carefully, however we do not share the Court's approach.

The 2019 Advisory Opinion was advice provided to the United Nations General Assembly at its request; it is not a legally binding judgment. UN General Assembly Resolution 73/295, adopted following the ICJ's Advisory Opinion, does not and cannot create any legal obligations for UN Member States. Neither the non-binding Advisory Opinion nor the non-binding General Assembly resolution alter the legal situation, namely that of a sovereignty dispute between the UK and Mauritius. The General Assembly is not the appropriate forum to resolve such a bilateral dispute.

2. Please provide information regarding the process by which citizenship is granted to second and third-generation Chagossians and what steps are taken to minimize family separation and further dispersal of the

populations.

Resettled Chagossians were citizens of the United Kingdom and Colonies by birth under section 4 of the British Nationality Act 1948¹. On 1 January 1983, when the British Nationality Act 1981² came in to force, they became British Overseas Territories citizens “otherwise than by descent”. If a person holds citizenship “by descent” they cannot pass it on to a child born overseas, but a person who has citizenship “otherwise than by descent” can pass that status on. This means that Chagossians in this group can pass that status on to children born outside of the United Kingdom and qualifying territories.

The first generation of children born in either Mauritius, the Seychelles and other islands after 1969 (so outside of the United Kingdom and Colonies) to these resettled Chagossians acquired citizenship of the United Kingdom and Colonies by descent under the British Nationality Act 1948 if born to a father with that citizenship status. On 1 January 1983, they became British Overseas Territories citizens by descent only. On 21 May 2002, these citizens acquired British citizenship by descent under the British Overseas Territories Act 2002³. This means that they cannot transmit their British citizenship status to children born to them outside of the United Kingdom and qualifying territories i.e. to those children born to them in Mauritius, the Seychelles or other islands.

It is a core principle of British nationality law that British citizenship is normally only passed on to one generation born abroad. However, those who hold British citizenship have no legal restriction on their ability to enter and remain in the UK, and they may apply under the existing immigration rules for family members who are not British citizens to join them here, provided they meet the necessary qualifying conditions. These rules apply equally to all British citizens. Similarly, where someone from the Chagossian community is already in the UK but does not have lawful immigration status, we would encourage them to contact the Home Office so their position in the UK can be addressed. Such cases would be considered on their individual merits in the light of any compassionate circumstances and in accordance with relevant UK human rights legislation. Where individuals qualify for permission to stay in the UK, they will receive immigration documentation clearly setting out any related conditions either permitting or restricting access to work and/or public funds which they can use to demonstrate their entitlements to third parties responsible for conducting statutory checks.

As part of the New Plan for Immigration⁴, announced on 24 March, we are planning to introduce registration provisions for children of British overseas territories citizen (BOTC) mothers who were born before 1983 and children of BOTC unmarried fathers who were born before 2006. Before 1 January 1983, women could not pass on British

¹ <https://www.legislation.gov.uk/ukpga/Geo6/11-12/56/enacted>

² <https://www.legislation.gov.uk/ukpga/1981/61>

³ <https://www.legislation.gov.uk/ukpga/2002/8/data.pdf>

⁴ <https://www.gov.uk/government/consultations/new-plan-for-immigration>

nationality to a child born outside the UK and its then territories. Similarly, before 1 July 2006 children born to British unmarried fathers could not acquire British nationality through their father. While registration provisions have since been introduced to rectify this issue for the children of British citizens, this was not changed for children of BOTCs, and we are seeking to address this in legislation. Whilst there is already a route to citizenship for children born between 26 April 1969 1 January 1983 to Chagossian-born mothers, children of Chagossian mothers who left the islands before 1969 may be able to benefit from this change.

3. Please provide information on what efforts are being taken to recognize the Chagossians' culture and heritage within the United Kingdom, which is now home to a majority of exiled Chagossians, and how the population is being supported in its continued struggle.

The UK is committed to doing more to address the aspirations of Chagossians, including the desire for better lives and to maintain a connection to BIOT. In 2016 the UK therefore decided to implement a support package worth approximately £40m (approximately \$US50m) over 10 years aimed at providing Chagossians with better life chances in the communities in which they currently live, not just in Mauritius but also in the UK and the Seychelles. As FCO Minister Duncan said in a Written Statement⁵ to the UK Parliament on 16 November 2016, support will focus on improved access to health and social care, better education and employment opportunities, as well as cultural conservation.

The support package enables Chagossians in the UK, Mauritius, Seychelles and elsewhere to maintain a connection with BIOT through a more frequent programme of heritage visits. Building on the visits that have taken place in the past, we have been providing opportunities in greater numbers (until the Coronavirus pandemic). Eight heritage visits took place between November 2017 and February 2020 with 154 Chagossians each spending a week in Diego Garcia and/or outer islands and visiting former settlements and cemeteries. The visits were well received by those participating, and more visits will take place once it is safe to travel.

The UK has gone to great lengths to support projects that will most benefit the Chagossian community. In Mauritius, where the largest number of Chagossians live, we have run a number of English language courses. More of these courses, as well as business skills courses, will be delivered through the British Council. The UK has also offered to work with Mauritius Government to deliver support to the Chagossian community there. We regret that they have so far refused to cooperate with the UK.

⁵ Written Ministerial Statement, 16 November 2016: British Indian Ocean Territory
<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-11-16/HCWS260/>

For Chagossians in the UK, in October 2020 the Foreign, Commonwealth and Development Office issued an invitation for organisations to bid for funding from the support package to deliver projects for benefit the UK Chagossian community. Subsequently, contracts have been signed to provide English language courses and to arrange for statements of comparability for qualifications that have been attained outside of the UK. So far in 2021, agreements have been reached with three regional charitable organisations where there are large Chagossian communities. These charities will engage with the communities, help overcome barriers they face; provide a hub for advice and learning opportunities; and work with young Chagossians on music programmes.

4. Please inform whether any form of reparation, including but not limited to compensation, was provided to Chagossians for their forced eviction and displacement, their loss of material, cultural, and spiritual property and land, their loss of livelihood, their loss of cultural identity and access to cultural heritage, and their lack of access to essential services including health and education.

In September 1972, a payment of £650,000 was agreed between the UK and Mauritius in discharge of the UK's obligation to meet the cost of resettlement of those displaced from the Archipelago. The payment was made to Mauritius in March 1973. In 1977-1978 individual sums were passed on by Mauritius to Chagossian families (in total 595 families).

In 1982, the United Kingdom paid a further ex-gratia sum of £4 million into the Ilois Trust Fund which was set up in agreement with Mauritius⁶ in order to disburse these funds in settlement of all claims arising from Ilois/Chagossians being moved to Mauritius from BIOT. Substantial cash payments, sometimes used to purchase land or housing, were subsequently made out of the Trust Fund to the great majority of individual Chagossians in Mauritius. Just over £4 million was disbursed by the Trust Fund during 1983 and 1984 to 1,344 Chagossians⁷.

The above demonstrates that substantial payments (around £15.5 million in current prices) have been made to Chagossians since the time of their removal. As has been confirmed by both the English Courts and the European Court of Human Rights (ECHR) in its 2012 judgment⁸, receipt of such payment has resulted in a full and final settlement, accompanied by freely made and broad renunciations of all future claims, including with respect to resettlement in BIOT. The question of compensation for the removal of Chagossians from BIOT has therefore been definitively ruled upon by those Courts. The UK Government is under no legal obligation to provide any further compensation in addition to those payments which have already been made. Nevertheless, the United Kingdom is committed to doing more (on a voluntary basis)

⁶ Mauritius then passed the The Ilois Trust Fund Act 1982

⁷ *Chagos Islanders v Attorney General and the BIOT Commissioner* [2003] 2222, para.80

⁸ *Chagos Islanders v United Kingdom* (2012) 56 EHRR

to address the aspirations of Chagossians, including the desire for better lives and to maintain a connection to BIOT as covered in further detail above in response to question 3.

5. Please inform whether any form of satisfaction has been afforded to Chagossians, including a public apology, a public declaration restoring their dignity and rights of victims, and an accurate account of the violations they endured.

Successive UK Governments have expressed sincere regret about the manner in which Chagossians were removed from BIOT in the late 1960s and early 1970s. These statements have been delivered through a wide range of mechanisms, both in the UK and internationally, on numerous occasions. The most recent examples include:

Written Ministerial Statement, 16 November 2016: British Indian Ocean Territory - <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-11-16/HCWS260/>.

UK Written Statement to the International Court of Justice 15 February 2018 <https://www.icj-cij.org/public/files/case-related/169/169-20180215-WRI-01-00-EN.pdf> Paragraphs 1.5, 4.3.

UK Written Comments to the International Court of Justice 14 May 2018 <https://www.icj-cij.org/public/files/case-related/169/169-20180514-WRI-01-00-EN.pdf> Paragraph 1.13.

UK Oral Statement to the International Court of Justice 3 September 2018 <https://www.icj-cij.org/public/files/case-related/169/169-20180903-ORA-02-00-BI.pdf> Paragraph 5.

UK Oral Statement to United Nations General Assembly 22 May 2019 83rd Plenary Meeting on Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965 Note by the Secretary-General (A/73/773) Draft resolution (A/73/L.84/Rev) https://digitallibrary.un.org/record/3809714/files/A_73_PV.83-EN.pdf Page 10/26.

Report of the Secretary-General (18 May 2020): Advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965 – UK reply 15 January 2020. https://digitallibrary.un.org/record/3865093/files/A_74_834-EN.pdf Page 16/21.

The facts relating to the removal of the Chagossians from the Chagos Archipelago have been set out in very considerable detail in the cases that have been brought by Chagossians before the English courts, in particular in *Chagos Islanders v Attorney*

*General and the BIOT Commissioner*⁹. The United Kingdom's Written Statement of 15 February 2018 to the International Court of Justice's consideration of the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 also provides a summary of the facts¹⁰.

⁹ See *Chagos Islanders v Attorney General and the BIOT Commissioner* [2003] EWHC 2222, at paras. 3-49

¹⁰ <https://www.icj-cij.org/public/files/case-related/169/169-20180215-WRI-01-00-EN.pdf> paragraph 4.4