

## Minority Rights Group International

Minority Rights Group International (MRG) is an international NGO in Special Consultative Status with ECOSOC. MRG works to secure the rights of minorities and indigenous peoples worldwide.

### 1) Introduction

This report will highlight concerns over the implementation of human rights by the government of the United Kingdom with respect to its overseas territories. It will highlight the example of the British Indian Ocean Territory (BIOT) and the systematic way in which the government has failed to provide a remedy to the islanders for violations of their rights committed by the UK, as identified by the UK courts most recently in May 2006, upheld by the Court of Appeal in May 2007 and included in recommendations of the UN Human Rights Committee.

### 2) Overview of the situation of BIOT<sup>1</sup>

#### a. History of the removal of the population

Up until the 1960s, the Chagos Islands in the Indian Ocean were inhabited by an indigenous people, the Ilois (also known as Chagossians), who were born there, as were their parents and many of their ancestors. In the early 1960s the governments of the United Kingdom and the United States of America resolved to establish a major military base on the largest of the Chagos Islands, Diego Garcia. To facilitate the creation of the base, in 1965 the Chagos archipelago (including Diego Garcia) was divided from Mauritius (then a British colony) and constituted as a separate colony called the British Indian Ocean Territory (BIOT) by way of Order in Council (SI 1965 No 1920).

From 1965 onwards Britain began removing the inhabitants of the Chagos Islands (who are British citizens) by *inter alia*, refusing to let them return from visits to Mauritius and closing down the plantations which provided employment for the Islanders. In 1971, an 'Immigration Ordinance' was issued by the Commissioner of BIOT (pursuant to powers contained in the 1965 Order) requiring the compulsory removal of the whole of the population of the territory, including all the Ilios, to Mauritius. The Ordinance also provided that no person could enter the territory without a permit. The last inhabitants were removed from the Chagos Archipelago in 1973. Most now live in poverty in Mauritius and the Seychelles with a small number in the UK.

---

<sup>1</sup> For a detailed overview of the removal of the population, see Madeley, J. *Diego Garcia: A Contract to the Falklands*, MRG 1985, available at: <http://www.minorityrights.org/?lid=645>

There have been allegations in 2007 that the US airbase on the British sovereign territory of Diego Garcia has been used as a secret detention centre by the CIA.<sup>2</sup> The UK government says it has accepted US 'assurances' that this is not the case.<sup>3</sup>

#### **b. Ongoing legal actions during the period under consideration by the UPR**

The Chagossians have been challenging the legality of their expulsion and fighting for the right to return to their islands. In May 2007 the UK courts ruled for a third time that the removal of the inhabitants was illegal and the government's use of royal prerogative to override the first judgement was also illegal.

The first High Court judgment in November 2000 not only struck down the Immigration Ordinance of 1971, but gave as its underlying reason the conclusion that the power of Peace, Order and Good Government can only mean *"the People are to be governed not removed"*. In 2001, the government reported to the UN Human Rights Committee that the law which they had enacted following the departure of the population had been ruled

*"invalid in that it denied access to people belonging to the territory. The United Kingdom had not appealed against that ruling, but had amended the law to ensure that any island-dweller had the right to return to any part of the territory except Diego Garcia."*<sup>4</sup>

However, instead of appealing the ruling, on 10 June 2004 the UK Foreign Secretary caused two Orders in Council to be passed by the Queen in Council which "declared that no person has the right of abode in BIOT nor the right without authorisation to enter and remain there. The Chagossians were thus effectively exiled."<sup>5</sup> Orders in Council are a relic from the colonial period made under the royal prerogative. The Orders in Council were used to overturn the court ruling and to bypass parliament. It was not until the following week that the UK Parliament was informed of the Orders in Council by way of a written ministerial statement.

The Chagossians successfully challenged the legality of the Orders in Council through the courts<sup>6</sup> in a ruling of 11 May 2006. It found that bypassing parliament through the use of the Orders in Council was unlawful. The Government appealed that decision and on 23 May 2007 the Court of Appeal again ruled in favour of the Chagossians. The Court did not grant the Government leave to appeal. The Government applied to the House of Lords for permission to appeal in June 2007. The House of Lords decided it would hear the appeal on the condition that the government paid all the legal costs whether the

---

<sup>2</sup> see Council of Europe report at: <http://www.sacc.org.uk/sacc/docs/coe-rendition-second-marty-report.pdf> (page 13) and news reports at:

<http://news.independent.co.uk/europe/article2636183.ece>,  
<http://politics.guardian.co.uk/foreignaffairs/story/0,,2194798,00.html>,

<sup>3</sup> Written answer to parliamentary question, 18 July 2007

<http://www.theyworkforyou.com/wrans/?id=2007-07-18b.24.6>

<sup>4</sup> Government reply in summary record CCPR/C/SR.1963, Oct 2001, para 14

<sup>5</sup> The Queen (on the application of Bancoult) v. Secretary of State for the Foreign and Commonwealth Affairs (2007), [2007] EWCA Civ 498, para 11.

<sup>6</sup> The Queen (on the application of Louis Olivier Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs Rev1 (2006) EWHC 1038 (Admin) (11 May 2006).

appeal was to be allowed or dismissed. The government has accepted this condition and the appeal will go ahead.

In a written answer on 1<sup>st</sup> December 2005, the Government said that it had spent around £1.5 million on legal fees for the case and that was before the most recent judgements<sup>7</sup>, money which could have been spent on facilitating the return of the islanders.

In its "Concluding Observations" on the UK's last periodic report, the Human Rights Committee observed that:

*"Although this territory was not included in the State party's report (and the State party apparently considers that, owing to an absence of population, the Covenant does not apply to this territory), the Committee takes note of the State party's acceptance that its prohibition of the return of Ilois who had left or been removed from the territory was unlawful.*

*The State Party should, to the extent still possible, seek to make exercise of the Ilois' right to return to their Territory practicable. It should consider compensation for the denial of this right over an extended period. It should include the territory in its next periodic report".<sup>8</sup>*

No such steps have been adopted, leaving the Islanders to continue their legal battle. Neither has the UK included BIOT in its latest periodic report, submitted on 18 May 2007.<sup>9</sup>

### **3) Recommendations**

Minority Rights Group requests the member states of the Human Rights Council examining the UK under the Universal Periodic Review to ask the government of the UK to commit to:

- a) Include and comprehensively address the human rights situation and violations or potential violations of the relevant Convention for all territories under its control when reporting to human rights monitoring bodies, especially where that body has requested such information.
- b) Provide remedies to victims of violations where the government has recognised its action as being unlawful (such as the government accepted its actions were with respect to the Ilois when it did not appeal the 2000 judgement and it reiterated before the Human Rights Committee in 2001) taking into account recommendations from UN human rights bodies that address these situations.

---

<sup>7</sup> Hansard:

[http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo051201/text/51201w23.htm#51201w23.html\\_spnew0](http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo051201/text/51201w23.htm#51201w23.html_spnew0)

<sup>8</sup> Concluding Observations CCPR A/57/40 vol. I (2002), paragraph 38

<sup>9</sup> CCPR/C/GBR/6