

Mandates of the Special Rapporteur on minority issues; the Working Group of Experts on People of African Descent; the Special Rapporteur in the field of cultural rights; 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

Ref.: AL GBR 1/2023
(Please use this reference in your reply)

21 February 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on minority issues; Working Group of Experts on People of African Descent; Special Rapporteur in the field of cultural rights; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 43/8, 45/24, 46/9, 43/36 and 45/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **continuous forced displacement of the Chagossian people and lack of their effective participation in the decision-making concerning their homeland – Chagos Islands, and to reference an earlier communication (AL GBR 13/2020) on completing the process of decolonization of Chagos Islands.**

According to the information received:

Chagossians are an Indigenous people, predominantly of African descent, and an ethnic and linguistic minority in the United Kingdom and Mauritius. Fifty years ago, Chagossians were forcibly evicted from their homeland on Chagos Islands by the United Kingdom government to make space for a United States military base.

Since the expulsion of the Chagossian people from the Chagos Islands, the United Kingdom and the United States continue to block the Chagossian people from returning to the Chagos Islands and from resettling there permanently and have failed to provide effective and fair reparations including restitution, compensation and guarantee of non-repetition.

On 3 November 2022, the United Kingdom Foreign Secretary stated that its government intended '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' and that the United Kingdom and Mauritian Governments were looking to have an agreement signed by early 2023. The first of the negotiation meetings is scheduled for 11-12 January 2023.

In response to a question from a Member of Parliament on 14 November 2022, which raised concerns about the United Kingdom Government's intentions to consult with the Chagossian people, the United Kingdom Foreign Secretary stated 'we will ensure that we have conversations with the Chagossian

communities. We will make sure that we are very conscious of that strength of feeling as we progress with the negotiations. It would not be right – indeed, it is not necessarily possible – for me to speculate as to the outcome of those negotiations, but we know the strength of feeling on this. I assure you that we take these views very seriously.’

It is reported that the Chagossians did not participate in the decision-making or negotiations and were not sufficiently consulted about the status and future of Chagos Islands.

Without prejudging the allegations raised, we express our grave concerns regarding the continued forced displacement of the Chagossian people from their homeland on Chagos Islands, and regarding lack of effective and fair reparations for this act. The continuous involuntary displacement of the Chagossians from their homeland on Chagos Islands appears to violate, *inter alia*, Universal Declaration of Human Rights articles 8, 13 and 27, International Covenant on Civil and Political Rights articles 12 and 27, International Convention on the Elimination of Racial Discrimination article 5, International Covenant on Economic, Social and Cultural Rights (ICESCR) articles 1 and 15, United Nations Declaration on Minorities articles 1, 2, 4 and 5, and United Nations Declaration on the Rights of the Indigenous Peoples (UNDRIP) articles 3, 8, 10, 18 and 19.

We are further seriously concerned with the lack of transparency around the planned negotiations between the governments of the United Kingdom and Mauritius, and the lack of firm commitments and practical arrangements to center these negotiations on the rights of the Chagossian people and to ensure effective and meaningful participation of the Chagossians in the processes related to negotiations and decision-making concerning their homeland. These omissions appear to violate the rights of the Chagossians to fully participate in decisions that affect them and have an impact on their cultural life and the standard to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide clarifications on the circumstances around and legal grounds for the displacement of Chagossians from Chagos Islands back in the 1960-70s, including on the compliance of such actions with the international human rights standards.
3. Please list the concrete steps taken by your Excellency’s Government to discontinue further forced displacement of the Chagossian people

from the Chagos Islands, and to facilitate their return to and permanent resettlement on the Islands.

4. In particular, please provide explanations on any formal or informal impediments to the return and permanent resettlement of the Chagossian people on the Chagos Islands.
5. Please list the concrete steps taken by your Excellency's Government to provide the affected Chagossians with effective and fair reparations for the committed and continued forced displacement, including restitution, compensation and guarantees of non-repetition.
6. Please provide information and clarifications on the specific measures taken by your Excellency's Government to ensure full and effective participation of the Chagossian people, through representatives chosen by themselves in accordance with their own procedures, in the past and current decision-making on matters affecting their rights, including on the status of their homeland, Chagos Islands. In particular, please provide information and clarifications on the specific measures taken by your Excellency's Government to ensure full and effective participation of the Chagossian people, through representatives chosen by themselves in accordance with their own procedures, in the preparations for and in the negotiations between the Government of UK and the Government of Mauritius regarding Chagos Islands.
7. Please also provide information and clarifications on the specific measures taken by your Excellency's Government to secure the free, prior and informed consent of the Chagossian people before adopting and implementing legislative, administrative and other measures that may affect them, most notably in connection with your Excellency's government's decisions and the negotiations with the US Government, and between the Government of UK and Government of Mauritius around Chagos Islands.
8. Please kindly provide us with the copies of the documents attesting to the effective participation of the Chagossian people, as well as their free, prior and informed consent, to all ongoing and upcoming decisions and negotiations affecting Chagossians and the use of Chagos Islands.
9. Please provide information and clarifications on whether your Excellency's Government's negotiations agenda focuses on the Chagossian people's rights, including right to reparations and right to unobstructed permanent return to the Chagos Archipelago.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please be informed that a letter on this subject matter has also been sent to the Government of Mauritius involved in the abovementioned allegations. Also note that a copy of this communication is being sent to the Government of United States of America.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of our highest consideration.

Fernand de Varennes
Special Rapporteur on minority issues

Catherine S. Namakula
Chair-Rapporteur of the Working Group of Experts on People of African Descent

Alexandra Xanthaki
Special Rapporteur in the field of cultural rights

K.P. Ashwini
Special Rapporteur on contemporary forms of racism, racial discrimination,
xenophobia and related intolerance

Fabian Salvioli
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of
non-recurrence

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer to your Excellency's Government to articles 8 and 13 of the Universal Declaration of Human Rights (UDHR). Article 13 of the Universal Declaration stipulates that "Everyone has the right to freedom of movement and residence within the borders of each State" and that "Everyone has the right to leave any country, including his own, and to return to his country". At the same time, article 8 of the Universal Declaration provides that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law".

We would like to further refer your Excellency's Government to articles 12 and 27 of the International Covenant of Civil and Political Rights (ICCPR), signed by the United Kingdom on 16 September 1968 and ratified on 20 May 1976. Article 12 stipulates *inter alia* that "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence" and that "No one shall be arbitrarily deprived of the right to enter his own country". Article 27 provides that ethnic, religious or linguistic minorities shall not be denied the right to enjoy their own culture, to profess and practise their own religion, or to use their own language.

We would like to further draw the attention of your Excellency's Government to paragraph 3.2 of the ICCPR general comment no. 23: article 27 (Rights of Minorities), which provide that "The enjoyment of the rights to which article 27 relates does not prejudice the sovereignty and territorial integrity of a state party. At the same time, one or other aspect of the rights of individuals protected under that article - for example, to enjoy a particular culture - may consist in a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority."

Furthermore, paragraphs 6.2 of the ICCPR general comment no. 23 provides that: "Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion. Accordingly, positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group. In this connection, it has to be observed that such positive measures must respect the provisions of articles 2.1 and 26 of the Covenant both as regards the treatment between different minorities and the treatment between the persons belonging to them and the remaining part of the population. However, as long as those measures are aimed at correcting conditions which prevent or impair the enjoyment of the rights guaranteed under article 27, they may constitute a legitimate differentiation under the Covenant, provided that they are based on reasonable and objective criteria."

At the same time, paragraph 7 of the ICCPR general comment no. 23 provides that: "With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular

way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.” Similar provisions could be found in articles 1 and 4 of the UN Declaration on Minorities.

In addition, we would highlight that article 5 of the International Convention on the Elimination of Racial Discrimination (ICERD), which the United Kingdom ratified in 1969, outlines that “in compliance with the fundamental obligations laid down in article 2 of this Convention, 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”. Article 5 provides equal protection to civil rights, including “the right to freedom of movement and residence within the border of the State” and economic, social and cultural rights. Article 6 of ICERD establishes the right to equal remedy for violations of human rights and fundamental freedoms contrary to the Convention.

We would also like to draw the attention of your Excellency’s Government to ICERD’s General recommendation XXIII on the rights of indigenous peoples. The General recommendation calls on States parties to: “(a) Recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State’s cultural identity and to promote its preservation; (b) Ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity; (c) Provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics; (d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent; (e) Ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages”.

We would also like to draw the attention of your Excellency’s Government to articles 1 and 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the United Kingdom on 20 May 1976. Article 1 provides that “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Article 15 establishes that States Parties recognize the right of everyone to take part in cultural life. As stressed by the Committee on Economic, Social and Cultural Rights, article 15, paragraph 1(a), of “the Covenant also includes the right of minorities and of persons belonging to minorities to take part in the cultural life of society, and also to conserve, promote and develop their own culture. This right entails the obligation of States parties to recognize, respect and protect minority cultures as an essential component of the identity of the States themselves. Consequently, minorities have the right to their cultural diversity, traditions, customs, religion, forms of education, languages, communication media (press, radio, television, Internet) and other manifestations of their cultural identity and membership” (general comment 21, para. 32).

The Committee on Economic, Social and Cultural Rights, in its 2009 general comment 21 on the right to take part in cultural life (E/C.12/GC/21 para. 44) stressed that States must refrain from interfering with the exercise of and the access to cultural practices, goods and services. The obligation of States to fulfil this right requires them to take appropriate legislative, administrative, judicial, budgetary, promotional and other measures aimed at the full realization of the right for everyone. States should adopt appropriate measures or programmes to support minorities or other groups in their efforts to preserve their culture (para. 52.f), and should obtain their free and informed prior consent when the preservation of their cultural resources is at risk (para. 55).

In the case of indigenous peoples, cultural life has a strong communal dimension which is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. The Committee ESCR has emphasized that “indigenous peoples’ cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity”. States parties must therefore take measures to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources (E/C.12/GC/21 para. 36). Furthermore, States parties must also respect the rights of indigenous peoples to their culture and heritage and to maintain and strengthen their spiritual relationship with their ancestral lands and other natural resources traditionally owned, occupied or used by them, and indispensable to their cultural life (para. 49 d).

We would like to further refer your Excellency’s Government to UN Declaration on Minorities article 1, which states that “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity” and that “States shall adopt appropriate legislative and other measures to achieve those ends”. Article 2.3 of the Declaration states that “Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation”; article 4.1 states that “States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law” and article 4.2 states that “States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards”. Article 5.2 sets that “National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities”.

Furthermore, we would like to draw the attention of your Excellency’s Government to the UN Declaration on the Rights of the Indigenous Peoples (UNDRIP). Article 10 of UNDRIP 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”. Also, article 8 stipulated that: “Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture” and that “States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources; (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights; (d) Any form of forced assimilation or integration; (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them”.

Article 3 of UNDRIP states that “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. Article 18 states that “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions” and article 19 states that “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them”.

Furthermore, we would like to recall that pursuant to article 2.3(a) of the ICCPR victims of human rights violations are entitled to an effective remedy. In this regard, we would like to draw your Excellency’s Government attention to the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, of February 2005, which established that any human rights violation gives rise to a right to reparation on the part of the victim, or his or her beneficiaries. This implies a duty on the part of the State to make reparation and the possibility for the victim to seek redress from the perpetrator (principle 31). All victims shall have access to a readily available, prompt and effective remedy in the form of criminal, civil, administrative or disciplinary proceedings. Reparations may also be provided through programmes, based upon legislative or administrative measures addressed to individuals and to communities (principle 32). As stipulated in principle 34 of this instrument, the right to reparation should cover all injuries suffered by victims. Reparations afforded to victims should include measures of restitution, compensation, rehabilitation, and satisfaction, as provided by international law. The Updated Set of Principles further establishes that victims and other sectors of civil society, including women and minority groups, should participate in public consultations and play a meaningful role in the design and implementation of reparation programmes (principle 33).