

Research Briefing

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British Indian Ocean Territory: UK to negotiate sovereignty 2022/23



Summary

- 1 Background: The UK's Overseas Territories
- 2 The creation of the BIOT
- 3 Removal of Chagossians, 1968-73
- 4 Legal challenges to UK administration
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Summary

In 1965, the UK created the British Indian Ocean Territory (BIOT), also known as the Chagos Archipelago. From 1968 to 1973, it removed the local population, known as Chagossians or Ilois, for a UK-US military base on the BIOT's largest island, Diego Garcia.

Two disputes arose from these events: Firstly, the claim of Mauritius to hold sovereignty over the BIOT and secondly the right of Chagossians to return.

The UK Government has [consistently rejected Mauritian claims](#) and said it is committed to cede sovereignty when the Territory is no longer needed for defence purposes. While the Government [has apologised for the treatment of Chagossians](#), it has concluded a return to be too challenging and expensive.

In November 2022 the UK and Mauritian Governments announced they [would enter into negotiations](#) to resolve “all outstanding issues” on the BIOT. This follows increasing criticism of the UK at the UN and international courts.

This briefing paper explains the creation of the BIOT, the removal of its population, legal disputes, and issues for the 2022/23 negotiations.

The creation of the BIOT

The UK took control of the Archipelago in 1814. It was then administered from Mauritius, a UK colony, until 1965, when the UK [created the BIOT through an Order in Council](#) (a law made by the Privy Council), ruled by a Commissioner.

This followed UK-US negotiations to establish a military base on the BIOT to counter Soviet and Chinese influence in the region. A 50-year agreement for the base [was signed in 1966](#) (PDF), and was [renewed for 20 years in 2016](#).

Mauritian Government ministers [agreed to the detachment prior to the country's independence in 1968](#) and accepted UK Government undertakings to cede the Archipelago to Mauritius when no longer needed for defence purposes. The UK also paid £3 million in recognition of the decision.

The removal of Chagossians

Citing the economic unsustainability of the Archipelago, from 1968 to 1973 the UK removed between [1,400 and 1,700 Chagossians from the BIOT](#) (though numbers are uncertain). Many were resettled in Mauritius, the Seychelles, and, from 2002, [in the UK](#) (PDF). Laws made by the UK's Commissioner [made it illegal to stay or return without permission](#).

The [UK has apologised](#) for the nature of their removal, and announced three payments to support their resettlement, with the [most recent in 2016](#).

Disputed sovereignty

The UK has [consistently defended its sovereignty of the BIOT](#), stating Mauritius has never held sovereignty over the Archipelago and [called for the dispute to be resolved bilaterally through talks](#), rather than international courts.

Since the 1980s, Mauritius has [advanced its sovereignty claims](#) (PDF) through international fora such as the UN, arguing the UK's retention of the BIOT constitutes an [unfinished act of decolonialisation](#) (PDF). Most recently, in 2017 the UN General Assembly [voted to refer the issue to the International Court of Justice](#) (ICJ), which in 2019 [advised the UK should end control within six months](#). A 2019 UN vote called for the UK to [adhere to the court's advice](#).

The UK Government has said the [ICJ advice is not a legally-binding judgment](#), and that it would cede the BIOT when no longer needed for defence purposes.

Disputes over the return of Chagossians

There has been litigation by Chagossians in UK courts seeking their right to return. The UK Government has commissioned two studies on the possibility of return, in 2002 and [in 2015](#) (PDF). In 2016, “on the grounds of feasibility, defence and security interests and cost to the British taxpayer,” the Government said a return [could not be supported](#).

Chagossians have [challenged the prohibition on their return](#) through the UK courts—their court victory in 2000 saw the Government repeal the BIOT ordinances prohibiting their return, but following the [2002 feasibility study](#) (PDF), restrictions were re-introduced in 2004. In 2007, the House of Lords ruled that the [UK Government had the legal power to prohibit their return](#).

2022/23 negotiations

In November 2022, the UK and Mauritian Governments announced they [would enter into negotiations](#) to resolve “all outstanding issues” on the BIOT, including sovereignty and the position of the Chagossians. These are intended to [conclude in early 2023](#).

The Governments have said the operation of the military base [will continue](#). Mauritian ministers have [previously offered the US a 99-year lease for the base](#). Mauritius has [backed the return of Chagossians to the Archipelago](#) (PDF) in the past but no change has been announced in the UK's position.

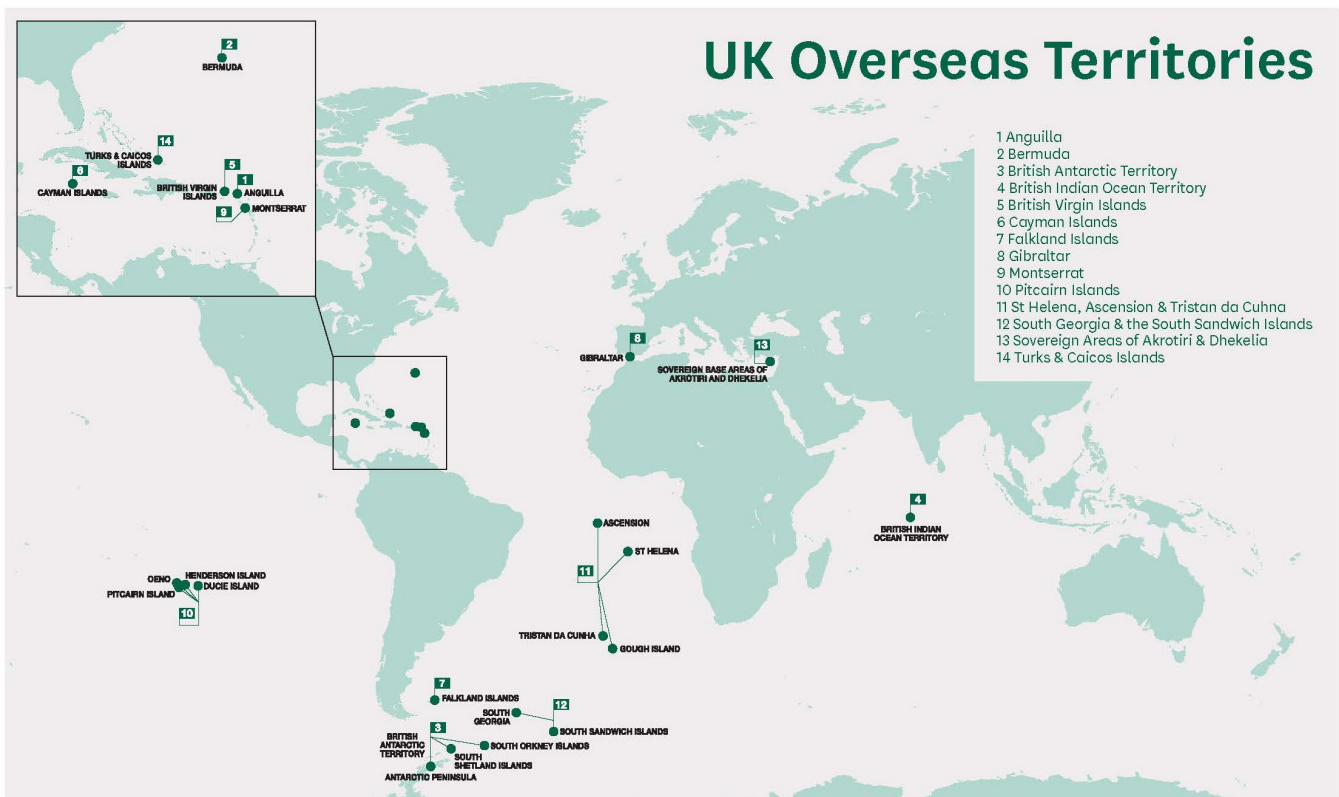
1 Background: The UK's Overseas Territories

The British Indian Ocean Territory (BIOT) is one of 14 UK Overseas Territories (OTs). More information on these Territories is provided in the [Overseas Territories Library briefings](#).

The Territories all have historic links to the UK and with the UK and Crown Dependencies like Jersey form one undivided realm, where the King is sovereign. This means they have no separate representation internationally.

Each Territory is governed separately and has its own constitution. The UK is responsible for their constitutions, which are made and amendable only by the UK Privy Council through an Order in Council, rather than local authorities. These Orders are legal instruments that have the force of law.

Only ten of the 14 Territories are permanently inhabited by British nationals. For the inhabited OTs, they each have their [own parliament and council](#), as well as a [UK-appointed Governor](#). The uninhabited Territories, which includes the BIOT, only have an appointed Commissioner.¹



Map adapted from Foreign & Commonwealth Office, [The Overseas Territories](#), 2012, CM8374, p10

¹ Commons Library, [The UK OTs and their Governors](#) and [The separation of powers in the UK's OTs](#).

2

The creation of the BIOT

The BIOT, also known as the Chagos Archipelago, is a collection of 58 islands in 640,000 square kilometres of the Indian Ocean. Its largest island is Diego Garcia, which accounts for half its land area.²

Its nearest neighbours are the Maldives and Sri Lanka. The sovereignty of the BIOT has long been disputed with Mauritius since the country gained independence from the UK in 1968 and joined the Commonwealth.

This section provides an outline of the BIOT's creation, developments since the 1960s, including the removal of its population, and disputes over its status.

2.1

Mauritian independence and the US military base

The UK took control of Mauritius from France in 1814, during the Napoleonic Wars.

UK establishes BIOT in 1965

The islands of the Chagos Archipelago were governed as a dependency of Mauritius (then a UK colony) until 1965.

In that year, through an Order in Council, the UK combined the islands with some from the British Seychelles colony, [to form the new distinct Territory](#) of the BIOT.³

The [Order in Council](#) conferred on a non-resident, UK-appointed Commissioner the power to make laws for the peace, order, and good government of the BIOT. It made no provisions for an elected assembly.⁴

Talks on a UK-US agreement from 1963

The decision to create the BIOT reflected the outcome of negotiations between the US and UK to establish a military base on the islands.

² Foreign & Commonwealth Office, [The Overseas Territories](#), 2012, CM8374, p96 and [BIOT](#)

³ Some of the Islands were returned to the Seychelles in 1976 upon its independence by the UK: Peter Sands, [The US and Britain in Diego Garcia: The future of a controversial base](#), 2009, p5

⁴ The BIOT Order 1965, accessed from BIOT Administration, [BIOT laws—the ordinances](#) 'BIOT constitution orders'

US-UK talks began in 1963, with the US seeking to develop strategic points in the region in the [context of Cold War rivalry and the threat of greater Soviet and Chinese influence in East Africa and South Asia](#). The US preferred uninhabited or lightly populated islands with friendly government for these bases, in order to minimise local opposition and the threat that the host government would move closer to the Soviet side in the Cold War.⁵

During US-UK talks, the UK Foreign Office [recognised these pressures](#) and suggested transferring control of Diego Garcia to minimise the risk of opposition:

The Foreign Office clearly indicated that control over the Chagos Archipelago (including Diego Garcia) should be transferred in such way as to minimize substantially or remove the possibility that use of the islands could be hampered by external pressures for self-determination.⁶

In 1966, the UK came to an agreement with the US to establish a joint military base on Diego Garcia, and for the land to be available for this purpose for an [“indefinitely long period”](#) (PDF).⁷

The initial agreement allowed for a period of 50 years (to 2016) and the potential for a further 20 years (to 2036—this extension was agreed between the US and the UK in 2016).⁸

UK-Mauritius talks and Mauritian independence, 1968

The UK’s decision to create a separate Territory was taken with the agreement of the Mauritian Council of Ministers, the payment of £3 million from the UK, and undertaking of the UK “to cede sovereignty of the territory to Mauritius when it is no longer required for defence purposes.”⁹

Following this agreement, Mauritius gained its independence from the UK in 1968, as a member of the Commonwealth.

The UK has consistently argued that Mauritius [has “never held sovereignty” over the BIOT](#), with the UK holding this continuously since 1814.¹⁰

However, from the 1960s many UN members have argued these acts constituted a dismemberment of Mauritius and a violation of UN resolutions

⁵ A. Erickson, W. Ladwig III, J. Mikolay, [Diego Garcia and the US’ emerging Indian Ocean Strategy](#), *Asian Security*, 6, 2010, pp214-37, at p221 and Sands, *The US and Britain in Diego Garcia*, p147

⁶ N. D. Howland, [Foreign relations of the United States, 1964-68](#), Volume 21, 2000, documents 33-50, quote from document 34, 3 March 1964

⁷ [UK and US Exchange of notes constituting an agreement concerning the availability for defence purposes of the BIOT](#), 30 December 1966 (PDF)

⁸ HLWS257 [[Updated on the BIOT](#)], 16 November 2016

⁹ Philippe Sands, *The last colony: A tale of exile, justice, and Britain’s colonial legacy*, 2022, pp41-3; International Court of Justice, [Legal consequence of the separation of the Chagos Archipelago from Mauritius: Written statement of the Republic of Mauritius](#) (PDF), 2018, para 2.34, pp63-78; PQ HL1516 [[BIOT: Sovereignty](#)], 5 July 2022

¹⁰ PQ HL1516 [[Chagos Islands: Sovereignty](#)], 19 July 2022

calling for the protection of the territorial integrity of states upon achieving their independence.¹¹ The UK Government has noted the first explicit Mauritian claims to sovereignty [date from the 1980s](#) (PDF),¹² though Mauritius argues this reflects its caution when still economically dependent on the UK.¹³

For more on legal disputes, see below, section 4.

2.2 The question of sovereignty

Both sides agree that the UK has committed for Mauritius to hold sovereignty over the BIOT when it is no longer needed for defence purposes.

In 1980, Prime Minister Ramgoolam of Mauritius told the UN General Assembly that the country reaffirmed its claim to Diego Garcia as the “natural heritage” of Mauritius and called for the disbandment of the BIOT. He argued the detachment of the Archipelago had been an [unlawful condition imposed on Mauritian ministers prior to independence](#) (PDF).¹⁴

The UK has argued the Archipelago was ruled as a dependency of Mauritius prior to independence “as a matter of convenience” and it was “never an integral part” of the colony. UK Governments have said independence [was not granted on the condition of agreeing to any detachment](#) (PDF).¹⁵

These positions inform the language both sides use—the UK Government says it will “cede” the Territory to Mauritius when longer needed for defence purposes, as it argues it was never part of Mauritius, while others state this will instead represent the “return” of land over which Mauritius has held sovereignty.

Section 4.1 provides more on the legal disputes over sovereignty.

2.3 The BIOT’s Marine Protection Area (MPA)

The BIOT’s ocean area is more than twice the size of the UK land area, and it has around 2,859 square kilometres of coral reef.

On 1 April 2010, the British Government announced that it would establish a Marine Protection Area (MPA) in the BIOT, where fishing would be banned (apart from Diego Garcia). This was despite opposition from the Mauritian

¹¹ Philippe Sands, *The last colony*, pp45-7

¹² [Mauritius v United Kingdom, 15 July 2013, Counter memorial submitted by the UK](#) (PDF), pp35-7

¹³ [Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965: Statement of Government of Mauritius](#) (PDF), 2018, p121

¹⁴ [Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965: Statement of Government of Mauritius](#) (PDF), 2018, p122

¹⁵ [Mauritius v United Kingdom, 15 July 2013, Counter memorial submitted by the UK](#) (PDF), pp12, 23, 27

Government, who argued the UK was in breach of international conventions by establishing the MPA.¹⁶

The UK's creation of the MPA was challenged by both the Mauritian Government and by Chagos Islanders.

Mauritius supplied the International Tribunal for the Law of the Sea with evidence suggesting the UK was using the MPA to prevent resettlement. However, the Tribunal did not accept this evidence, concluding in 2015 that there was no "ulterior motive or improper purpose."¹⁷

Section 4 provides more on the associated legal disputes.

¹⁶ Commons Library, [The UK's OTs: Climate change and biodiversity](#), pp7, 23-24

¹⁷ [Chagos Marine Protected Area Arbitration Between the Republic of Mauritius and the UK](#) (PDF), 18 March 2015, para 543

3 Removal of Chagossians, 1968-73

In addition to the disputed sovereignty of the BIOT, the second controversy arising from the creation of the Territory was the removal of its population by the UK between 1968 and 1973. This means that the Territory has no permanent population (aside from the military base).

3.1 How were the population removed?

The UK Government has [“expressed sincere regret about the manner in which Chagossians were removed from BIOT in the 1960s and 1970,”](#) but has concluded their return is now not possible.¹⁸

Most of the population’s ancestors were transported to the Archipelago by the French in the eighteenth century from Africa to work on plantations.

The numbers living in the BIOT in the 1960s are uncertain, but the current BIOT Administration estimates between 1,400 and 1,700 people were removed from the Archipelago and most went to Mauritius.¹⁹

A 1971 local ordinance, made by the Commissioner, made it illegal to enter or remain in the Territory without a permit.²⁰

Subsequent orders have reiterated the ban on Islanders returning: British Indian Ocean Territory (Constitution) Order 2004 and the British Indian Ocean Territory (Immigration) Order 2004.²¹

3.2 Many Chagossians are now in the UK

The number of Chagossians and their relatives in the UK is uncertain, with estimates of between 3,000 and 10,000 people. Many live in Crawley,

¹⁸ PQ 262406 [[BIOT](#)], 13 June 2019

¹⁹ BIOT, [BIOT History](#)

²⁰ BIOT Immigration Ordinance 1971, accessed from BIOT Administration, [BIOT laws—the ordinances](#) ‘BIOT constitution orders’

²¹ Accessible via, [BIOT laws—the ordinances](#) ‘BIOT constitution orders’

Sussex.²² Wythenshawe in Manchester [also has around 400 Chagossians](#), according to the UK Chagos Support Association.²³

In 2002, the [British Overseas Territories Act](#) granted British citizenship to those resettled from the Chagos Archipelago between 1969 and 1982, and their children.²⁴

In 2022, the UK Government said that applications for the descendants of those resettled and born outside British Territory would also be [allowed from November 2022](#). There is a time limit of five years on applications.²⁵

3.3 UK funding for Chagossians

The UK has paid three amounts of funding to the Chagossians or the Mauritian Government for their resettlement.

1) Costs of resettlement, 1972

In 1972, the UK paid £650,000 to the Mauritius Government to assist with the resettlement of Chagossians.

This was disbursed with accrued interest in 1977 and 1978 to 595 families.²⁶

2) 1982 agreement and Ilois Trust Fund

Following a 1982 agreement between the UK Government, the Government of Mauritius, and representatives of Chagossians, a further £4 million was paid by the UK into the Ilois Trust Fund for the benefit of Chagossians. The Government of Mauritius also contributed some land to the Trust Fund and the Indian Government contributed £1 million.²⁷

In 2016, the UK Government said 1,344 Chagossians received compensation through the Fund, mainly between 1982 and 1984. Final disbursements were made in 1987.²⁸

According to the European Court of Human Rights, no sums were paid to the Chagossians on the Seychelles, who numbered around 500 people.²⁹

²² The Guardian, [Evicted Chagos Islands' descendants to get British citizenship](#), 1 September 2022 and BBC News, [Chagos islands cannot return home, says Supreme Court](#), 29 June 2016

²³ UK Chagos Support Association, [Manchester Chagossians community trip](#), 5 September 2017

²⁴ [British Overseas Territories Act 2002](#), Section 6

²⁵ Home Office, [Nationality and Borders Bill: Chagossians nationality factsheet](#), 31 October 2022

²⁶ PQ 34395 [[Ilois: Resettlement](#)], 21 April 2016

²⁷ PQ 34395 [[Ilois: Resettlement](#)], 21 April 2016

²⁸ PQ 34395 [[Ilois: Resettlement](#)], 21 April 2016

²⁹ [\[2012\] ECHR 2094_35622/04](#), para 12

In 2019, the UK Government said it considered this to be [final compensation](#):

Substantial compensation (around £15.5 million in [2019] current prices) has been paid to Chagossians since that time. British courts and the European Court of Human Rights have confirmed that compensation has been paid in full and final settlement. The Government currently has no plans to review this decision.³⁰

3) Further package of support, 2016-2026

In November 2016, the UK Government [announced a support package of £40 million](#) over ten years to support Chagossians in the communities in which they currently live, primarily the UK, Mauritius and Seychelles.³¹

This was in response to the Government's assessment that resettlement of BIOT [could not be supported](#) "on the grounds of feasibility, defence and security interests and cost to the British taxpayer"³² (see below, page 13 to 15, for more on potential resettlement).

To November 2021, [a total of £810,000 has been spent](#).³³ Spending focuses on [health, social care, education, employment and culture](#).³⁴

Is it compensation?

In 2016, the Government stated the support package ["is not compensation"](#) and instead a ["forward-looking" package](#) of support:

We have to look to the future, not the past. Compensation has already been agreed and upheld in the courts, so we are now trying to offer a forward-looking support package of £40 million in the manner that I described.³⁵

The Chagos Support Association similarly said it is [not an offer of compensation](#).³⁶

3.4

Calls to return and UK Government position

Successive UK Governments have said it is not possible for Chagossians to return to the BIOT. They cite the continuing need of the Territory for defence purposes, including the islands around Diego Garcia, and the lack of

³⁰ PQ HL14332 [[Ilois: Resettlement](#)], 19 March 2019. This is a reference to cases such as those considered by the [European Court of Human Rights in 2012](#) (PDF)

³¹ HLWS257 [[Update on the British Indian Ocean Territory](#)], 16 November 2016

³² HLWS257 [[Update on the British Indian Ocean Territory](#)], 16 November 2016

³³ PQ 67088 [[Ilois: Finance](#)], 9 November 2021

³⁴ Foreign, Commonwealth and Development Office, [Chagossian support package 2021 to 2022](#), 9 August 2021

³⁵ HC Deb, [17 November 2016](#), c931; PQ 2343 [[Ilois: Compensation](#)], 10 July 2017

³⁶ UK Chagos Support Association, [Chagossians react to UK Government £40m package](#), 16 February 2017

feasibility of resettlement.³⁷ The Government’s policy has been challenged in court—this is discussed in section 4, below.

Government reports and decisions against resettlement

Several Government-commissioned reports have been conducted.

A 2002 report concluded that rising sea levels and an environment highly vulnerable to human-induced disturbance [made repopulation challenging](#) (PDF) (much of the land is less than one metre above sea level).³⁸ In 2004, [Foreign Secretary Robin Cook said](#):

Anything other than short-term resettlement on a purely subsistence basis would be highly precarious and would involve expensive underwriting by the UK Government for an open-ended period—probably permanently [...] it would be impossible for the Government to promote or even permit resettlement to take place. After long and careful consideration, we have therefore decided to legislate to prevent it [through the 2004 BIOT orders—see above, 11].³⁹

The report’s conclusions have been subsequently criticised, including for its estimates of [changing sea levels on the Archipelago](#).⁴⁰

A further [feasibility study was published in 2015](#). The UK Government said it was “an important milestone.”⁴¹ The review, carried out by KPMG, considered a range of options for resettlement, and noted that while there would be challenges, there were “no fundamental legal obstacles” to a resettlement.⁴²

Following the report, the Government commissioned a consultation on the potential resettlement of the BIOT, published in 2016.

This found that a [majority of the Chagossians who responded were in favour of resettlement in principle](#) (2% were against in all circumstances) but many expressed concern at how plausible return was, including how accessible jobs beyond defence and the BIOT administration would be.⁴³

In response to the consultation, the Government said it had [decided against resettlement](#), on the “grounds of feasibility, defence and security interests, and cost to the British taxpayer,” citing the challenges of developing modern

³⁷ [Foreign and Commonwealth Office response to Foreign Affairs Committee Overseas Territories](#), Cm7473, 2008, para 16

³⁸ Royal Haskoning, Agrisystems and MacAlister Elliot For the Foreign & Commonwealth Office, [Feasibility study for the resettlement of the Chagos Archipelago, Phase 2B, Volume 1](#) (PDF) 2002, pp162-3, 167

³⁹ [Written Ministerial Statement: 15 June 2004](#), col 32WS

⁴⁰ HC Deb, [25 October 2016](#), 66WH; New Scientist, [Chagos islands in sea-level rise controversy](#), 23 November 2022

⁴¹ Foreign & Commonwealth Office, [Policy review of resettlement of the BIOT](#), 10 February 2015

⁴² KPMG, [BIOT: Feasibility study report volume 1](#), January 2015, p2

⁴³ Foreign & Commonwealth Office, [BIOT resettlement policy review consultation](#), updated 21 January 2016

infrastructure, economic opportunities, and the low-lying nature of the islands. It instead pledged additional funding support for the Chagossians (see above, pages 12 to 13).⁴⁴

Response to Government policy on resettlement

The All-Party Parliamentary Group (APPG) on the Chagos Islands have been critical of UK policy.

In response to the Government's decision in 2016, Andrew Rosindell MP, the APPG's Chair, said the decision denied the Chagossians, as British subjects, the "same rights, freedoms and self-determination that all British citizens should have" and [undermined the UK's defence of the right to self-determination for other OTs, including the Falklands and Gibraltar](#).⁴⁵

Responding for the Labour Party, the Shadow Foreign Secretary, Emily Thornbury, [suggested a pilot programme of resettlement](#), in line with one of the options considered in the KPMG report.⁴⁶

The APPG has continued to argue in favour of a pilot resettlement and exploring ways for Chagossians to live and work on the island through the creation of environmental, scientific and heritage opportunities.⁴⁷

Position of Mauritian Government

The Government of Mauritius supports the return of the Chagossians to the Archipelago. In its 2019/20 budget, it allocated around 50 million rupees to support any potential resettlement.⁴⁸

⁴⁴ HLWS257 [[Update on the BIOT](#)], 16 November 2022

⁴⁵ HC Deb, [17 November 2016](#), c386

⁴⁶ HC Deb, [17 November 2016](#), c387

⁴⁷ Commons Library, [Disputes over the BIOT](#), February 2021 pp9-10

⁴⁸ UN Secretary General, [Advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965](#), 18 May 2020 (PDF), para 1.2

4

Legal challenges to UK administration

Further reading on legal challenges.

The below provides a non-exhaustive summary of legal challenges, judgements and advisory opinions relating to the UK's sovereignty over the BIOT and the rights of the Chagossians to return.

For more information on these challenges, see:

- Commons Library, [Disputes over the BIOT: A survey](#), 2013. History of the BIOT and legal cases to 2013.
- Commons Library, [Disputes over the BIOT: February 2021 update](#). Legal cases from 2013 to 2021.
- Philippe Sands, *The last colony: A tale of exile, justice, and Britain's colonial legacy*, 2022. Sands acted as counsel for Mauritius in recent international cases.

4.1

Sovereignty and UK administration

2010 Mauritian case against the MPA

In 2010, the UK created the Marine Protection Area (MPA) around the BIOT. In the same year, Mauritius lodged a case against the MPA under the UN Convention on the Law of the Sea, arguing the UK had no powers to declare an MPA as it was not a “coastal state” under the Convention in relation to the BIOT.⁴⁹

In 2015, the [Permanent Court of Arbitration \(PCA\)](#), which considers a range of international disputes including on maritime boundaries and sovereignty, unanimously ruled that the MPA declared by the UK was not compatible with obligations under the Convention to give proper regard to the rights of Mauritius and consult with it.⁵⁰

⁴⁹ [An arbitral tribunal constituted under Annex VII of the United Nations convention on the law of the sea in the matter of the Chagos MPA](#) (PDF) March 2015, paras 7-8

⁵⁰ As above, paras 528-536

It also found that the undertaking to “return the Chagos Archipelago to Mauritius when no longer needed for defence purposes is legally binding.”⁵¹

However, the Tribunal did not accept evidence from Mauritius that the MPA was intended as a means to prevent Chagossians resettlement.⁵²

This ruling is final and binding.

The UK’s position [is not that the tribunal’s ruling is tantamount to finding the MPA unlawful](#), but rather than the UK should have consulted Mauritius about its establishment. It said it would be open to bilateral talks.⁵³

2013-2018 Chagossian case against the MPA in the UK

The Chagos Refugees’ Group argued that the MPA had an improper motive: namely to make resettlement impractical (due to the ban on fishing) and that the consultation on its creation was flawed by the failure to disclose the existence on the part of Mauritius of inshore fishing rights.⁵⁴

Beginning in the High Court, the case reached the UK Supreme Court in 2017. It endorsed the verdicts of the lower courts that the MPA consultation process was legal and had not been created for an improper purpose.⁵⁵

2019 International Court of Justice

In July 2016, Prime Minister Pravin Jugnauth announced that Mauritius would table a resolution at the UN General Assembly seeking to refer the issue of sovereignty to the International Court of Justice (ICJ) for an Advisory Opinion.

In 2017, the UN General Assembly voted to refer the issue to the ICJ—the UK said this was an inappropriate use of the mechanism:

[It is] an attempt to circumvent the principle that no State should be compelled to have its bilateral disputes submitted for judicial settlement without its consent, not least on matters of sovereignty.⁵⁶

The ICJ issued its Advisory Opinion in February 2019. This said:

The process of decolonization of Mauritius was not lawfully completed in 1968 [...]

⁵¹ As above, para 547

⁵² As above, para 543

⁵³ BIOT, [Marine Protected Area](#), accessed 10 November 2022

⁵⁴ [2018] UKSC 3 [R \(on the application of Bancoult No 3\) \(Appellant\) v Secretary of State for Foreign and Commonwealth Affairs \(Respondent\)](#) (PDF), 8 February 2018, para 4

⁵⁵ As above, paras 49, 63

⁵⁶ HCWS10 [\[BIOT\]](#), 16 June 2017

The United Kingdom’s continued administration of the Chagos Archipelago constitutes a wrongful act [...]

The United Kingdom has an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible [...].⁵⁷

The UK Government [emphasised that the hearing was an “advisory opinion, not a judgment.”](#) and that it remained a bilateral dispute with Mauritius that required a bilateral solution.⁵⁸

Mauritian Prime Minister Jugnauth [welcomed the court’s statement:](#)

Our territorial integrity will now be made complete, and when that occurs, the Chagossians and their descendants will finally be able to return home.⁵⁹

In May 2019, the General Assembly, which had requested the advisory opinion, [voted in favour of a resolution calling on the UK to end its administration of the BIOT within six months.](#) It also called on the UK to work with Mauritius to facilitate the resettlement of Chagossians who wished to return to the archipelago.⁶⁰

2021 International Tribunal for the law of the Sea case

In September 2019, the Special Chamber of the International Tribunal for the Law of the Sea began to consider a case between Mauritius and the Maldives over a disputed maritime boundary.⁶¹

The Maldives had become involved in the BIOT dispute as its exclusive economic zone (the sea area for which a state has jurisdiction over marine resources) overlaps with that of the Archipelago.

The Maldives held that the Tribunal did not have jurisdiction to decide on the maritime boundaries between itself and Mauritius due to the existing sovereignty dispute between Mauritius and the UK over the Chagos Archipelago.⁶²

While the Tribunal does not have competence over territorial disputes, it stated the issue had been considered by the ICJ (see above) and that “Mauritius’ sovereignty over the Chagos Archipelago can be inferred from the ICJ’s determinations.”⁶³

⁵⁷ International Court of Justice, [Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965: Summary of advisory opinion](#) (PDF), 25 February 2019, p12

⁵⁸ HC Deb, [26 February 2019](#), c145

⁵⁹ Reuters, [World Court- Britain must return Indian Ocean to Mauritius](#), 25 February 2019

⁶⁰ UN, [General Assembly welcomes ICJ opinion](#), 22 May 2019

⁶¹ International Tribunal for the Law of the Sea, [Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean](#) (PDF), 28 January 2021, p1

⁶² As above, p2

⁶³ International Tribunal for the Law of the Sea, [Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean](#) (PDF), 28 January 2021, p4

In February 2021, the UK Government said it was aware of the Tribunal's ruling, and that the UK had not been party to the case. It [argued that the statement](#):

Can have no effect for the UK or for maritime delimitation between the UK (in respect of the British Indian Ocean Territory) and the Republic of the Maldives.⁶⁴

However, commentators have argued the case has significant implications for the claims of the UK to patrol the BIOT and management of the MPA.⁶⁵

4.2

The rights of Chagossians to return

Legal cases in the UK have generally re-affirmed the decision, and right, of the UK Government to limit the return of Chagossians to the Archipelago.

1975: Vencatassen claim for compensation

A former resident of the BIOT, Michel Vencatassen, brought a claim against the UK Government for his forced removal from Diego Garcia in 1971. To avoid the case coming to court, the UK settled the case for £4 million, to be held in trust for Chagossians. This formed the basis of the 1982 Trust Fund (see above, page 12).⁶⁶

1998-2000: Bancoult challenge to 1971 ordinance prohibiting returns

Olivier Bancoult, one of those forced to leave the Archipelago and leader of the Chagos Refugees Group, challenged the 1971 immigration ordinance that prevented the return of Chagossians in the UK High Court in 1998.

In 2000, the High Court found that the powers of the UK Commissioner did not allow for the removal of the islanders.

The Government accepted the verdict, and the Commissioner repealed the 1971 ordinance. The Commissioner then introduced a new law which allowed for entry to the BIOT to those who were an Overseas Territory citizen by virtue of their connection with the Territory, allowing a potential return.⁶⁷

However, this decision was later reversed by Orders in Council made by the UK Government. See Bancoult's 2004 challenge, below.

⁶⁴ PQ 148829 [[BIOT: Navy](#)], 8 February 2021

⁶⁵ Commons Library, [Disputes over the BIOT: February 2021 update](#), p26

⁶⁶ Philippe Sands, *The last colony*, 2022, p68

⁶⁷ [\[2008\] UKHL 61 R \(on the application of Bancoult\) vs Secretary of State for Foreign & Commonwealth Affairs](#), paras 14-18

2002-2004 Decision on compensation

In 2004, following litigation in the UK, the Court of Appeal affirmed that the £4 million compensation paid in response to the Vencatassen case was the final sum, with the UK Government having “discharged its obligations to the Chagossians by payment in full and final settlement.”⁶⁸

2004-2008: Bancoult challenge to new orders prohibiting return

While the Government accepted the High Court judgment in 2000, in 2004 it made new Orders in Council preventing Chagossians from returning, citing the costs and environmental challenges this would involve as well as changes in the international security climate.⁶⁹

Bancoult challenged the decision in the High Court, which ruled the Orders were unlawful and irrational. The Government then appealed to the Court of Appeal, that in 2007 also found in favour of the Chagossians and that preventing their return was unlawful.⁷⁰

In 2007, the Government appealed the case to the House of Lords, then the UK’s highest court. By 3 to 2, the judges ruled in favour of the Government and said that it was, through the Privy Council, entitled to legislate for a colony of the UK. This meant the Orders in Council remained in force.⁷¹

Following the 2008 judgement, the Chagos Refugee Group took the case to the European Court on Human Rights. In December 2012, the Court ruled the application for the case to be considered under the European Convention on Human Rights was inadmissible.⁷²

Resettlement decision in the Supreme Court rejected, 2015-16

In 2015 the UK Supreme Court heard an application on the 2008 verdict of the House of Lords and dismissed the appeal by a vote of 3 to 2.

However, it did note that it was open for Chagossians to mount a new challenge in light of the more recent study on resettlement carried out by KPMG.⁷³

⁶⁸ As above, para 21

⁶⁹ As above, para 26

⁷⁰ As above, para 28

⁷¹ Commons Library, [Disputes over the BIOT: A survey](#), 2013, pp26-7

⁷² Commons Library, [Disputes over the BIOT: A survey](#), pp6-8

⁷³ [\[2016\] UKSC 35, R \(on application of Bancoult \(No2\) v Secretary of State for Foreign and Commonwealth Affairs](#), June 2016, Press summary

Further review on resettlement rejected, 2019-2020

A judicial review of the Government's 2016 decision to oppose resettlement was held in the UK's High Court in 2019. Its ruling found against the Chagossians challenge to the decision.⁷⁴

The Court of Appeal granted leave to appeal, and judgment was issued in 2020. The appeal centred around the applicability of the European Convention on Human Rights to the BIOT, whether the Divisional Court had applied the right level of scrutiny to the Government's decision making, and the rationality of the decision made by the Government in 2016. The appeal was dismissed on all grounds.⁷⁵

The appellants hoped to appeal to the UK Supreme Court.

⁷⁴ [\[2019\] EWHC 221, R \(on application of Hoareau and Bancoult\) v Secretary of State for Foreign and Commonwealth Affairs](#) (PDF), February 2019, paras 128, 201, 275, 299

⁷⁵ [\[2020\] EWCA Civ 1010, R \(on application of Hoareau and Bancoult\) v Secretary of State for Foreign and Commonwealth Affairs](#) (PDF), July 2020, paras 90, 144, 161, 183

5 Planned negotiations in 2022/23

5.1 Changing international opinion on the BIOT

United Nations votes

The UK has found itself increasingly isolated over its control of the BIOT at the United Nations.

In order for the dispute to be referred to the International Court of Justice (see above, page 17), a majority of UN General Assembly members are required to vote in favour.

In 2017, 95 countries voted in favour of referral, with 15 against (65 abstained). While the UK and the US spoke against, arguing it was a bilateral dispute, many countries, such as India and the Group of African States, argued the [move was necessary to complete decolonisation](#).⁷⁶

Following the court's advisory ruling in 2019, only 6 countries (Australia, Hungary, Israel, Maldives, UK and US) voted against a General Assembly resolution [demanding the unconditional withdrawal of the UK from the Territory within six months](#). 116 countries voted in support of the resolution and 56 countries abstained.⁷⁷

The position of the Maldives, which is the nearest state to the BIOT, has also recently changed, stating in 2022 that it would now vote in favour of a UN General Assembly motion [recognising the Archipelago as part of Mauritius](#).⁷⁸

US and UK's strategic shift in the region

An additional reason for the new negotiations may be the strategic shift in US and UK foreign policy towards Asia and the Indo-Pacific in response to China's growing economic, maritime, and military power.

Although neither the UK nor Mauritian statement on the new negotiations cite a reason for them,⁷⁹ analysis by the Carnegie Center argues that territorial disputes in the Indian Ocean, which also involve France and some of its

⁷⁶ UN, [General Assembly adopts resolution seeking international court's advisory opinion on pre-independence separation of Chagos \[...\]](#), 22 June 2017

⁷⁷ UN, [General Assembly welcomes international court of justice opinion on Chagos Archipelago](#), 22 May 2019

⁷⁸ The Times of Addu, [Attorney General defences stand to recognise Chagos as part of Mauritius](#), 23 October 2022

⁷⁹ HCWS354 [[Chagos Archipelago](#)], 3 November 2022

former colonies, “[open the door for islands to deepen their relationship with China.](#)”⁸⁰

Commentators note that resolving a long-standing territorial dispute and a point of disagreement in international law and UN opinion [may form part of the UK’s attempts to strengthen regional alliances against China.](#)⁸¹

5.2 Statements on negotiations, November 2022

On 3 November 2022, the Foreign Secretary, James Cleverly, announced [that the UK would enter into negotiations with Mauritius](#) to resolve “all outstanding issues” relating to the BIOT. This includes the exercise of sovereignty.⁸²

He said the agreement would be made based on international law and take into account relevant legal proceedings and include issues relating to the former inhabitants of the Archipelago.

This announcement followed bilateral talks between the UK Prime Minister, Liz Truss, and Prime Minister Jugnauth at the UN General Assembly earlier in 2022.

The Governments are entering negotiations with a view to achieve an agreement in early 2023.⁸³

Speaking the same day, the Mauritian Prime Minister, Pravind Kumar Jugnauth, [made a similar statement and undertakings](#) (PDF) to the country’s National Assembly.⁸⁴

Past talks have not succeeded

These are not the first talks between the UK and Mauritian Governments: Talks took place in 2009 but ended following the UK’s creation of the MPA in 2010, which the Mauritian Government had criticised as a unilateral decision.⁸⁵

Further rounds of talks also took place in 2016 and 2017, but this did not progress and ended when Mauritius sought a vote of the UN General Assembly to refer issue of sovereignty to the ICJ.⁸⁶

⁸⁰ Carnegie Endowment for International Peace, [We’re thinking about the Indian Ocean all wrong](#), 2 May 2022

⁸¹ Peter Harris, [Want a rules-based order for the Indo-Pacific? Start with Diego Garcia](#), 8 January 2021

⁸² HCWS354 [[Chagos Archipelago](#)], 3 November 2022

⁸³ HCWS354 [[Chagos Archipelago](#)], 3 November 2022

⁸⁴ National Assembly, [Hansard 3 November 2022](#), pp19-20 (PDF)

⁸⁵ Commons Library, [Disputes over the BIOT: A survey](#), May 2013, p14

⁸⁶ Commons Library, [Disputes over the BIOT: February 2021 update](#), pp15-16

5.3 What policy issues might be considered?

The UK Government's written statement sets out [several priorities for negotiations](#):

- Strengthen relations with Mauritius and work together on regional and global challenges.
- Increase cooperation on Indian Ocean security, maritime security, and marine protection.
- Conserve the environment
- Tackle crime, including illegal migration, fishing, drugs and arms trafficking.

The issue of UK sovereignty over the BIOT was last considered by the Foreign Affairs Committee in 2008, when it recommended the UK should take the views of Chagossians [into account when seeking a resolution to the sovereignty dispute](#) (PDF).⁸⁷

The Foreign Office said the views of other parties would be welcome, though any negotiations would be between the states concerned.⁸⁸

5.4 What is the significance of the negotiations for Chagossians?

The UK Government has not made any statements on the position of Chagossians, other than this will be [one of the outstanding issues](#) it intends to resolve.⁸⁹

Responding to the November 2022 announcement, Human Rights Watch has said the participation of Chagossians should be prioritised, and a [form of reparations and compensation arranged](#).⁹⁰

The UK Government previously argued that the Islands could not be resettled on the grounds of feasibility, defence and security interests, and the cost to

⁸⁷ [Foreign and Commonwealth Office response to Foreign Affairs Committee Overseas Territories](#), Cm7473, 2008, recommendation para 41 (PDF)

⁸⁸ As above, para 129-30

⁸⁹ HCWS354 [[Chagos Archipelago](#)], 3 November 2022

⁹⁰ Human Rights Watch, [Chagos Islands: Include long-expelled residents in negotiations](#), 8 November 2022

the UK taxpayer (see above, page 14).⁹¹ No change of the Government's position has been published.

5.5 What might this mean for the US base?

UK-US agreement lasts until 2036

In 2016, the UK renewed the agreement for the joint military base [until 2036](#).⁹²

The Foreign Secretary, James Cleverly, has said maintaining US and UK influence in the region is “at the heart of the British negotiations.”⁹³

Undertakings of Mauritian Government

Mauritius has sought to issue assurances that the base would be unaffected by any change in control.

There had been reports that the US was [considering Australia's Cocos Islands as an alternative to the BIOT](#), prior to the 2016 renewal.⁹⁴ While the US has been using the islands for some time, analysts stress that they [lack key air and port infrastructure](#) and there may be political opposition.⁹⁵

In 2012, Prime Minister Navin Ramgoolam said Mauritian sovereignty could be established [without prejudice to the use of Diego Garcia as a military base](#).⁹⁶

In 2020, Mauritius offered the US a [99-year lease for its Diego Garcia base](#),⁹⁷ and current Prime Minister Jugnauth said in 2021 that the end of any UK administration over the BIOT would have “no implications for the US military base,” which [his country “is committed to maintain](#).”⁹⁸

In November 2022, the UK Government said any agreement [will ensure the continued operation of the joint military facility](#) on Diego Garcia.⁹⁹

⁹¹ Foreign & Commonwealth Office, [BIOT resettlement policy review consultation](#), updated 21 January 2016

⁹² HLWS257 [[Update on the BIOT](#)], 16 November 2016

⁹³ Foreign Affairs Committee, [Oral evidence: Work of the FCDQ](#), 14 November 2022, Q254

⁹⁴ Reuters, [Australia open to US spy flights from Indian Ocean Island](#), 28 March 2012

⁹⁵ The Diplomat, [Australia's Cocos Islands cannot outpace America's troubled Diego Garcia](#), 16 April 2019

⁹⁶ All Africa, [Mauritius: Diego Garcia—The case, sovereignty and right of return](#), 18 June 2012

⁹⁷ Nikkei Asia, [Mauritius makes play for future with US base on Diego Garcia](#), 18 November 2020

⁹⁸ BBC News, [UN court rules UK has no sovereignty over Chagos islands](#), 28 January 2021

⁹⁹ HCWS354 [[Chagos Archipelago](#)], 3 November 2022

5.6 Could Diego Garcia be separated from the rest of the BIOT?

Some islands in the BIOT were ceded to the Seychelles in 1976 upon its independence from the UK, as they were not needed for defence purposes.

Some UK Parliamentarians have suggested the “transfer of the Outer Islands of the British Indian Ocean Territory to Mauritius,” arguing they are not needed for defence purposes.¹⁰⁰

However, in 2019 the UK Government said the outer islands are too small and undeveloped to sustain habitation and are “integral” to the effective operation of the defence facility on Diego Garcia.¹⁰¹

5.7 Could there be a co-management agreement?

The BIOT is not the only disputed Territory in the Indian Ocean, with France holding several islands.

In 2010, France agreed a co-management agreement with Mauritius over the French-held Tromelin Island. The agreement allows the co-management of the Island, including over its economy and management. The agreement did not prejudice any sovereignty claims over Tromelin.¹⁰²

If applied to the BIOT, this could include, for example, joint management over the MPA.

5.8 What does this mean for other Territories whose sovereignty is disputed?

The BIOT is not the only Territory that has seen the UK’s sovereignty challenged, with Argentina and Spain claiming sovereignty over the Falklands and Gibraltar, respectively. The UK rejects claims with both and cites the support of the local populations in remaining a UK OT.

Since the November announcement, Argentina’s foreign ministry has [called for talks over the Falklands](#).¹⁰³

¹⁰⁰ As suggested, for example: PQ 138065 [BIOT], 21 March 2022; HL Deb, [27 January 2022](#), c491

¹⁰¹ HC Deb, [3 July 2019](#), 586WH and PQ242056 [BIOT] 16 April 2019

¹⁰² Sean Murphy, International law relating to islands, 2019, p145

¹⁰³ Buenos Aires Times, [Argentina urges UK to resume talks over Malvinas Islands sovereignty](#), 3 November 2022

However, the Falkland Island's Governor, Alison Blake, said the UK-Mauritius negotiations [do not represent any broader shift in UK policy towards its Territories](#):

UK ministers are very clear that this does not represent a broader shift in UK policy towards the Falkland Islands, which is a modern relationship based on partnership, shared values and the right of the Falkland Islanders to determine their own future.¹⁰⁴

The Falkland Island's Legislative Assembly has issued a similar statement.¹⁰⁵

Gibraltar's Government also says it has no concerns: In November, Chief Minister Fabian Picardo said the [UK's commitment to Gibraltar is unaltered](#):

In the case of Gibraltar the United Kingdom has made a cast iron commitment not to transfer sovereignty against the wishes of the people of Gibraltar and not even to start a process of sovereignty discussions with which the Gibraltarians are not content

The Government of Gibraltar will never consent to any such discussions of sovereignty ever commencing.¹⁰⁶

Further reading on the Falklands and Gibraltar

- Lords Library, [Sovereignty since the ceasefire: The Falklands 40 years on](#), August 2022
- Commons Library, [Brexit and Gibraltar](#), May 2017. Includes discussion of Spanish claims to Gibraltar and the Gibraltar and UK Government response.

¹⁰⁴ Merco Press, [Chagos: Mauritius and UK agree military base on Diego Garcia will remain, says Foreign Secretary](#), 5 November 2022

¹⁰⁵ Merco Press, [Falkland Islands Legislative Assembly reaffirms rights to self-determination amid Chagos sovereignty negotiations](#), 4 November 2022

¹⁰⁶ Gibraltar Chronicle, [Britain agrees to sovereignty talks with Mauritius over Chagos Islands](#), 3 November 2022

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