

Briefing

The Rights of Chagossians to Self-Determination

Why Chagossians must be included in negotiations about the Sovereignty of the Islands

1. Chagossians are the belongers/indigenous population of the islands

Chagossians have been declared the “belongers” of the Chagos Islands in a High Court judgement of 2000¹. They have been identified as the indigenous population of the islands by numerous international groups, bodies, reports and conferences. For example, a UN report of 2021 refers to the Chagossians as “the indigenous inhabitants of the islands”². In his separate opinion at the ICJ in 2019, Judge Gaja refers twice to the Chagossians as the “indigenous population”³. Chagossians also appear in the Minority Rights Group⁴ World directory of Minorities and Indigenous Peoples, participated in a UN Working Group on Indigenous Populations as early as 1996⁵ and Chagossian community group representatives self-defined as such in the Pretoria Declaration⁶ of 2022.

2. Chagossians have a right to self-determination, independent of any state

Chagossians have a right to self-determination, both as the belongers and indigenous population of the island and as British Overseas Territories (BOT) citizens⁷. As an African people, they have a right of self-determination under the African Charter on Human and People’s Rights 1981. *Human Rights Watch* have recently insisted that “the UK and Mauritius should prioritize the Chagossian people’s participation” in negotiations about the sovereignty of the Chagos Islands.⁸ In his separate opinion at the ICJ in 2019, Judge Gaja acknowledged that “the General Assembly may have considered that, as the result of the process of decolonization, the Archipelago would become part of Mauritius. **However, the General Assembly may revisit the issue and in particular take into account the will of the Chagossians**”⁹ Judge Abrahams, also at the ICJ in 2019, determined that had Chagossians been consulted in 1965, this could have led to a separation of Chagos from Mauritius, since “*The principle of territorial integrity does not preclude agreeing to the partition of a territory*

¹ Case No: CO/3775/98; Handed Down Judgment; In the High Court of Justice Queens Bench Division (The Administrative Court); Lord Justice Laws & Mr. Justice Gibbs; 3 November 2000.

² Mandates of the Working Group of Experts on People of African Descent and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. REFERENCE: AL MUS 3/2020. 30 March 2021

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25799>

³ Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965. ICJ The Hague; advisory opinions. Separate opinion of Judge Gaja: 25th Feb 2019

<https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-07-EN.pdf>

⁴ <https://minorityrights.org/minorities/chagossiansilois/>

⁵ UN Working Group on Indigenous Populations 1996 see: Jeffery, Laura. (2013) Chagos islanders in Mauritius and the UK. Manchester University Press

⁶ Pretoria Declaration: Institute of Pan-African Thought and Conversation, University of Johannesburg 5th October 2022

⁷ Foreign & Commonwealth Office. Secretary of State, Great Britain. Foreign, Commonwealth Office, Foreign, & Commonwealth Office Staff. (2012). The overseas territories: Security, success and sustainability (Vol. 8374). The Stationery Office.

⁸ <https://www.hrw.org/news/2022/11/08/chagos-islands-include-long-expelled-residents-negotiations>.

Retrieved 12th Dec 2022

⁹ See Footnote 3

based on the freely expressed will of the different components of the population of that territory”¹⁰. In the Pretoria Declaration of October 2022 representatives of Chagossian community groups and platforms agreed as position on self-determination independent of any state (details follow).¹¹

3. Are Chagossians ‘Mauritian’?

Chagossians first came to the islands in the late 18th century as slaves from Madagascar and Mozambique. Subsequent migration to the islands has been from India, Mauritius, the Seychelles and various parts of Africa.¹² Chagossians have a unique culture and language, distinct from other Indian Ocean territories. Chagossians are mainly Creoles of African origin and of Roman Catholic faith. Mauritius is a majority Hindu country of Indian origin. Although many Chagossians were exiled to Mauritius between 1965 and 1973, some Chagossians have no connection to Mauritius of any kind, notably those Chagossians who were sent to the Seychelles. The Chagos Archipelago is a separate territory to Mauritius, more than 2000 km away and the relationship between Mauritius and Chagos was colonial and administrative, first established by France and continued by Britain from 1814. For all these reasons Chagossians do not accept the Mauritian Government description of them, as “Mauritians of Chagossian origin”¹³. Every Chagossian is a British Overseas Territory citizen, some are also citizens of Mauritius, Seychelles and other territories. Many Chagossians have experienced marginalisation and discrimination in Mauritius. A UN report of 2021 noted the many barriers to success facing Chagossians in Mauritius, including, “the lack of formal recognition of the Chagossians in the Mauritian Constitution, the disproportionate poverty facing the Chagossian population, and continued racial discrimination facing the Chagossian population in Mauritius.”¹⁴

4. Chagossians have been denied any form of representation from exile to the present day

Chagossians have never been consulted over their future, or the future of their islands. They were exiled from their islands without their consent and without any consultation. The case which was brought to the International Court at the Hague in 2019 after intense lobbying of the African Union and the UNGA by the Mauritian Government, framed the question from a Mauritian perspective, referring to Chagossians as “Mauritians..of Chagossian origin.” - a description offensive to most Chagossians. The Chagossian community were neither informed nor consulted about the case and were not legally represented. Their active participation at the court was limited to a pre-recorded video by one person for the Mauritian delegation and Chagossian attendance was confined to a handful of observers

¹⁰ Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 Summary of the Advisory Opinion. ICJ The Hague Summary 2019/2 25 February 2019

<https://www.icj-cij.org/public/files/case-related/169/169-20190225-SUM-01-00-EN.pdf>

¹¹ Pretoria Declaration: Institute of Pan-African Thought and Conversation, University of Johannesburg 5th October 2022

¹² See Carter, Marina, Wenban Smith, Nigel (2016) Chagos: A History Exploration, exploitation, expulsion London: Chagos Conservation Trust

¹³ <http://www.govmu.org/English/News/Pages/Chagos-Archipelago-an-integral-part-of-Mauritius,-the-Government-states-.aspx>

¹⁴ Mandates of the Working Group of Experts on People of African Descent and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. REFERENCE: AL MUS 3/2020. 30 March 2021

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25799>

attached to the Mauritian delegation. Most Chagossians reject the legitimacy of the court's opinion since they were not represented.

5. The community is united on these key issues: The Pretoria Declaration

Chagossian groups are united on the key issues of indigeneity and self-determination.

Following a conference at the University of Johannesburg on the future of the Chagos Islands in October 2022¹⁵, delegates (including the Chagos Refugees Group and 5 members of Chagossian Voices) agreed in the *Pretoria Declaration* that:

- a) the Chagossians are an Indigenous People of the Chagos Islands as per the definition of the United Nations Declaration on Indigenous People 2007
- b) Chagossians have an inalienable right to self-determination.
- c) Chagossians alone have the right to decide when and how to exercise their right to self-determination, whether statehood or association with any other state.

6. The Advisory Opinion of the International Court at the Hague: 2019

The Advisory Opinion arising from this case has been hugely influential, leading to a vote at the UN General Assembly and judgments at ITLOS. The case was not brought to the court by Chagossians. The question to the court makes no mention of the Chagossians, except obliquely as Mauritians "of Chagossian origin". The question asks for the right of Mauritians to re-settle the islands. Chagossians were not represented at the Court and the community was not consulted or informed about the case. The judgment deals with the Mauritian right of self-determination, and completely avoids the issue of any Chagossian right of self-determination. The judgment appears to address territorial claims and avoids the issue of peoples, culture and the human rights and the full history of Chagossians. **We believe the judgement was fundamentally flawed as it was framed by a narrow question, concerning only Mauritian rights, and yet the aggrieved party (the exiled Chagossians) were neither represented nor consulted.** By excluding Chagossians from the case, much evidence and the Chagossian perspective were kept from the court. Chagossians also see the Mauritian Government as complicit, alongside the UK and the US, in their exile from the islands. This was not addressed by the court or by the question to the court.

7. The Mauritian Government position on Chagossian identity is unacceptable for Chagossians

The Mauritian Government does not recognise the Chagossians as a people. This lack of constitutional recognition of the Chagossians has been criticised in UN reports¹⁶. The Mauritian Government state that "the Chagossians are Mauritian nationals" and that Mauritian sovereignty of the islands will result in "the resettlement on the Chagos Archipelago of Mauritian nationals"¹⁷. They do not recognise the Chagossians as an indigenous people or as anything more than a type of Mauritian. This is clear from the questions they put to the court which deal with "the inability of Mauritius to implement a programme for the resettlement on the Chagos Archipelago of its nationals"¹⁸. Since all Chagossians are BOT Citizens and only some are Mauritian, where does this leave the rights of Chagossians, many of whom have no connection to Mauritius?

¹⁵ Pretoria Declaration: Institute of Pan-African Thought and Conversation, University of Johannesburg 5th October 2022

¹⁶ See footnote 2

¹⁷ Memorandum of the Government of the Republic of Mauritius in response to the Joint Communication dated 30 March 2021 21st May 2021 No. 61/2021 (MMG/HR/28/3)

¹⁸ Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965: Question to the Court: <https://www.icj-cij.org/en/case/169>