



The Chagos Islanders

Standard Note: SN/IA/4463

Last updated: 2 June 2010

Author: Jon Lunn

Section International Affairs and Defence Section

Between 1968 and 1973 the British Government cleared the entire Chagos Archipelago, officially known as British Indian Ocean Territory (BIOT), of its inhabitants as part of moves to build a US military base on the biggest island, Diego Garcia. Today, there are two main outstanding disputes arising from these events. One is between the Chagos Islanders (also called Chagossians or Ilois) and the British Government over the legality of the former's removal and whether they have any right of return; the other is between the UK and Mauritius about the UK's claim to sovereignty over the Chagos Archipelago.

Between 1998 and 2008, lawyers for one group of Chagos Islanders pursued the issue of their right of return to the Archipelago through a series of cases in British courts. This endeavour ended in 2008 when the Law Lords narrowly found in favour of the British Government. However, the group of Islanders has now taken its case to the European Court of Human Rights, which is yet to decide whether it is admissible. The UK Government is currently contesting the case. There has also been criticism of the previous Government's decision, announced on 1 April, to establish a Marine Protection Area around BIOT. It has been claimed that the consultation process was inadequate and the rights of Chagos Islanders have been ignored. Parliamentarians sympathetic to the idea that Chagos Islanders have the right of return also accused the previous Government of reneging on a promise to brief Parliament before a decision was taken.

Successive Mauritian governments have asserted a claim to sovereignty over BIOT, arguing that it was illegally separated from Mauritius before the latter gained independence in 1968. The UK has repeatedly rejected these claims, but has undertaken to cede BIOT to Mauritius when the territory is no longer required for defence purposes. A formal dialogue between the UK and Mauritius on issues relating to BIOT was established in 2009. However, the Mauritian Government has opposed the British decision to establish a Marine Protection Area around BIOT and has suspended its participation in the dialogue.

This note provides brief background about the situation of the Chagos Islanders, paying particular attention to the legal dispute over whether they have the right of return. The note is not comprehensive in its coverage and will not be automatically updated.

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

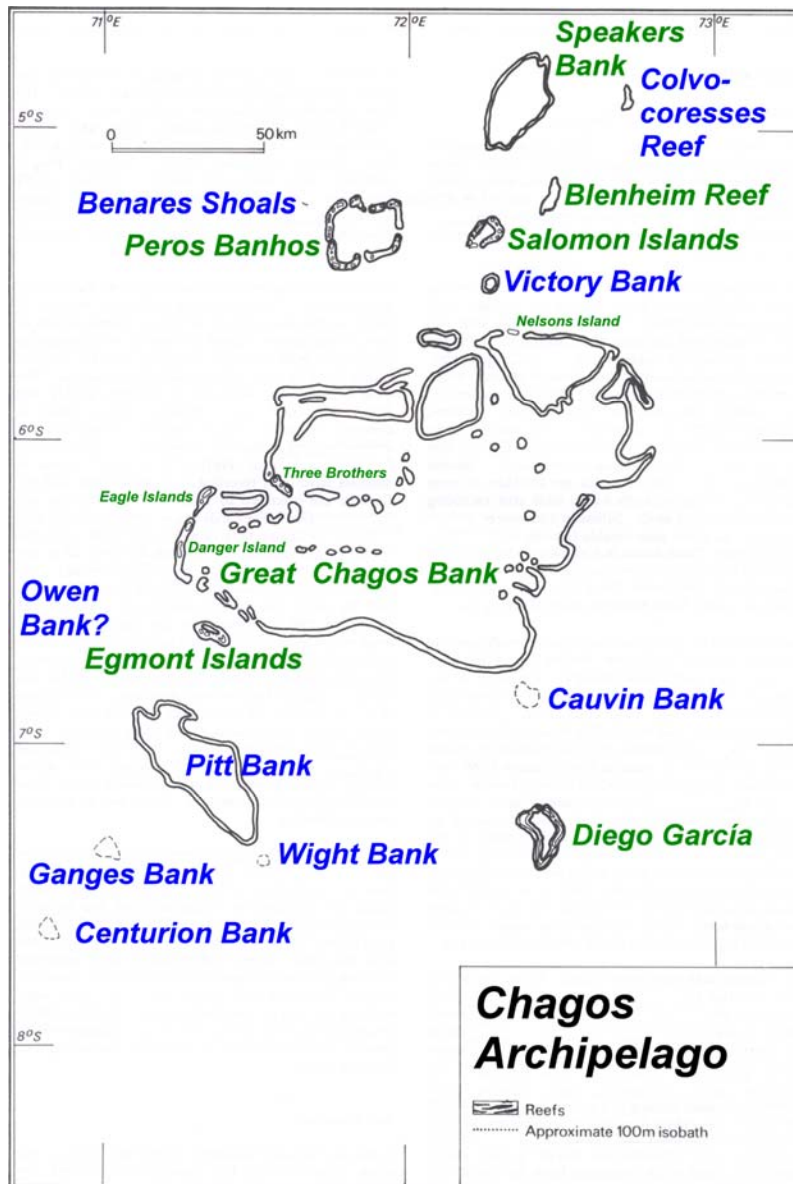
This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

Contents

1	Background	3
2	Legal challenges in the British courts, 1998-2008	5
3	Developments since the 2008 Law Lords judgment	9
3.1	Legal developments	9
3.2	Towards a Marine Protection Area	13
3.3	Dialogue between the UK and Mauritius	17

1 Background

The controversy over the Chagos Islanders (also known as Chagossians or Ilois) began in 1965. Their former home was the Chagos Archipelago in the Indian Ocean, formerly governed as part of the British colony of Mauritius. The Chagos Archipelago is a group of seven atolls comprising more than 60 individual tropical islands roughly in the centre of the Indian Ocean. The Archipelago lies about 500 km (300 miles) due south of the Maldives, its nearest neighbour; 1600 km (1000 miles) southwest of India, and half way between Tanzania and Java.¹



[Source: Wikipedia at: http://upload.wikimedia.org/wikipedia/en/6/60/Chagos_large.png]

In 1965 the UK detached the Chagos Archipelago from the colony of Mauritius to create, by an Order in Council under the Royal Prerogative, a separate colony called the British Indian Ocean Territory (BIOT). The intention was to use the Chagos Archipelago for defence purposes. Mauritius received a £3 million grant in return, and an undertaking was made to

¹ See: http://en.wikipedia.org/wiki/Chagos_Archipelago

return the Archipelago to Mauritius when it was no longer needed for defence purposes. The Order in Council also provided for the appointment of a Commissioner for the Territory. One function conferred on the Commissioner was the power to make laws for the "peace, order and good government" of the Territory.

Between 1968 and 1973 the British Government cleared the entire Chagos Archipelago of its inhabitants as part of moves to build a US military base on the biggest island, Diego Garcia. Diego Garcia was leased to the US by the UK under a December 1966 Exchange of Notes for an initial period of 50 years.² The Exchange of Notes states that the arrangement will remain in force for a further 20 years beyond 2016 unless either side gives notice to terminate it in the two years before its expiry – that is, from December 2014 onwards.³ In return for the leasing of Diego Garcia, the US gave the UK a secret \$14 million subsidy on the purchase of the Polaris submarine nuclear deterrent.⁴

In 1971 the Commissioner, acting under instructions from Ministers in London, enacted an Immigration Ordinance which made it unlawful for a person to enter or remain in BIOT without a permit. This formalised in law the removal of the whole of the existing civilian population of the territory to Mauritius and established a prohibition on their return.

Campaigners claim that many Chagos Islanders were not told at the time of their removal that they were leaving permanently and that their departure was accompanied by serious intimidation. Most of the 2,000 Islanders, whose slave ancestors are believed to have been transported to the Archipelago from Madagascar and Mozambique by the French in the late eighteenth century to work on the coconut plantations, ended up in the slums of Mauritius. Following Mauritian independence these Chagossians qualified for Mauritian citizenship. Today, the total number of Chagossians around the world is believed to be around 4,000-5,000. There is a small community based in Crawley, Sussex.

Compensation arrangements for the Chagos Islanders were offered by Britain in the 1970s and early 1980s. £650,000 was paid to the Government of Mauritius for the benefit of the Chagossians in the early 1970s, in particular to assist their resettlement there. In 1982 an agreement between the Government, the Government of Mauritius and representatives of the Chagossians was reached, under which a further £4 million was paid by the Government into a trust fund for the benefit of the registered Chagossians. As far as the British Government was concerned, this represented full and final settlement of any claims that the Chagos Islanders might have had.⁵

Over the last decade, another dimension has been added to the dispute. This concerns British citizenship rights. Under the *British Overseas Territories Act 2002*, Chagossians were granted British citizenship if they were born after April 1969 and before January 1983 to a woman who at the time was a citizen of the UK and Colonies by virtue of her birth in BIOT. Chagossians have complained about the exclusion from British citizenship (by descent) of third-generation Chagossians born outside BIOT, saying, for example, that this splits

² Ivan Lewis, Minister of State in the FCO, clarified in a Westminster Hall debate in March 2010 that the Exchange of Notes made the entire Archipelago available for the defence purposes of both the British and US Governments. See: HC Deb 10 March 2010 c88WH

³ HC Deb, 12 January 2009, c357W. The previous British Government stated that it expected that a decision about post-2016 arrangements would be taken in 2014. See: HC Deb 10 March 2010 c86WH

⁴ For a fuller account, see: ND Howland ed., *Foreign Relations of the United States, 1964-1968*, Vol. 2 (Government Printing Office: Washington, D.C., 2000) pp 83-117

⁵ This view was later challenged (unsuccessfully) in the British Courts, as described in part 2 below.

families, when older members are British citizens and thus have the right of abode in the UK, but younger members are not.⁶

Nonetheless, the two main outstanding disputes arising from the events of the 1960s remain the one between the Chagos Islanders and the UK Government over the legality of their removal and whether they have any right of return; and the dispute between the UK and Mauritius about the UK's claim to sovereignty over the Chagos Archipelago.⁷

Since the late 1990s, a group of Chagossians have embarked on a series of legal challenges to the 1971 Legal Ordinance. These are discussed in parts 2 and 3 below.

Successive Mauritian governments have asserted a claim to sovereignty over BIOT, arguing that it was illegally separated from Mauritius before the latter gained independence in 1968. Mauritius views the issue as one of 'unfinished decolonisation' and British claims as in violation of UN General Assembly resolutions, most notably 1514 (XV) of December 1960, which called for independence for all colonies, and 2066 (XX) of 16 December 1965, which called on the UK not to take any steps that dismembered Mauritius or violated its territorial integrity in the course of granting it independence.

The UK has repeatedly rejected the counter-claims of Mauritius, but it has undertaken to cede BIOT to Mauritius when the territory is no longer required for defence purposes. After previously being hostile to the demands of many Chagos Islanders to be allowed to return to the islands, Mauritius has more recently appeared to become supportive of the Islanders' cause. Recent developments on this issue are discussed in part 3 below.

2 Legal challenges in the British courts, 1998-2008

In 1998, the leader of the Mauritius-based Chagos Refugee Group, Louis Olivier Bancoult, brought a claim for judicial review in the British High Court to challenge the legality of the 1971 Ordinance.⁸

In November 2000 the High Court, having dismissed Government arguments that such Ordinance was immune from judicial review because it was made under the royal prerogative, ruled that the removal of the Islanders was unlawful and effectively granted them the legal right to return to any of the Islands, with the exception of Diego Garcia itself. Lord Justice Laws said that there had been an "abject legal failure" in the removal of the islanders. The Government said that it would not appeal and would explore the feasibility of resettlement. It also indicated that it would uphold its treaty commitments to the US. The then Foreign Secretary, Robin Cook, stated that the Government accepted the verdict of the High Court.

However, in 2004 the Government issued new Orders in Council to ban the Islanders from returning. It offered a number of grounds for doing so, including environmental and defence concerns. For example, the Government stated that feasibility studies had revealed that

⁶ Recent developments on this issue are discussed in part 3 below.

⁷ For developments in the dispute over the Chagos Islands to 2008, see House of Commons Library Standard Note SN/IA/4463, *The Chagos Islanders*, 8 October 2007; Foreign Affairs Committee, Seventh Report of Session 2007-08, *Overseas Territories*, HC 147-I and 147-II.

⁸ R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs, [2001] QB 1067

resettlement would be costly and environmentally unsustainable, with any returnees struggling to eke out a subsistence existence.⁹

The Orders were the British Indian Ocean Territory (Constitution) Order 2004 and the British Indian Ocean Territory (Immigration) Order 2004. One critic, Mark Curtis, then of the World Development Movement, argued in the *Guardian* at the time that it was defence concerns that were really to the fore:

B2 stealth bombers based on Diego Garcia have been used against Iraq following the Blair government's approval in mid-2002 of a US request to base them there. The secret Downing Street memo of July 2002, leaked a few months back, made clear that the US military regarded the Diego Garcia base as "critical" to all Iraq invasion options. Even murkier are the US and Canadian media reports about Diego Garcia being used to hold terrorist suspects beyond the reach of US and international law. The British government has consistently denied that any detainees from Afghanistan or Iraq have been held on Diego Garcia. Yet Amnesty International told a US senate hearing in June it had evidence that the island was one in a network of secret CIA detention facilities, where "detainees are being held arbitrarily, incommunicado and indefinitely without visits by the Red Cross".¹⁰

The issue of whether there had been any 'extraordinary renditions' by the US authorities that had used Diego Garcia has continued to be the cause of much controversy, with the British Government ultimately admitting in 2008 that there had been instances, of which it had not been informed.

The Chagos Refugee Group, still lead by Mr Bancoult, decided to launch a legal challenge against the 2004 Orders in Council. In May 2006 these Orders were in turn ruled unlawful by the High Court.¹¹ The British Government said that it would appeal. In July 2006 the *Guardian* reported that the Foreign Office intended to appeal against the May judgement because it was "under pressure from the US Government not to allow the islanders to return to Diego Garcia or its surrounding islands".¹²

The appeal began on 5 February 2007. John Howell QC, for the Foreign Secretary, argued before the Court of Appeal that the High Court judges had "erred in law" and "misdirected" themselves when reaching their decision. Mr Howell told the appeal judges: "This appeal raises issues of constitutional law of great importance." He said those issues concerned "the constitutional relationship between this country and British overseas territories". If the approach of the High Court was correct it represented a "revolutionary change in the constitutional law involved, which will affect all British overseas territories". The QC said: "The Divisional Court has asserted a jurisdiction to determine what considerations Her Majesty may take into account and the purposes for which she may so legislate. No court has previously asserted such a jurisdiction so far as I am aware. The Divisional Court has also asserted that Her Majesty may not legislate for such a territory to promote the interests of the UK and in particular its defence and security interests."¹³

While the case was before the Court of Appeal, the Government of Mauritius expressed strong criticism of the stance being taken by the UK Government.

⁹ Chagossians, pointing to other feasibility studies that reached a different conclusion, claim that they would be able to sustain themselves through coconut oil exports and fishing.

¹⁰ "Their right to return", *Guardian*, 8 November 2005

¹¹ For the full text of the ruling, see: <http://www.bailii.org/ew/cases/EWHC/Admin/2006/1038.html>.

¹² Ewen MacAskill, *Guardian* 1 July 2006

¹³ "Court to decide on families' right to return to Diego Garcia", *Independent*, 7 February 2007

LONDON (Reuters) - The President of Mauritius said on Wednesday his country would be prepared to quit the Commonwealth in its row with Britain over the forced expulsion of the people of the Chagos Islands.

In an interview on BBC radio, Anerood Jugnauth said he sympathised with the islanders expelled by Britain from the Chagos archipelago in the 1960s and 1970s who have been fighting for decades to be able to return home.

"I think ultimately we will have to go to court ... to the International Court of Justice," Jugnauth said.

Asked whether he would be prepared to pay the price of leaving the Commonwealth to pursue the legal battle, the president said: "I believe that yes".¹⁴

On 23 May 2007 the Court of Appeal again found in favour of the Chagos Islanders. It said that the use of Orders in Council to prevent the Islanders from returning was unlawful and an abuse of power. The Court of Appeal declined to give the Government permission to take the case to the House of Lords.¹⁵ However, it said that it could not prevent the Government from petitioning the Law Lords directly. The Court of Appeal also said that, if it did appeal, the Government should be liable for all the legal costs associated with the case, regardless of the outcome.¹⁶ On 25 June 2007 the Government duly went ahead and petitioned the Law Lords to uphold the 2004 Orders in Council.

The Law Lords narrowly ruled in the Government's favour in 22 October 2008, by three-to-two.¹⁷ An article in *The Guardian* provided a useful review both of the judgment and of some of the reaction to it:

Chagos islanders evicted by the British government in the 1970s today lost their long-running battle to return to the Indian Ocean archipelago. The [islanders had previously won the right to return](#) to all islands except Diego Garcia, the main island, where there is a US military base. The 3-2 [ruling today by the law lords](#) overturns the islanders' victory and is the final stage of a legal battle that started 10 years ago.

Lord Hoffmann ruled the government was entitled to legislate for a colony in the security interests of the United Kingdom. The US state department had argued that the islands might be useful to terrorists.

Lord Hoffmann said: "Some of these scenarios might be regarded as fanciful speculations, but in the current state of uncertainty the government is entitled to take the concerns of its ally into account." He rejected the argument by the Chagossians' lawyers that the government did not have the power to remove their right of abode in what is now known as the British Indian Ocean Territory (BIOT). "The law gives it and the law may take it away," he said.

Lord Rodger and Lord Carswell agreed. Lord Bingham and Lord Mance dissented.

Olivier Bancoult, the evicted islander who put his name to the legal bid when it started in 1998, said after the ruling: "We are deeply disappointed but of course we fight on. We are consulting our legal team to see what we can do."

¹⁴ "Mauritius says may leave Commonwealth in Chagos row", *Reuters*, 7 March 2007

¹⁵ Full ruling available at:
<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2007/498.html&query=bancoult&method=boolean>

¹⁶ "UK Government broke law over Chagos exiles", *Times Online*, 23 May 2007

¹⁷ For the full text of the judgment, see:
<http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd081022/banc-1.htm>

Bancourt urged ministers to read the statements of the dissenting judges. "They should put an end to the shameless victimisation of Chagossians and adopt a lawful policy of facilitating our return to our homeland." [...]

[...] The foreign secretary, David Miliband, welcomed today's judgment as a vindication of the government's decision to appeal.

"We do not seek to excuse the conduct of an earlier generation. Our appeal to the House of Lords was not about what happened in the 1960s and 1970s. It was about decisions taken in the international context of 2004.

"This required us to take into account issues of defence [and] security of the archipelago and the fact that an independent study had come down heavily against the feasibility of lasting resettlement of the outer islands of BIOT."

In his dissenting judgment, Lord Bingham declared as void and unlawful a 2004 order to declare, without the authority of parliament, that no person had the right of abode in the Chagos islands.

The power to legislate without going to parliament was "an anachronistic survival", he said. "The duty of protection cannot ordinarily be discharged by removing and excluding the citizen from his homeland."

Lord Mance said factors relied on as justifying the order were based on a "remote and unlikely risk" of large-scale resettlement of the outer Chagos islands.

Richard Gifford, who represented the Chagossians, said: "It has been the misfortune of the Chagos islanders that their passionate desire to return to their homeland has been caught up in the power politics of foreign policy for the past 40 years.

"Sadly, their struggle to regain their paradise lost has been dismissed on legal grounds, but the political possibilities remain open for parliament the British public and the international community to continue to support."

The law lords were told during the hearing in July that Diego Garcia was regarded by the US since the 9/11 terrorist attacks as a "defence facility of the highest importance ... a linchpin for the UK's allies".

The Foreign Office argued that allowing the [Chagossians to return would be a "precarious and costly"](#) operation, and the United States had said that it would also present an unacceptable risk to its base.

While there were "undeniably unattractive aspects" to what had happened to the islanders in the 1970s, that was no longer what the case was about, Jonathan Crow QC, for the foreign secretary, told the lords. "The Chagossians do not own any territory," Crow said. "They have no property rights on the islands at all. What is being asserted is a right of mass trespass." [...]

A recent study found the small number of islanders likely to want to return to the archipelago permanently would be able to make a sustainable living. The study, backed by the Let Them Return campaign and written by John Howell, a former director of the Overseas Development Institute, suggested there were "no physical, economic or environmental reasons" to prevent resettlement on the islands of Peros Banhos and Salomon. Howell suggested about 150 families - fewer than 1,000 people and about a quarter of those entitled to go back - would want to return. Eco-tourism

and fish exports could provide jobs and income. The total cost to the UK of resettlement would be about £25m, the report said.¹⁸

The legal process in the UK had finally been exhausted. The 2004 Orders in Council remained in force. It remained to be seen whether the Chagos Refugee Group and its supporters would now take the case to a regional or international court.

The issue of whether the amount of compensation given to the Chagos Islanders following their removal was adequate and should be considered definitive was also a matter of legal dispute during this period. The High Court found in 2003 that the 1982 agreement was indeed a “full and final settlement of all claims who participated. This judgment was upheld by the Court of Appeal in July 2004.¹⁹ The Chagos Refugee Group and its supporters expressed their disappointment at the 2004 judgment, claiming that they have seen relatively little of the money that was notionally allocated to them by way of compensation.

There is a group of Chagossians living in the UK which has decided that returning to the Archipelago is no longer feasible. However, this group, which set up the British Indian Ocean People’s Party, took legal action to establish the immediate entitlement of Chagossians to welfare benefits following their arrival in the UK. They argued that their unique history and circumstances meant that Chagossians should not have to wait until three months after arrival, the standard residency requirement for all British citizens. However, the High Court rejected this argument in 2006, a verdict that was subsequently upheld by the Court of Appeal in 2007.

3 Developments since the 2008 Law Lords judgment

3.1 Legal developments

Following the October 2008 Law Lords judgment, the previous UK Government’s position on the right of return that is still claimed by some of the Chagos Islanders remained unchanged. The then Minister of State at the FCO, Gillian Merron, said in a Westminster Hall debate on 23 April 2009, that its “policy will remain that no person has a right of abode in BIOT or the right to enter the Territory unless authorised”.²⁰

In written evidence to a Foreign Affairs Committee (FAC), the then Foreign Secretary, David Miliband, reaffirmed that:

the Government regrets the way the resettlement of the Chagossians was carried out in the 1960s and 1970s and at the hardship that followed for some of them. We do not seek to justify those actions and do not seek to excuse the conduct of an earlier generation. But the Courts have previously ruled that fair compensation has been paid and that the UK has no legal obligation to pay any further compensation; and British citizenship was granted to a large number of Chagossians under the British Overseas Territories Act 2002. The appeal to the House of Lords was not about what happened in the 1960s and 1970s. It was about decisions taken in the international context of 2004. This required us to take into account issues of defence security of the

¹⁸ “Chagos Islanders lose battle to return”, *Guardian*, 22 October 2008

¹⁹ HL Deb 22 May 2006 c81WA

²⁰ HC Deb, 26 November 2008, c1775W; Gillian Merron MP, then Minister for the Overseas Territories, in the Westminster Hall debate on the FAC Report, HC Deb, 23 April 2009, c181WH

archipelago and the fact that an independent study had come down heavily against the feasibility of lasting resettlement of the outer islands of BIOT.²¹

However, the British Government has stated that it accepts that there “continues to be a moral responsibility” towards the Chagos Islanders which “will never go away”.²²

In a letter to the FAC in May 2009, Richard Gifford, Legal Representative of the Chagos Refugee Group, said that the most recent statements and exchanges on the issue, including those involving his Group, demonstrated that:

1. The only UK Defence Expert who has pronounced on cohabitation between islanders and the US military sees no problem with resettlement on Diego Garcia itself, and, a fortiori, on any of the Outer Islands.
2. FCO treatment has been condemned by several international bodies, most recently by the EU Parliament, in Plenary Session.
3. There are three scientific studies which advocate resettlement as a viable option, and only one which believes resettlement to be “costly and precarious”. However, this conclusion lacks credibility and was probably merely the reflection of what officials wished to hear.
4. The ample resources of the European Development Fund will be available to finance resettlement when the population returns.

Mr Gifford said that “Neither the BIOT Commissioner, nor the Minister of State has attempted to provide any substantive justification for the Policy of Exile, save to use worn-out phrases such as “We cannot turn the clock back”. ”²³

An All Party Group on the Chagos Islands was established in December 2008, following the House of Lords judgment. It has been very active since then. Its Chair in the last Parliament was Jeremy Corbyn MP.

Following the exhaustion of the UK legal process, the Chagos Refugee Group decided to take its case to the European Court of Human Rights. Before deciding whether to proceed with the case, the Court invited the previous British Government to submit written observations on the admissibility and merits of the islanders’ application and to inform the Court of its position concerning the possibility of a “friendly” out-of-court settlement. In his May 2009 letter to the FAC, Mr Gifford, representing the Chagos Refugee Group, expressed the hope that the Foreign Secretary would “take seriously the invitation from the European Court of Human rights to offer to Chagossians a “Friendly Settlement”. ”²⁴

The Court set a deadline of 17 July 2009 for the receipt of the previous Government’s position. In a parliamentary answer on 30 June, the Government said that it expected to meet this deadline.²⁵ However, in another answer on 16 July, the Government said that it would be requesting a short extension to the deadline, “due to the very recent receipt of submissions on behalf of Interveners”.²⁶

²¹ Foreign Affairs Committee, Seventh Report of Session 2008-09, *Human Rights Annual Report 2008*, HC 557, Ev 53

²² HC Deb 10 March 2010 c89WH and 91WH

²³ *Ibid.*, Ev 88

²⁴ *Ibid.*

²⁵ HL Deb, 30 June 2009, c31WA

²⁶ HC Deb, 16 July 2009, c605W

The UK Government eventually made a submission to the Court on 31 July 2009. In it, the Government stated that it had decided to contest the case, and not explore the possibility of a “friendly” out-of-court settlement. Explaining the Government’s decision to defend itself, the FCO said:

The Government was invited by the Court to submit written observations on the admissibility and merits of the application to the ECtHR and it did so on 31 July 2009.

UK courts have previously ruled that the ECHR is not applicable in BIOT, that fair compensation has been paid and that the UK has no legal obligation to pay any further compensation.

British citizenship has been granted to a large number of Chagossians under the British Overseas Territories Act 2002 who have a right of abode in the UK.

The highest UK court has also already ruled on the issue of right of abode in BIOT and decided that the BIOT Constitution is lawful.

The Government concluded on the basis of the 2002 independent feasibility study that lasting resettlement would be precarious and, if sponsored by the Government, would entail expensive underwriting by the British taxpayer for an open-ended period.

Full immigration control over the entire territory is necessary to ensure and maintain the availability and effective use of the territory for defence purposes of both the UK and the US, particularly in light of a change of security circumstances since 2000 and our treaty obligations to the US.

On the issue of its response to the proposal for “friendly settlement”, the FCO said: “Given the Government’s assessment as to the admissibility and merits of the case, it had no proposals to make in regard to a friendly settlement.”²⁷

The Coordinator of the Chagos Islands All Party Parliamentary Group and former High Commissioner to Mauritius (2000-2004), David Snoxell, reacted to the previous Government’s decision in a letter to *The Times* of 5 August 2009. He wrote:

The quest for justice for the Chagossians enters its 11th year with the Foreign and Commonwealth Office’s decision, last week, to contest the case in the European Court of Human Rights, instead of seeking a friendly settlement, as suggested by the court. This is a bitter disappointment for the Chagossians. For the fourth time in a decade the FCO has preferred to defend the case, rather than admit that the removal of the Chagossian people was, and still is, a violation of their fundamental human rights.

This, however, is the view of parliamentarians, nine senior judges and the informed public, not to mention the international community. Several parliamentary questions and an early day motion requested the Government to consult Parliament before replying to the court. By delaying its reply until the recess the FCO appears, once again, to have ignored Parliament. If the European Court decides that it has jurisdiction to hear the case it would be surprising if the judges found that the continued exclusion of the Chagossians from their homeland was not a violation of the European Convention on Human Rights.

The FCO may feel that it has a good case in law and is prepared to spend millions on trying to prove it, but the public perception is that the Chagossians should no longer be the victims of an injustice that deprived them of their birthright. How then can the FCO

²⁷ Email from FCO Press Office, 20 August 2009

claim to be acting in the public and taxpayers' interest? The raison d'être for the FCO is above all to find solutions through diplomacy and negotiation. Should not the FCO be applying its well-honed diplomatic skills, common sense and decency in bringing this tragedy to an end?²⁸

The Chagos Refugee Group and its supporters regarded their moral and political case as having been strengthened by comments made by then Justice Secretary Jack Straw, who was Foreign Secretary at the time of the 2004 Orders in Council, to a BBC Radio 4 documentary on the Privy Council, which was broadcast in May 2009.²⁹ Mr Straw said that, in retrospect, the 2004 Orders in Council should have been referred to the FAC, and that in failing to do so he had “exchanged legitimacy for speed”. David Miliband told the FAC in July 2009 that, in finding it impossible to send the draft Orders in Council in advance to the FAC in 2004, Mr Straw had “pointed to the need to preserve complete confidentiality to avoid the risk of any attempt to circumvent the Orders before they came into force.”³⁰

The Government subsequently made further submissions to the European Court in October 2009 and January 2010. Lawyers for the Chagos Refugee Group have also made a series of submissions. They have expressed hopes that there might be a verdict on the admissibility of the case this summer.

In April 2010, the question of the feasibility of resettlement again came to the fore when one of the experts that had taken part in a 2002 feasibility study commissioned by the British Government, Stephen Akester, stated that his opinion – that some of the outer atolls could be resettled without damaging the eco-system or compromising the security of the US military base on Diego Garcia – had been removed from the final text as a result of political pressure. The FCO has said that no copies of earlier drafts of the 2002 study have been retained. Akester also claimed that, although the British Government had said that the cost of resettlement would be prohibitive, he and the other experts involved in the 2002 study were not asked to consider cost.³¹

The dispute concerning British citizenship for Chagossians also arose again in the context of the Parliamentary consideration of the *Borders, Citizenship and Immigration Bill*, which was given Royal Assent on 21 July 2009 as the *Borders, Citizenship and Immigration Act 2009*. Tom Brake MP introduced a clause to the Bill which aimed to amend the *British Overseas Territories Act 2002* so as to confer full British citizenship on the Chagos Islanders, thus enabling them to pass on their status to their children.³² Responding during Committee stage to the proposal, then Immigration Minister Phil Woolas said that the issue was whether the children of exiled Chagossians would, without the resettlement, have been born in BIOT and so would now be British citizens otherwise than by descent (rather than, as was often the case, British citizens by descent, because they had been born outside the territory). Mr Woolas said that the FCO was in discussion with the Chagos Islanders and their representatives and that the Government was sympathetic to the position of second and later generation Chagossians born in Mauritius or the Seychelles. Even so, he said, to allow British citizens by descent through a connection to BIOT to pass on their citizenship to the next generation might provoke representations from other British citizens. For this reason, he

²⁸ “Chagossians, injustice and the Foreign Office”, *The Times*, 5 August 2009

²⁹ “What’s the Point of the Privy Council?”, BBC Radio 4, 12 May 2009

³⁰ Foreign Affairs Committee, Seventh Report of Session 2008-09, *Human Rights Annual Report 2008*, HC 557, Ev 53

³¹ “Study into return of Chagos islanders was manipulated, consultant claims”, *Times*, 22 April 2010

³² PBC Deb, 18 June 2009, c209

said, the policy on transmission of British citizenship by persons who hold that status by descent was strictly applied.³³ The clause was withdrawn.³⁴

In the run-up to the British General Election held on 6 May 2010, both the Conservatives and the Liberal Democrats made statements regarding the Chagos Islanders. According to a website run by supporters of the cause of the Islanders:

With the UK general election campaign in full swing, supporters of the Chagossians' right of return have this week received messages of support from two men who are destined to play crucial roles in shaping British politics and foreign policy following May 6.

Firstly, Shadow Foreign Secretary **William Hague** - the man who will be taking over from David Miliband at the FCO pending an election victory by David Cameron's Conservatives – has said the following:

"I can assure you that if elected to serve as the next British government we will work to ensure a fair settlement of this long-standing dispute."

In his letter, which was written in his capacity as Shadow Foreign Secretary, Mr Hague highlighted a recent speech made by his colleague and Shadow FCO Minister Keith Simpson, who pledged that the Conservatives would address the issue of resettlement with an "*open mind*," insisting that the Chagossian people "*must be placed at the heart of any decisions taken about their homeland*" [...]

[...] Meanwhile, Liberal Democrat leader **Nick Clegg**'s office, whose party would hold the balance-of-power in the House of Commons if the Conservatives were to fall short of an overall majority, has written to say:

"[the] Liberal Democrats take the view that removing the Chagossians in the 1960s was a scandalous decision and this Government has continued to mistreat these people. They have done so in the face of opposition from the UN. Regardless of the legal arguments, Nick and the Liberal Democrats believe that the Government has a moral responsibility to allow these people to at last return home.

We have actively supported their cause in the past and we will continue to aid their campaign to see justice done. We have been appalled that the government has wasted time, money and effort defending the indefensible. It is a disgrace that £2m of taxpayers' money the government has been squandered in order to uphold this injustice."³⁵

With the formation of a coalition government composed of these two parties, following the 6 May general election, such statements take on considerable significance.

3.2 Towards a Marine Protection Area

In 2009, the previous British Government began to explore whether to establish a Marine Protection Area (MPA) around BIOT. A consultation process took place between November 2009 and early March 2010.³⁶ A decision to establish one was taken in April.

³³ PBC Deb, 18 June 2009, c216-219

³⁴ See House of Commons Library Research Paper 09/65, *Borders, Citizenship and Immigration Bill [HL]: Committee Stage Report*, 9 July 2009

³⁵ Available at: <http://www.chagossupport.org.uk/> at 29 April 2010

³⁶ The consultation had originally been scheduled to end in February but was then extended into March. For the full text of the April 2010 report on the results of the consultation process, see: <http://www.fco.gov.uk/resources/en/pdf/3052790/2010/marine-life-apr-2010>

During the consultation period, the Government of Mauritius expressed its opposition to the proposal until wider issues of sovereignty and Chagossian resettlement had been addressed. The Mauritian High Commissioner to the UK wrote to the *Sunday Times* on 10 January 2010:

Mauritius has rights; LETTERS

YOUR article "Brown can build his green legacy on coral reefs" (Charles Clover, Comment, December 27) suggests that there are only two obstacles in the way of the establishment of the Marine Protected Area around the Chagos Archipelago, namely "the claim of the Chagossians - coconut farmers descended from Mauritian French [sic] stock, who were shamefully evicted by the military in the 1970s" and "what to do about a tuna fishery that pays the Treasury about £1m a year".

However, there is no mention of the illegal excision of the Chagos Archipelago from Mauritius prior to Mauritius being granted independence by the United Kingdom, an act condemned by the international community on the grounds that it was in breach of international law.

The right of Mauritius to enjoy sovereignty over the archipelago, and the failure of the promoters of the marine project meaningfully to address this issue, are serious omissions. There can be no legitimacy to the project without the issue of sovereignty and resettlement being addressed to the satisfaction of Mauritius.

The All Party Parliamentary Group on the Chagos Islands also raised concerns in a letter to *The Times* of 26 January:

Don't forget the role of Chagos Islanders; Letters to the Editor

Sir, Your report (Jan 22) on the proposed Chagos Islands Marine Protected Area (MPA) stated that 2,000 Chagos Islanders were "relocated" to Britain and Mauritius to make room for a US base on Diego Garcia. In fact, about 1,500 Chagossians, of whom some 700 survive, were moved against their will to Mauritius and Seychelles in the early 1970s.

How many would wish to return, and the nature of a resettlement on two atolls, 150 miles north of the US base, is impossible to determine at this stage. The Chagos Islanders want to be involved with the conservation and environmental protection of the islands. Careful management and planning can, at modest cost, avoid degradation of the environment.

The All Party Parliamentary Group has urged the FCO to commission a rapid independent study of the numbers who would wish to resettle and the practicalities of resettlement. Many Chagossians will not want to live permanently in the islands but they all want the right to visit their homeland at will. The way forward is to make provision in the proposed marine protected area for Chagossian interests (such as local fishing) and those of Mauritius. Conservation and human rights must go hand in hand. We urge the Government, before the election, to lift the ban imposed in 2004 on the return of the Chagos Islanders and so end this tragedy that has dogged the UK's reputation for respect for human rights and its international obligations.

Oliver Bancoult was reported by the Chair of the All Party Group, Jeremy Corbyn, as having written to him:

Regarding the Marine Protected Area we will support it as long as it takes into consideration the fundamental right of the Chagossians.³⁷

On 1 April, the British Government announced that it had decided to go ahead and establish the MPA.

According to an FCO press release:

Foreign Secretary David Miliband today announced the creation of a Marine Protected Area (MPA) in the British Indian Ocean Territory. This will include a "no-take" marine reserve where commercial fishing will be banned. The British Indian Ocean Territory (BIOT) consists of 55 tiny islands which sit in a quarter of a million square miles of the world's cleanest seas. Announcing the creation of this MPA, David Miliband said:

"I am today instructing the Commissioner of the British Indian Ocean Territory to declare a Marine Protected Area. The MPA will cover some quarter of a million square miles and its establishment will double the global coverage of the world's oceans under protection. Its creation is a major step forward for protecting the oceans, not just around BIOT itself, but also throughout the world. This measure is a further demonstration of how the UK takes its international environmental responsibilities seriously.

The territory offers great scope for research in all fields of oceanography, biodiversity and many aspects of climate change, which are core research issues for UK science.

I have taken the decision to create this marine reserve following a full consultation, and careful consideration of the many issues and interests involved. The response to the consultation was impressive both in terms of quality and quantity. We intend to continue to work closely with all interested stakeholders, both in the UK and internationally, in implementing the MPA.

I would like to emphasise that the creation of the MPA will not change the UK's commitment to cede the Territory to Mauritius when it is no longer needed for defence purposes and it is, of course, without prejudice to the outcome of the current, pending proceedings before the European Court of Human Rights." [...]

[...] The idea of making the British Indian Ocean Territory an MPA has the support of an impressive range of UK and international environmental organisations coming together under the auspices of the "Chagos Environment Network" to help enhance the environmental protection in BIOT. Also, well over 90% of those who responded to the consultation made clear that they supported greater marine protection

Pollutant levels in Chagos waters and marine life are exceptionally low, mostly below detection levels at 1 part per trillion using the most sensitive instrumentation available, making it an appropriate global reference baseline.

Scientists also advise us that BIOT is likely to be key, both in research and geographical terms, to the repopulation of coral systems along the East Coast of Africa and hence to the recovery in marine food supply in sub-Saharan Africa. BIOT waters will continue to be patrolled by the territory's patrol vessel, which will enforce the MPA conditions.³⁸

The Chagos Refugee Group, the Mauritian Government and British MPs sympathetic to the right of return of the Islanders were amongst those who condemned the decision:

³⁷ Quoted by Jeremy Corbyn MP in HC Deb 10 March 2010 c78WH

³⁸ Available at: <http://blog.protectplanetocan.org/2010/04/new-protection-for-marine-life-of.html>

Anger mounted today over Britain's [decision last week](#) to create the world's largest marine protection zone around the Chagos islands as an influential group of British MPs joined the government of [Mauritius](#) and a large group of islanders to condemn the way the decision was made.

The [world's leading conservation groups welcomed the move](#) to ban [fishing](#) across an area the size of France, but the Mauritian government, which claims the Indian Ocean islands, and the largest Chagos refugee group, which is fighting for the right to return to the islands, have deplored the way they claim the, foreign secretary, [David Miliband](#) rushed out the decision without their consultation.

"Perfidious Albion is dishonest. I am very angry," said Mauritian foreign minister Arvin Boolell.

Olivier Bancoult, chair of the [Chagos Refugees Group](#), the largest collection of exiles, said he was "shocked" that Britain had not shown the islanders even a draft of the proposal.

Speaking from Mauritius, he said: "The British government has shown its true face in the way it does things with no respect for democracy and consideration for others' opinions. We have been taken for a ride."

Details of the [conservation](#) zone have not been made public, except that it is to become a full "no-take" area. This ban on fishing, previously Chagossians' main livelihood, could make it impossible to live on the islands if the islanders won the right to return.

"Everyone would have been happy with the creation of a marine protection area providing it had made provision for the interests of Chagossians and Mauritius, which it could so easily have done," said David Snoxell, former British high commissioner in Mauritius and chair of the [Marine Education Trust](#).

"The Foreign Office statement completely disregards the Chagossians who are not even mentioned in it. They have been airbrushed out," he said.

Miliband also attracted the ire of the all-party Chagos committee, whose members complained that parliament had been sidelined.

In a letter to Miliband, chair of the committee Jeremy Corbyn said: "The action of the Foreign Office flies in the face of world opinion in respect of the Chagossians' right to return.

"I am shocked that you did not see fit to honour the undertaking given to parliament that there would be full consultation with islanders and MPs."

The Foreign Office had committed in a debate on Chagos two weeks ago that MPs would be briefed before any final decisions were taken on the marine protected area (MPA).

The all party parliamentary group wants to know what the urgency was for the MPA's creation and how the Foreign Office had time to properly examine 450 contributions, many of them complex, to the consultation.

The MPs are expected to ask Miliband to put the decision on hold pending a verdict on the islanders' right to return, due in the summer from the European Court of [Human rights](#).³⁹

As stated in the press article, MPs were particularly angered by the apparent breaking of a pledge made during an earlier Westminster Hall debate on the issue to brief MPs before a decision was taken. The then Minister of State at the FCO, Ivan Lewis, stated on in this debate on 10 March:

[...] I would like to place on record that it is important that hon. Members are briefed – I suspect that this may be the responsibility of someone else, who will, I hope, come from the Labour party – when the Government decide what to do next about the marine protected area [...] I therefore put on record a commitment to make sure, wherever possible, that interested hon. Members are briefed before we make final decisions on the marine protected area.⁴⁰

The issue was raised as an Urgent Question in both Houses of Parliament on 6 April. Chris Bryant, also then a Minister of State in the FCO, replied to Jeremy Corbyn, who had laid the Urgent Question in the Commons:

I apologise to my hon. Friend and to the House, because it became clear to us that, notwithstanding the commitment made to him in the debate, no further information could have come in that would have made any difference to the decision on the protection of the marine environment in the British Indian Ocean Territory.⁴¹

3.3 Dialogue between the UK and Mauritius

In its 2008 Report on the Overseas Territories, the Foreign Affairs Committee concluded that “any resolution to the UK’s sovereignty dispute with Mauritius over the British Indian Ocean Territory must take Chagossians’ wishes into account.”⁴² In its Response, the FCO said that “Any discussions about the cession of the Territory would be between the sovereign states concerned ie, UK and Mauritius. However, the views of other interested parties would be welcomed.”⁴³

The previous British Government and its Mauritian counterpart agreed during 2008 to establish a bilateral dialogue on issues relating to BIOT. The first meetings in this framework took place at official level in London in January and July 2009. According to then FCO Minister Lord Malloch-Brown, at the January meeting:

Officials discussed the latest legal and policy developments relating to BIOT. British officials set out the view of the UK on sovereignty and how the United Kingdom had to bear in mind its treaty obligations with the USA. Mauritian officials set out the view of Mauritius on sovereignty. There were discussions on fishing rights, environmental concerns, the continental shelf, future visits to the territory by the Chagossians and respective policies towards resettlement. Officials agreed the need to maintain a dialogue on a range of issues relating to the territory and to meet again at a date to be agreed.⁴⁴

³⁹ “Chagos Islands marine protection plan comes under fire from three sides”, *Guardian*, 6 April 2010

⁴⁰ HC Deb 10 March 2010 c90WH

⁴¹ HC Deb 6 April 2010 c820

⁴² Foreign Affairs Committee, Seventh Report of Session 2007-08, *Overseas Territories*, HC 147-I, para 419

⁴³ *Response of the Secretary of State to the Seventh Report of the Foreign Affairs Committee, Session 2007-08, Overseas Territories*, Cm 7473, September 2008, para 130

⁴⁴ HC Deb, 24 February 2009, c35-6WA

However, since the July 2009 meeting, although there have been some bilateral contacts, there have been no further meetings within the framework of the dialogue. In March, the Mauritian Foreign Minister, Arvin Boolell, was quoted as saying in the Mauritian newspaper, *L'Express*:

Mauritius is not being treated as an equal partner by the UK and the Government believes that the legitimate interests of Mauritius should not be taken lightly. The third round of bilateral talks, scheduled for early 2010, has indeed been called off because Mauritius has expressed its displeasure at the ongoing public consultations on the MPA outside the bilateral framework... Under the guidance of environment protection, the UK is eager to allow eco-imperialism to rule over justice and basic human rights.⁴⁵

How far this new dispute over the establishment of the MPA will affect the longer-term viability of the dialogue remains to be seen. The three-party alliance that has comprised the Mauritian Government since 2005, led by Prime Minister Navin Ramgoolam, won re-election for another five-year term on 5 May 2010.

⁴⁵ Quote taken from: "UK Chagos Support Association March update", *Pambazuka News*, Issue 473, 12 March 2010. Available at: <http://www.pambazuka.org/en/category/socialmovements/62958>