

## **Diego Garcia residents fight second High Court Battle for the right to return to Chagos Islands**

12 December 2005 Deborah Gabriel

### **Chagos was given to Britain under the Treaty of Paris**

During the morning of December 6 2005 at the Royal Courts of Justice in the case of The Queen on the application of Bancoult vs Secretary Of State for The Foreign & Commonwealth Office, prosecuting barrister Sir Sidney Kentridge explained the background of the case to the court.

Presiding over the hearing is Lord Justice Hooper and Mr Justice Cresswell with John Howell QC acting for the defence.

Up until 1814 Mauritius was a French possession under the sovereignty of France but towards the end of the Napoleonic wars, under the Treaty of Paris Chagos was given to Great Britain.

In 1965 Chagos was separated from Mauritius and constituted as a separate colony. At the time there were at least 700 permanent residents on the island, including the parents of Olivier Bancoult.

The Chagossians had their own language: Creole French, their own culture and their parents and grandparents were buried on the island. They also had schools and a church.

Although they didn't own or lease land all those who lived on the Chagos islands were British Subjects. As the Chagos islands are legally constituted as a 'conquered state' by way of the Treaty of Paris, the Chagos islanders are considered as being under protection of the monarch.

Sir Sidney told the court: **"The legislative power of a British monarch is subordinate to that of parliament. The Queen therefore is not the supreme legislative power in the United Kingdom as that power rests with Parliament."**

The powers over a colony are the same as the laws in the UK that the Queen's powers are below that of the British Parliament. No parliamentary powers have ever been exercised in the Chagos case.

The extent of the Royal Prerogative (used to bring Orders in Council last year which banned the Chagossians from returning to their islands) is a matter of English law which applies throughout the Queen's dominions.

### **Indigenous population of Chagos islands removed to make way for US military base**

In 1965 the British Indian Ocean Territory (BIOT) was hived off as a separate colony to give effect to an agreement between the UK and the USA. The point of the agreement was so that the American Navy and Military could establish a military base on a smaller island, which they wanted to acquire free of the indigenous population.

They also wanted somewhere which was not under the representation of a Prime Minister, as Mauritius was. Therefore the US wanted the Chagos islands to be cleared of the population.

The British government agreed this should be done (defence disagrees). By 1973 the population of the Chagos islands was evacuated by Queen's orders using military necessity as a justification.

There was no prior consultation with the Chagossians nor was their consent requested. They were

never permitted to return – an order was made to this effect in 1971.

Sir Sidney told the court: **“Evicting the Chagossians from their islands was hidden from the United Nations, from the British public and from the British Parliament.”**

The land on which the Chagossians lived which was owned by a plantation company was acquired by the Crown and leased back to the plantation company, then closed down. Houses on the island of Diego Garcia were demolished.

In 1967 Olivier Bancoult was three years old when his sister was badly injured in a road accident. The whole family travelled to Mauritius so that she could get proper medical treatment.

When the little girl died the family tried to return to Chagos but there was no transportation so they were forced to remain in Mauritius even though all their belongings and possessions were in Chagos.

By 1971 no-one was allowed to go to the Chagos islands without a permit. The Immigration Ordinance made by the Commissioner of BIOT established the right to make laws for peace, order and good governance of the territory.

### **Implications of legal rulings**

The 2000 ruling restored the right of Chagossians to return to BIOT, restoring the right of abode. After forty years the Chagossians still want to return to their islands because they have always remained as strangers in Mauritius where they have not settled properly and have lived in misery.

The Chagossians wish to maintain their legal right to return and live on their islands if and when it becomes possible. They have no desire to go to Diego Garcia because of the US military base. Even after the 2000 ruling a permit would still be required to enter Diego Garcia.

Someone born on the island of Diego Garcia would have a fundamental legal right of abode but a permit would still be needed because of the military base. No-one who was an inhabitant of BIOT has ever been given employment there.

In 1980 Chagossians in Mauritius (but not in Seychelles) accepted compensation from the British government and a trust fund was set up in Mauritius.

Sir Sidney told the court that in 2004 when the Queen issued Orders in Council, the only powers she had were Prerogative powers. A new section was entered into the law stating that BIOT was set aside for defence purposes.

It stated that the security of Diego Garcia would be compromised if people had right of access to the islands as Chagos is only 200km from Diego Garcia.

Sir Sidney Kentridge argued: **“The defence considerations of the US and UK cannot over-ride the rights of the population”**, and that the Queen acted outside her prerogative in issuing the Orders in Council.

**“The Queen’s powers were meant to ensure peace, order and good governance and removing a population to make way for a military base is not in the interests of the population”**, the prosecutor said.

Such a law should have been referred to Parliament: **“Peace order and good governance is about people, not rocks and mountains.”**

Sir Sidney told the court that the Queen's prerogative does not extend to the power to remove the right of abode of the whole of 'the relevant class' (refers to the legal status according to BIOT of Olivier Bancoult and his family).

Such a law falls outside the category of peace, order and good governance of the territory. A law for the government of the people cannot cover a law designed to exclude them from their territory.

Her Majesty The Queen had no such powers to do this. Sir Sidney told the court: **“Every citizen under English constitutional law has a right of abode in their place of citizenship by birth or other close connection and it has been a matter of enduring law since time immemorial.”**

That right may be forfeited by statute in certain situations. But continued Sir Sidney: **“There is no precedent in English statute or common law for an entire population to be exiled or excluded from their country of citizenship or residence.”**

Sir Sidney told the court that there was always an alternative for the foreign office- an Act of Parliament, but it was never prepared to go to Parliament.

In 2004 when the Orders in Council were issued, again no parliamentary approval was sought to reverse the 2000 ruling. No such legislation has ever been passed by Parliament.

The case continues.

Outside the Royal Courts of justice before the case commenced, Jeremy Corbyn MP told Black Britain that the hearing is of major importance because:

**“It challenges the whole basis on which the government legislated last year, using the Royal Order to put through an Order in Council which is a totally undemocratic form of government.”**

PRINTED WITH KIND PERMISSION AT: [www.iamcolourful.com](http://www.iamcolourful.com)