



INTERNATIONAL COURT OF JUSTICE

*COUR INTERNATIONALE DE JUSTICE*

*LEGAL CONSEQUENCES OF THE SEPARATION OF THE CHAGOS ARCHIPELAGO  
FROM MAURITIUS IN 1965 (REQUEST FOR ADVISORY OPINION)*

*EFFETS JURIDIQUES DE LA SEPARATION DE L'ARCHIPEL DES CHAGOS DE  
MAURICE EN 1965 (REQUETE POUR AVIS CONSULTATIF)*

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*Judge Gaja: In the process of decolonization relating to the Chagos Archipelago, what is the relevance of the will of the population of Chagossian origin?*

**Comment of the United Kingdom of Great Britain and Northern Ireland  
on the Written Reply of Mauritius**

1. The United Kingdom's comment on the Written Reply of Mauritius of 7 September 2018 is without prejudice to its position that the Court should exercise its discretion so as not to give an Advisory Opinion.
2. The United Kingdom does not accept that there has been, or now should be, a “process of decolonization relating to the Chagos Archipelago”<sup>1</sup>. The process of decolonization is “of Mauritius” according to Question (a) of the Request. The Chagos Archipelago was not an integral part of Mauritius prior to 1965 and did not form a part of Mauritius at the time of independence in 1968<sup>2</sup>. The process of decolonization “of Mauritius” was lawfully completed in 1968 at the time of its independence.
3. The United Kingdom makes four observations on the Written Reply of Mauritius.
4. First, Mauritius asserts that “the will of the people of Mauritius, including the ‘will of the population of Chagossian origin’, was not taken into account prior to the detachment of [the] Chagos Archipelago in 1965, or prior to the independence of Mauritius”<sup>3</sup>. The United Kingdom has set out in its written and oral pleadings that the people of Mauritius freely consented to the detachment in exchange for concrete undertakings and substantial benefits

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<sup>1</sup> Emphasis added.

<sup>2</sup> StGB, paras. 2.12-2.29; CoGB, paras. 2.5-2.13; cr 2018/21, pp. 10-11, paras. 19-21 (Buckland).

<sup>3</sup> Written Reply of Mauritius, para. 5.



in the 1965 Agreement, and this consent was reaffirmed multiple times at and after independence<sup>4</sup>. The 1967 general election was another opportunity for the free expression of will by the Mauritian people, and the party whose leaders had agreed to the detachment was elected by majority<sup>5</sup>.

5. Second, as regards the will of the population of Chagossian origin, the United Kingdom observes that this was not treated as a requirement by the representatives of Mauritius at the time of the 1965 Agreement and independence in 1968. The Chagos Archipelago was loosely administered - as a matter of convenience - as a dependency of Mauritius. The vast distance of the Archipelago from Mauritius explains why its inhabitants had limited contact with Mauritius. As can be seen from the Mauritius Written Statement, the only consistent and in any way significant tie with Mauritius was the import of copra from the Archipelago<sup>6</sup>. This was the reality in the 1960s, and it is disingenuous of Mauritius in 2018 to say that the “will of the population of Chagossian origin” was “required to be taken into account”<sup>7</sup> when its own leadership did not consider this necessary in 1965 or at the time of the subsequent reaffirmations of consent that were given (which Mauritius continues determinedly to ignore).
6. It should also be recalled how little was known about Chagossians in 1965 given their small population and the remoteness of the Archipelago. There were approximately 1360 people resident on the islands in November 1965<sup>8</sup>. Including those born on the islands, the total population of persons of Chagossian origin was between 1500-1750<sup>9</sup>.
7. Third, in Question (b) proposed to the General Assembly (and now addressed to the Court), in its written and oral pleadings, and now in its Written Reply to Judge Gaja, Mauritius continues to define the “population of Chagossian origin” as “*Mauritians* residing in the Chagos Archipelago or of Chagossian origin”<sup>10</sup>. The Republic of Seychelles emphasised in its Written Statement that a significant number of persons of Chagossian origin are

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<sup>4</sup> StGB, paras 3.38-3.50; CoGB, paras. 2.86-2.96; CR 2018/21, p. 9, para. 18; p. 15, para. 41; pp 21-41, paras. 66-77 (Buckland); pp. 29-30, para. 8; p. 34, para. 15, p. 37, para. 22; p. 39, para. 27; p. 40, para. 30 (Wordsworth); p. 44, para. 8 (Webb); p. 54, para. 6; pp. 57-58, paras. 14-18 (Wood).

<sup>5</sup> StGB, paras. 3.36-3.37; CoGB, paras. 2.17, 2.77-2.85, 4.10-4.11; CR 2018/21, p. 20, para. 64 (Buckland).

<sup>6</sup> StMU, paras. 2.24-2.31.

<sup>7</sup> Written Reply of Mauritius, para. 5.

<sup>8</sup> The population of Mauritius in 1965 was more than 700,000.

<sup>9</sup> *Chagos Arbitration Award*, para. 88 (UN Dossier 409).

<sup>10</sup> Written Reply of Mauritius, para. 2. Emphasis added.



present in the Seychelles and have obtained citizenship<sup>11</sup>. A significant number of Chagossians also reside in the United Kingdom and have obtained British citizenship.

8. The question that Mauritius wishes the Court to determine is not about Chagossians wherever they may live today, but about Mauritius and its claim to sovereignty over the Chagos Archipelago<sup>12</sup>. Mauritius' motivations are apparent when it comes to the question of resettlement, which it also raises in its Written Reply (paras 6-7). Mauritius appears to have in mind to settle its nationals generally, but only its nationals. In its understanding, "resettlement" would both extend beyond Chagossians yet not cover all Chagossians (those who do not have Mauritian nationality)<sup>13</sup>. It is noteworthy that Mauritius says that if it exercised sovereignty over the Chagos Archipelago, it will allow return and resettlement "in accordance with the laws of the Mauritius"<sup>14</sup>.
9. As the Court is aware, the United Kingdom has renewed its commitment to work with all Chagossians in Mauritius, Seychelles and the United Kingdom, establishing in 2016 a new fund of approximately £40 million to improve their lives and present greater opportunities for their families in the places where they now live, including outside of Mauritius<sup>15</sup>.
10. Fourth, Mauritius ignores the settlement that was individually agreed to by the very great majority of Chagossians in Mauritius following the treaty between the Governments of the UK and Mauritius of 7 July 1982 (the 1982 Agreement)<sup>16</sup>. If it were appropriate to focus on the population of the Chagos Archipelago, the voluntary renunciation by Chagossians of all claims arising out of their removal from the Chagos Archipelago, following the payment by the United Kingdom of compensation, would be a factor of great and determinative importance, as follows not least from the decision of the European Court of Human Rights in *Chagos Islanders v United Kingdom* in 2012<sup>17</sup>.

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<sup>11</sup> Seychelles Written Statement, paras. 4, 6 (requesting "that the unique perspectives and legitimate concerns of the Seychellois Chagossian community be taken into due consideration").

<sup>12</sup> StGB, paras. 1.5, 9.8-9.10; CoGB, paras. 1.14 and 5.20; CoUS, para. 4.4; CR 2018/21, p. 53, para. 2 and p. 61, paras. 24-25 (Wood).

<sup>13</sup> CR 2018/21, p. 61, para. 25 (Wood).

<sup>14</sup> Written Reply of Mauritius, para. 6.

<sup>15</sup> CR 2018/21, p. 61, para. 25 (Wood).

<sup>16</sup> StGB, paras. 4.9-4.19; CR 2018/21, p. 7, para. 6 (Buckland); p. 31, para. 9 (Wordsworth); p. 54, para. 6 (Wood).

<sup>17</sup> *Chagos Islanders v Attorney General and the BIOT Commissioner* [2004] EWCA Civ 997, see para. 83 (StGB Judgments Volume, Tab 4).