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International Relations  
Degree in International Relations

Final Degree Project

## Chagos: Dispossession and Exile in Paradise

Student: Oriol Galobart Raset

Student NIU: 758853

Supervisor: Mariona Lloret Rodà

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## Abstract

*The expulsion of Chagossians in the late 1960s and early 1970s by British authorities resulted in the dispossession of the whole population and the survival of colonialism in the Indian Ocean. Following decades of resistance, the International Court of Justice's advisory opinion of 2019 condemned the British continued administration and required the decolonisation of the archipelago. This project investigates to what extent ICJ's opinion is based upon colonial grounds and how it has affected the Chagossian community to challenge their current situation of exile and dispossession. To this end, content analysis of primary and secondary sources was conducted while postcolonial theory provided the conceptual underpinnings. Through the development of the thesis, the paper identifies several colonial grounds in ICJ's opinion. Among them, the non-questioning of the obtention of British sovereignty, the reliance on colonial borders, and the non-identification of Chagossians as the concerned peoples for self-determination. Given the importance of these argumentations for the decolonisation process laid by the Court, the paper ascertains that ICJ's advisory opinion did not provide increased autonomy and agency to Chagossians. Therefore, the exiles cannot challenge their situation of dispossession by themselves and remain subject to the decisions taken by other sovereign entities.*

Keywords: Chagos, Postcolonialism, International Court of Justice, Decolonisation, International law.

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### List of Acronyms

BIOT	British Indian Ocean Territory
CRG	Chagos Refugees Group
FCO	Foreign Commonwealth Office
ICJ	International Court of Justice
UNGA	United Nations General Assembly
UK	United Kingdom of the Great Britain and Northern Ireland
US	United States of America

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Map of the Chagos Archipelago within the Indian Ocean

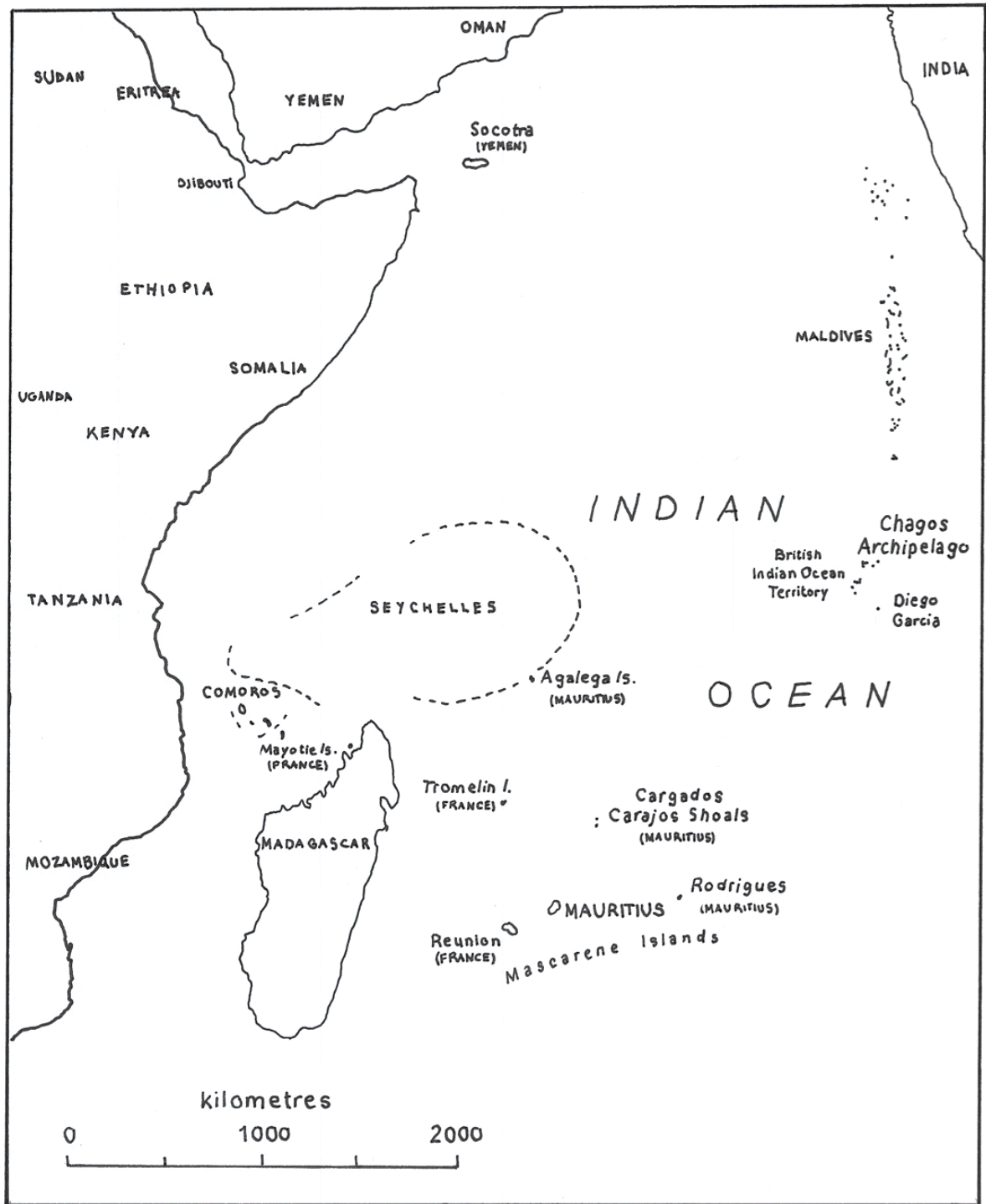


Fig. 1: Map depicting the Chagos Island and their relative remoteness within the Indian Ocean. Source: Adapted by the author.

## Map of the Chagos Archipelago and its Islands

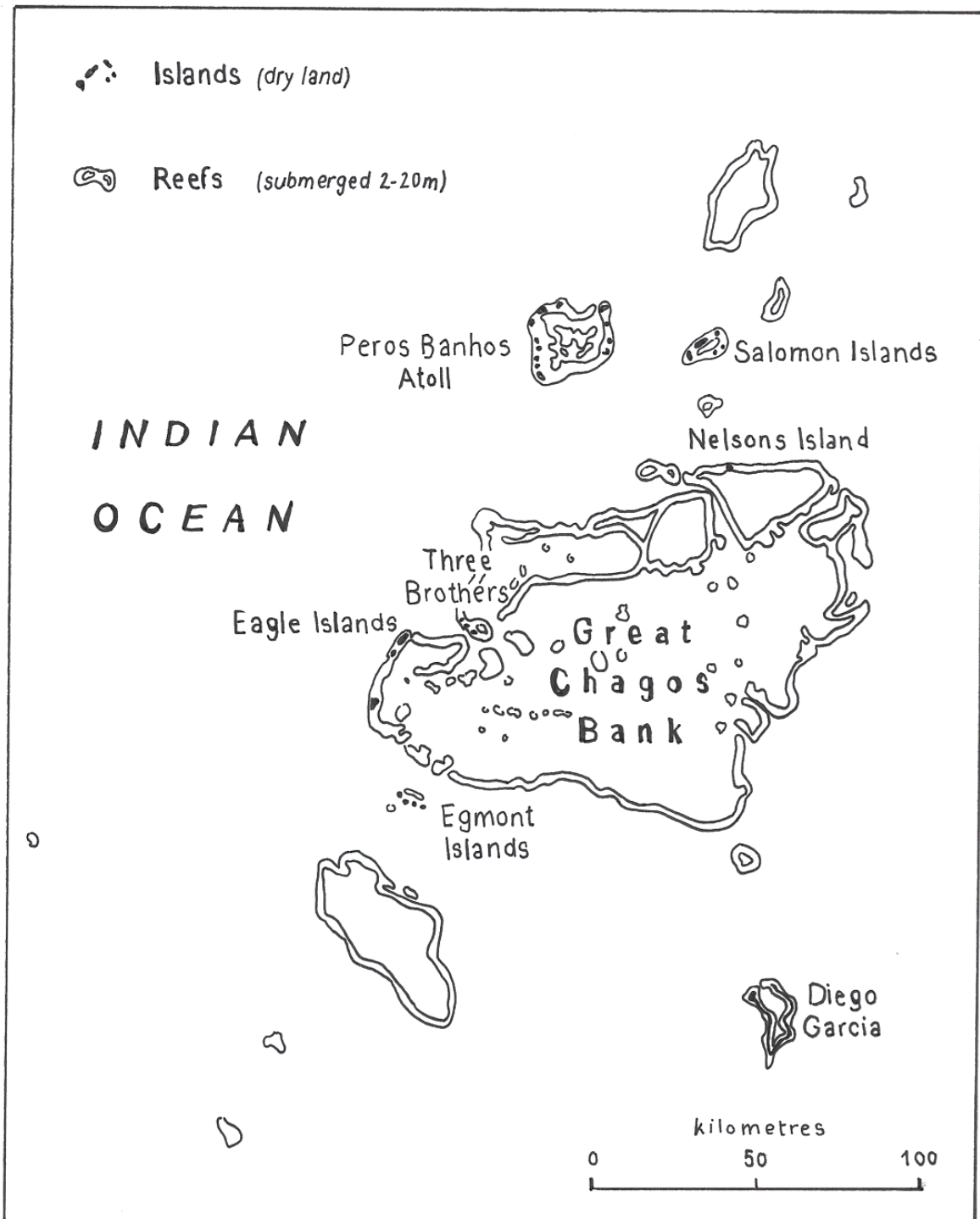


Fig. 2: Detailed map portraying the main group of islands in Chagos, namely: Diego Garcia, Salomon, and Peros Banhos. Source: Adapted by the author.

### Map of Diego Garcia and Main Military Facilities

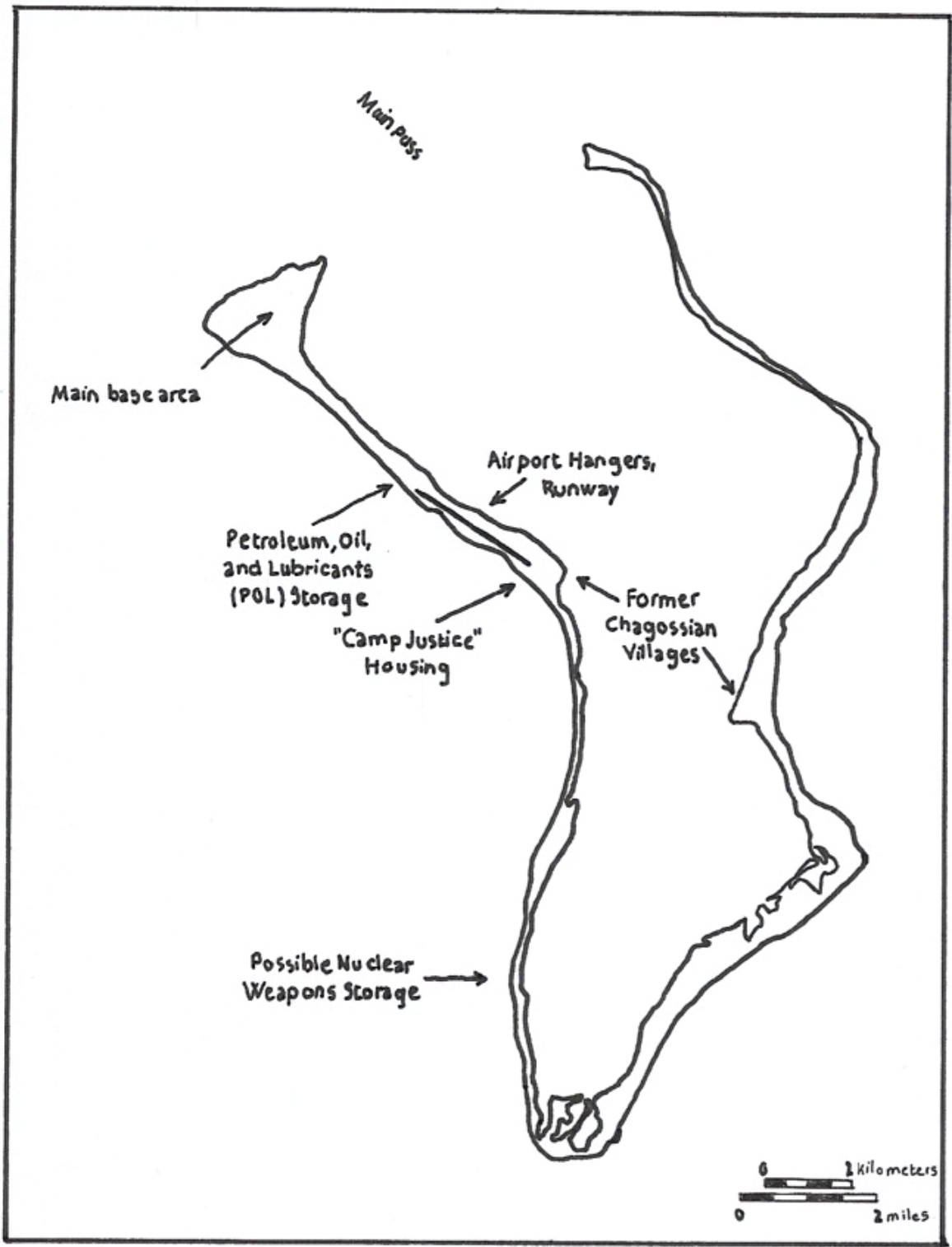


Fig. 3: Detailed map of Diego Garcia, the biggest Chagossian settlement and location of the American military base. Source: Adapted by the author from Vine in Evers and Kooy, 2011, p.XVIII.



## 1. Introduction

“Bury me in my home”, begged Serge Aristide referring to his lost homeland of Chagos (Another Paradise, 2019). Through the poignant testimonies offered by him and her daughter Sabrina Jean -activist and Chairwoman of Chagos Refugees Group UK- I was introduced to Chagossians and their indefatigable quest to return to their native land: the Chagos islands. This remote archipelago located in the Indian Ocean is a British Overseas Territory. However, it is not only British sovereignty that makes it a remarkable scenario, but a history of expulsion, human rights violations, and international judicial battles.

Paradoxically, while colonies around the world were emancipating in the 1960s, Chagos and its peoples experienced a process of increased colonial control by the British Empire. Between 1968 and 1973, British authorities expelled all the inhabitants of the archipelago to create an American military base. Chagossians were sent to Mauritius and Seychelles. As of today, they have not been able to return to their homeland. Once in exile, Chagossians articulated a relentless process of anti-colonial resistance.

Nonetheless, in 2019, the International Court of Justice shifted global attention towards the archipelago. The Court determined that “the process of decolonization of Mauritius was not lawfully completed [...] following the separation of the Chagos Archipelago” and that the current situation “is an unlawful act of a continuing character” (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 2019, para. 183 and 177). Thus, certifying that Chagos is an illegal remnant of the British Empire.

In this manner, Chagos constitutes a unique case in the world that reflects the contemporaneity and pervasiveness of colonialism in today’s international global order. Moreover, the human rights violations and deprivations that Chagossians have suffered, and still suffer by being denied the return to their homes, are coupled with a general unawareness of the situation that, unfortunately, encompasses the field of International Relations too. On a personal level, through this project, I would like to contribute to increase Chagossians’ visibility and denounce the situation of international helplessness that they suffer. Being aware of the limited means I have at my disposal, I hope I can use

them to fulfil the request of spreading the word within academia that Chagossian activist Frankie Bontemps transmitted me (2021<sup>1</sup>).

The general objective of this project is to provide an overview of Chagossians' agency and capacity to decide over their homeland in the wake of the International Court of Justice's advisory opinion of 2019 and the decolonisation process established. For that purpose, the following specific objectives have been elaborated: to critically review the International Court's judgement focusing on any colonial biases it might have, to determine the effects that the advisory opinion has had for Chagossian resistance and resettlement, and to provide a portrayal of the exiled Chagossian community's role in the international system after ICJ's proposed decolonisation.

The paper intends to unfold in a manner consistent with the idea that Chagossians are the central actors when dealing with their future. Nonetheless, the project categorically refuses to "speak for" Chagossians or propose solutions, as it is their prerogative to do so. On the contrary, this project sustains the idea that International Relations professionals should encourage the voices of Chagossians to be heard and taken into account.

In order to carry out the objectives and develop the paper, I have elaborated the following research question and thesis:

To what extent the decolonisation process of the Chagos Islands following the International Court of Justice's 2019 Advisory Opinion is based upon colonial grounds? How does it affect Chagossians' capacity to articulate their demands and challenge their current situation of exile and dispossession?

The decolonisation process of the Chagos Islands in the eyes of international law is based upon colonial grounds as it does not question how possession of land was obtained; it emphasises the principle of territorial integrity, which links the process to the metropolitan administration of the colonies; and does not recognise explicitly Chagossians as political subjects when dealing with self-determination. Consequently, that entails a vision of Chagossians as an agentless collective whose rights are permanently dependent upon other sovereign states both to be demanded

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<sup>1</sup> See full interview in the Annex.

and exercised. The lack of recognition pushes their fight outside the international legal scenario and strengthens the objectives that the UK achieved through their expulsion.

## 1.2 Methodology

To develop the thesis, extensive primary and secondary sources have been gathered, focusing on qualitative methods. Regarding primary sources, it is noteworthy the use of rulings by international judicial bodies, treaties, official minutes, resolutions by international organisations, and testimonies offered by the Chagossian community.

In this sense, the International Court of Justice's advisory opinion (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 2019) together with the documents attached, such as individual opinions by judges, verbatim records, or written submission, have been of utmost importance for the project. These documents establish the legal framework surrounding Chagos and lay the grounds for the decolonisation process. Studying its provisions is a necessary step to address the objectives that guide this paper and to develop the juridical segment of the analysis.

It is also worth mentioning a variety of Chagossian organisations (Chagos Refugees Group, 2020; Chagos Support, 2020; Chagossian Voices, 2021) which offer information and access to activists and their stances, opinions, and requests. Moreover, the project also includes an interview with Frankie Bontemps, committee chair of the Chagos Islands Welfare Group and collaborator at Chagossian Voices. He provides direct testimony of the demands and the complex reality that the collective faces.

In this project, I intend to explore the singularities of the Chagossian case from a non-state centric perspective. To this end, the lost "Paradise" that constitutes Chagos in the shared imaginary of the exiles acquires a primordial role. It is an exercise of humanising the consequences of colonialism by acknowledging Chagos not only as a coveted geopolitical spot, but as a space of resistance and collective empowerment. Therefore, allowing the inclusion of critical perspectives and Chagossians' voices when analysing the case. For this reason, the International Relations theory employed in this project is postcolonialism, as it provides the most suitable concepts and tools.

Drawing on the initial writings by Fanon and wa Thiong'o, with a special mention to Said's masterpiece *Orientalism* (Fanon, 1963; Thiong'o, 1969; Said, 2003), postcolonialism developed as a critical field in constant evolution and revision. In International Relations, postcolonialism offers the tools to discuss the institution of colonialism keeping in mind it is not a phenomenon of the past. On the contrary, it "reflects the continuity and persistence of colonial practices" (Chowdry and Nair, 2002, p.14). It does so, not from a purely positivist perspective, usually associated with Western ways of doing social sciences, but from a non-state centric point of view that considers individuals' experiences and emphasises concepts like exile, diaspora, or dispossession.

Its final goal is "to question the universality of the categories of modern social scientific thought" (Seth, 2013, p.2) and to not take for granted the concepts which conform the discipline by questioning their origins, representativity, and -lack of- universality. Likewise, postcolonialism signals International Relations' tendency to revolve around concepts of its own creation, such as anarchy or the interstate system, that have Eurocentric and ahistorical origins. It translates into self-centredness in theoretical frameworks which forgets -intentionally or unintentionally- land theft, racism, and violence (Krishna, 2001, p.406; Gruffyd Jones, 2002, p.7; Seth, 2013, p.16).

Methodologically, the project relies on qualitative data analysis methods. Gathered data has been analysed and classified according to the patterns and meanings found. The interpretation of sources has been vital to structure and develop a meaningful narrative which allows the obtention of findings. After the careful study of legal primary sources, I have identified the main concepts present in ICJ's procedure and contextualised them within the broader normative international legal framework. By doing so, the concepts act as variables which can then be articulated and questioned considering postcolonial critical literature. In this way, the project intends to provide an analysis drawing on Said's conception of "contrapuntal reading" in which "both processes, that of imperialism and that of resistance to it, can be done by extending our reading of the texts to include what was once forcibly excluded" (Said, 1993, p.66).

With the aim of enquiring on Chagossians' status as a collective, the systematised data from primary and secondary sources has been analysed through postcolonial concepts and the findings obtained in the legal segment of the study, allowing the obtention of new

conclusions. Moreover, discourse analysis has been performed when reviewing primary sources including juridical, historical, and journalistic documents.

To comprehensively tackle the objectives set, the empirical study has been structured in the following manner. Firstly, a socio-historical context is provided to frame the analysis within the broad impacts that colonialism has caused and to introduce the Chagossian community as the main stakeholder. Subsequently, the analytical body of the project is divided into two main parts to address the research question. Firstly, a legal analysis devoted to the colonial grounds of ICJ's advisory opinion and, afterwards, a socio-political review to delve into the judgment's consequences on Chagossian exiles.

## 2. Literature Review

The fate of the Chagos Islands and its population has brought the attention and interest of scholars from multiple fields of study. In the following literature review, I will first examine postcolonial theory's contributions to International Relations and, afterwards, the main areas of study and debate regarding the Chagos Islands.

Even if postcolonialism dates back to the 60s, in International Relations it is still in its early stages (Baylis, Smith, and Owens, 2008, p.661). Given that International Relations is intrinsically related to colonialism's impacts on global affairs, the late development of postcolonialism is surprising. Notwithstanding handbooks on International Relations theories include postcolonialism and acknowledge its growing importance (Baylis, Smith, and Owens, 2008; Pettman, 2010; Grovogui, 2013; Lawson, 2015), the lack of its full development entails difficulties when applying it. For this reason, concept loans from other social disciplines are employed in this project.

Said's contributions are key in postcolonialism as they shed light on the representations upon which the colonial system is sustained. The construction of the Western world could not have been achieved without firstly representing the Otherness of the non-geographical "Orient", characterized by its barbarism and exoticism. This duality permeates all layers of public and private life, from gender roles to school teaching. In Chagos, the "Orient" morphs to the "mysterious paradise", whose remoteness is both the source of charm and the excuse to commit questionable acts. This approach makes Chagos important and strategic and, at the same time, insignificant and invisible (Kothari and Wilkinson, 2010).

The capacity to create and perpetuate these narratives is intimately related to power. Postcolonial scholars not only have elaborated on material conceptions of power but also on the authority and hegemony stemming from knowledge. Regarding the latter, Western rationalist methodologies and their quest for objective results are anchored on narratives that do not account for the realities of the colonised (Tuhiwai Smith, 1999). Therefore, the control of who can elaborate knowledge is another tool at the service of colonialism.

Other postcolonial analytical tools are also being adapted to International Relations. Chakrabarty's "provincialisation of Europe" is held as a way to contest Eurocentrism as it challenges not only the "dominant accounts of social sciences, but the very concept

through which such accounts are offered” (Seth, 2009, p.335). It can be employed to enquire on concepts like sovereignty or identity, which sometimes are presumed to be universal and self-explanatory.

In relation to the Chagos Islands, extensive academic literature has developed around it. Considering its history and subsequent resistance movement, the publications span a myriad of issues including sovereignty, self-determination, or the decolonisation process, among other topics.

One of the main subjects of study that this case offers is geopolitics. The strategic location of Diego Garcia has become an instrumental asset for Americans to control the Middle East (Harris, 2015, p.508). The importance of the military base for the US-UK special relation is such that it has made Chagos a *de facto* American territory (Harris, 2013a, p.725). Nonetheless, for this project, the use of geopolitics is rather limited. While geopolitics cannot be disassociated from international legality, a purely realist geopolitical analysis has been avoided in favour of humanising the research.

Academic literature has also flourished in the field of legal studies as the singular situation of Chagos has propitiated legal fights in multiple jurisdictions. The legal disputes involving Chagos include insights into self-determination, reparations, and resettlement. Stephen Allen has provided an extensive analysis of Chagossians’ use of legality as a tool of resistance in the UK, confirming British efforts to preserve the *status quo* (2007; 2008; 2014). However, it has been ICJ’s ruling, regarded as a “surprisingly robust response” (Allen, 2020, p.20), that has reignited international legal interest for Chagos. Hence, the advisory opinion has been the focus of publications encompassing varying topics, going from consent in the excision of colonial territories to the UK’s international responsibilities (McCorquodale, Robinson, and Peart, 2020; Monaghan, 2021).

It is also necessary to provide a brief review of the most relevant juridical concepts and discussions involved in the Chagossian case. In this sense, sovereignty occupies a prominent role as it is inherent to statehood. In the last decades, critical literature has been developed which questions the universality and neutrality of the concept, examining its European origins and its use to legitimise the dispossession and occupation of non-Western peoples’ lands (Grovgui, 1996). The right to self-determination is also at the

core of the project as it legally recognised peoples' capacity to overturn their colonial situation. The discussions regarding territorial integrity's role in the maintenance of the colonial order and the limitations of "peoplehood" are two of the most relevant discussions regarding self-determination for this case (Castellino, 2008; Marshall Beier, 2002, p.84).

Finally, academic literature has been developed based on cultural grounds, which is mostly framed in the post-expulsion period. In this regard, Professor Jeffery has greatly contributed to the study of the effects that forced displacement and contemporary onward migration to the UK have implied for Chagossian culture (2007, 2010, 2011a). Similarly, Sandra Evers and Marry Kooy (2011) provide an overview of the eviction and the multi-level implications it had. The organisational capacity of Chagossians was also affected by marginalisation and, thus, it shaped mobilisations and entailed an ambiguous relation with Mauritian and British authorities (Vine and Jeffery, 2009).

All in all, there exists quite a developed academic literature regarding Chagos which provides a clear overview of the situation. Together with judicial sentences, international organisations' pronouncements, and Chagossian testimonies, it is possible to conduct an analysis within the realm of International Relations. However, some gaps have been detected in the literature from an International Relations perspective. Mostly, publications do not frame their study within the global consequences of colonialism and its impact on the relations between states, international organisations, institutions, and individuals. Therefore, Chagossians' role is circumscribed to legal disputes or to the adverse effects they have suffered. Yet, the community could also be represented within the complex setting that International Relations present. Their standing as native inhabitants should be enough to be relevant international actors.

The other noticeable gap is on how the right of self-determination should be applied. In this regard, there is a lack of literature addressing what could be considered the root of the problem: sovereignty and its colonial implications. By questioning how sovereignty and property are allocated in situations where the population is descendant of slavery and forced displacements, the Eurocentric biases and colonial impact that sustain current international law and International Relations could be analysed.



### 3. Historical Context: From Plantation Society to Expulsion

#### 3.1 Settling Chagos and the Forge of Chagossians

The Chagos Archipelago lies amid the Indian Ocean, separated by more than 500 kilometres from the nearest point in the Maldives and nearly 1,700 kilometres from Mauritius. Remoteness together with a reduced and fragmented geography, containing 64 islands with a total surface of 50 square kilometres, are its main characteristics.

In 1783, the French established the first permanent settlement in Chagos and set the bases for the continued colonial exploitation by carrying 22 enslaved people, mainly from Madagascar and Mozambique (Ly-Tio-Fane and Rajabalee, 1986, p.92). The communities were developed in Diego Garcia -the biggest island of the archipelago- and in Peros Banhos and Salomon. The natural attributes of Chagos allowed the production of large amounts of coconut oil and copra. Consequently, plantations grew exponentially and, by 1813, about 200 slaves of African origin had been forcibly brought to Chagos (Vine, 2010a, p.329).

Due to the Napoleonic Wars, in 1814, the French were obliged to cede Seychelles and Mauritius -of which Chagos depended administratively- to the British Empire. This colonial exchange implied few changes both for the enslaved inhabitants and for the French plantation owners. Similarly, the life of the inhabitants did not vary much after the formal abolition of slavery in 1835. On the contrary, the colonial authorities of Mauritius admitted their inability to “afford protection” to the isolated community (Johnstone, 1863, as cited in Carter, 2017, p.221). Nonetheless, this same remoteness was also at the heart of the development of the *culture des Iles*.

The comparatively good labour conditions in the archipelago in relation to Mauritius, noting that there are no good conditions in forced labour, propitiated workers to remain on the islands. Apart from a meagre salary, they had livestock, access to plots of land, and basic food rations (Vine, 2011a, p.24). By the beginning of the 20<sup>th</sup> century, there was already a clear sentiment of belonging to Chagos and transient workers coming to the islands could be distinguished from native inhabitants (Carter, 2017, p.223). The existence of a local cuisine, the development of Chagossian *sega* -a genre of popular music in the Indian Ocean-, and a distinguishable French-Bantu Kreol confirm the

emergence of Chagossians as a distinct cultural group (Jeffery, 2011a, pp.88-89; Jeffery, 2007, p.956; Vine, 2011a, p.26).

By the 1960s, the number of Chagossians ascended to around 1,800 individuals (Madeley, 1985, p.5). Moreover, the living conditions and access to public services increased importantly and included nurseries, schools, pensions, and healthcare provision (Vine, 2011a, p.30). Nonetheless, the decade of the 60s also signals the start of Chagossians' ordeal and the most tangible proof that they were seen as disposable commodities.



Fig. 4: Chagossian homes in Diego Garcia in 1972, one year after the expulsion. Source: Duran, 1972.

### 3.2 Expulsion and Deceit

At the height of the Cold War and with the United Kingdom retreating from East of Suez, the United States looked for a suitable location to build a military base in the Indian Ocean. Through the quest, Chagos was very positively reviewed due to its strategic location and usefulness of Diego Garcia's lagoon to act as a harbour (Bandjunis, 2001, p.2). Its sparse population and general neglect by authorities convinced the United States of the adequacy of Chagos (Vine, 2009, p.61). Indeed, the United Kingdom saw no problem in the American request to use it for defence purposes, including the demands

of holding the islands “without local inhabitants”<sup>2</sup> (US Embassy London, 1964, as cited in Vine, 2011a, p.32).

The British government decided that Chagos would be excised from Mauritius to protect American interests in the event of Mauritian independence. To avoid international criticism, the approval of Mauritius’ elected colonial authorities was sought and in the Lancaster House Agreement of 1965 Mr Ramgoolam, the Premier of Mauritius, agreed on the excision. He realised that Chagos would have been separated regardless of acceptance and that his approval would lead to quicker independence (Chan Low, 2011, pp.77-78). In exchange, Mauritius received 3 million pounds, financial aid for Chagossian resettlement, and compensation for the archipelago’s landowners<sup>3</sup>. Notwithstanding British sovereignty, fishing rights and benefits of oil and minerals were awarded to Mauritius. Finally, it was established that “if the need for the facilities on the islands disappeared the islands should be returned to Mauritius” (Annex 19 Record of a Meeting, 1965, para. 22).

Subsequently, the new colony of the British Indian Ocean Territory -BIOT- was created in 1965, consisting of the Chagos Archipelago and three uninhabited Seychellois islands<sup>4</sup>. The lease of Chagos was secretly arranged in 1966 and handed to the Americans for 50 years with a possible extension of 20 extra years<sup>5</sup> (United Kingdom, 1966, para. 11). That moment signalled the beginning of the carefully planned expulsion of Chagossians, as comments of the British permanent Undersecretary of State for Foreign Affairs and his deputy from 1966 portray (in Sand, 2009, p.17):

The object of the exercise [expulsion] was to get some rocks which remain ours; there will be no indigenous population except seagulls who have not yet got a

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2 It should be remarked that while there were no objections to the expulsion of Chagossians, the British and American authorities discarded the use of Aldabra -another British held island deemed suitable for American defence purposes- due to its endemic population of tortoises (Durup, 2013, p.3). The reasoning behind the decisions is quite telling of the value given to Chagossians’ human rights and well-being.

3 Before the excision, the archipelago belonged to the Chagos-Agalega Ltd company. Subsequently, “the Crown purchased all the Company’s lands in the Chagos Islands for the sum of £660,000” (Allen, 2007, p.465).

4 Contrarily to Chagos, the Seychellois islands -namely Aldabra, Farquhar, and Desroches- were returned to Seychelles once it became an independent state in 1976. Consequently, BIOT currently only encompasses Chagos.

5 The lease of Chagos is currently in its 20 years extension which is set to end in 2036 (Mace, 2016).

committee (the Status of Women Committee does not cover the rights of birds). -Sir Paul Gore-Booth.

Unfortunately, along with the birds go some few Tarzans or Men Fridays whose origins are obscure, and who are being hopefully wished on to Mauritius. -Sir Denis Greenhill.

These racist and misogynistic remarks confirm the extent to which Chagossians were dehumanised and expose the final aim of having deserted islands as *de facto* legal blackholes. The binary opposition between the coloniser and the colonised deprives Chagossians of humanity and transforms them into savages. Through this narrative, there is no need to grant them human rights (Tuhiwai Smith, 1990, p.27).

Moreover, a narrative was elaborated to portray Chagossians as temporary workers and deny them any rights they could have as the people of the land. A minute of 1966 by BIOT's commissioner states it clearly (The Queen (ex parte Bancoult) v. Secretary of State for the FCO, 2000, para. 13):

They [the Colonial Office] wish to avoid using the phrase 'permanent inhabitants' in relation to any of the islands in the territory because to recognise that there are permanent inhabitants will imply that there is a population whose democratic rights will have to be safeguarded and which will therefore be deemed by the UN Committee of Twenty-four to come within its purview...

In 1968, while Mauritius became independent, the expulsion started. From that year, Chagossians leaving the archipelago for healthcare or vacations could not return to the archipelago. Therefore, families were stranded in Mauritius, a country unknown to them and with no resources or place to stay. Parallely, the British "restricted the quantities of supplies" going to Chagos (Vine, 2011a, p.33), which implied a worsening of living standards and, consequently, more people abandoning the islands. They were never informed of the impossibility to return.

Finally, in 1971, BIOT's Immigration Ordinance was enacted "making it a criminal offense for anyone except authorized military personnel to be on the islands without a permit" (Vine, 2009, p.112). Thus, the expulsion of the remaining Chagossians became

more tangible. Diego Garcia, the site of the American base, was the first to be depopulated. Inhabitants were expelled in overcrowded boats to the outer islands of Chagos, Mauritius, or Seychelles. Testimonies recount they faced intimidation, including witnessing their dogs being killed and burned. Afterwards, the islands of Salomon and Peros Banhos were depopulated in 1972 and 1973, respectively (Jeffery, 2011a, p.23).

*Nordvaer*, the cargo boat used to expel the last Chagossians, became a symbol of the community's trauma (Patel, 2019). It embodies the exile and dispossession that Chagossians have had to undergo. Nonetheless, it was also the first space of resistance and contest. In one of the last voyages of the boat, Chagossians refused to disembark and demanded either to be returned to their homeland or to receive housing in Mauritius (Vine, 2009, p.120). This episode marks the beginning of a continued struggle which continues today.



Fig. 5: *Nordvaer* in Diego Garcia in 1969 prior its final voyages. Source: Morris, 1969.

## 4. Chagossian Resistance and Mauritian Contestation

### 4.1 Consequences of Expulsion

After Chagos was depopulated, Diego Garcia would become one of the most important American military bases in the world. Out of the spotlight, it has been an instrumental asset to control the Middle East and deploy the War on Terror, even being likened to “another Guantánamo” (Salter and Mutlu, 2013, p.829). Thus, the colonial status of Chagos is exploited to impose Western hegemony and exert imperialist violence.

Parallely, Chagossians had to face the harsh reality in Mauritius and Seychelles. Life conditions in plantations in Chagos were much better than in the new destinations. Poverty and misery awaited them as no resettlement was prepared. In Mauritius<sup>6</sup>, where most of them were sent, the situation was especially precarious and about 1 in 40 Chagossians died of starvation (Madeley, 1985, p.5). They also experienced social, housing, and working discrimination based on their origins, lack of education, and different language. These conditions have been perpetuated in time and acquired an endemic character. In 2003, 50% of Chagossians living in Mauritius were still unemployed and illiterate (Vine, 2006, p.23).

Chagossians have felt *déraciné* -uprooted- in their exile due to their disconnection with land and the suffered trauma. Together with material poverty, it has evolved into *sagren*, a concept which englobes the sadness, anxiety, and homesickness that being away from their homeland provokes (Jeffery and Vine, 2011, p.85). According to the Chagos Refugee Group, about 60 Chagossians have died from it (2001, as cited in Vine, 2010b, pp.182-95).

### 4.2 Chagossian Organisation and Resistance

Despite hardships, Chagossians organised to demand better living conditions and the return to their homeland. In Mauritius, hunger strikes and protests led by Chagossian women demanded solutions to the most immediate problems: lack of housing and poverty (Jeffery, 2011b, p.81). Thanks to the sustained mobilisations, the British government

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<sup>6</sup> Chagossians in Seychelles endured similar experiences of dispossession. Nonetheless, due to their comparatively small number, they have been mostly ignored by academia (Vine, 2011b, p.105).

offered two aid packages<sup>7</sup>. However, that of 1982 was presented as “full and final” for “all acts, matters and things done by or pursuant to the BIOT Order 1965” (Madeley, 1985, p.10). That is to say, insufficient compensations<sup>8</sup> were meant to stop any future legal claims. Chagossians acceded to sign as they were unaware of the implications and most either were illiterate and/or did not speak English (Bontemps, 2021).

Starting in the 80s, the Chagos Refugees Group -CRG- was constituted, becoming the first and most prominent support organisation. CRG has pursued a strategy of judicialisation once it was discovered that individuals born in Chagos were British citizens (Gifford, 2004). In 2000, British courts found that the removal of Chagossians was unlawful and granted them the right to abode in Chagos (Allen, 2008, p.685). Nonetheless, the victory did not last for long. In 2004, the British government used “the Queen’s archaic power of royal decree” to reinstate the immigration laws that had been struck down (Vine, 2010a, p.337). The House of Lords finally upheld the legality of the legislation in 2008, perpetuating the exile of Chagossians (Jeffery, 2009, p.24).

Similarly, most judicial initiatives have ended up reinforcing the *status quo* while morally acknowledging the past wrongs done. In the US any chance of judicial remedy disappeared in 2006 when the demand was deemed a non-justiciable political question (Pigrau Solé, 2016, p.9). Similarly, in 2012, the European Court of Human Rights ruled that it lacked jurisdiction to hear the case (Harris, 2013b, p.26; Raouf, 2014, p.5; Allen, 2020, p.18; Grandison, Kadaba, and Woo, 2013, p.38).

Overall, Chagossian exiles have used their limited resources to improve their day-to-day life and be able to return to their homeland. Although their condition as private individuals challenging states puts them in a situation of inferiority, their demands have shown states’ reliance on the colonial situation and their firm compromise to maintain the situation unchanged.

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7 Notably, compensation was only offered to Chagossian exiles in Mauritius. The exiles residing in Seychelles have never received compensation from the British (Vine and Jeffery, 2009, p.192).

8 Living conditions of Chagossians in Mauritius “improved only marginally” and most money was used to pay off debts (Vine, Harvey, and Sokolowski, 2012, p.7).

### 4.3 Mauritian Claims and International Strategy

Mauritius is the other relevant actor trying to modify the *status quo* of Chagos. Following independence in 1968, Mauritian politicians revisited the Lancaster House Agreement arguing that it was done under pressure. Progressively, the claim to Chagos was more vocal. In 1991, Mauritius enshrined the archipelago as part of the national territory in its new constitution (Republic of Mauritius, 2016, art. 111).

Nonetheless, Mauritius government's relation with Chagossians has been complex and filled with divergences. Important segments of Chagossians -with a special mention to those residing in Seychelles- distrust Mauritian interests on the island and a hypothetical "Mauritian Chagos" (Vine and Jeffery, 2009, p.198). In the same way, Mauritian authorities disliked Chagossians' resort to British tribunals as it illustrated Mauritius' lack of sovereignty (Jeffery, 2006, p.305).

After fruitless bi-lateral talks with the UK, Mauritian authorities have opted for international judicialisation to pursue their goals. In the last decade, Chagos has been at the centre of three cases presented or sponsored by Mauritius. Most importantly, the Advisory Opinion by the International Court of Justice of 2019, which is analysed in this project.

## 5. Legal Consequences of the Separation of the Chagos Archipelago

### 5.1 The Advisory Opinion

In June 2017, the United Nations General Assembly requested a non-binding advisory opinion to the International Court of Justice regarding the legality of the separation of the Chagos Archipelago from Mauritius in 1965 (UNGA, 2017). The initiative was spearheaded by Mauritius with the support of the African Union (Minas, 2019, p.12). Mauritius could take the case much further than Chagossians and shape the requests to its national interests. However, there was no effort by Mauritius to coordinate a strategy with all Chagossian groups (Bontemps, 2021).



Given that any international dispute settlement requires the consent of both parties and the UK rejected giving it<sup>9</sup> (Yee, 2017, p.627), the advisory opinion had to circumvent any reference to a bilateral dispute. That is why the focus is on decolonisation, a topic within the reach of the UNGA. The questions posed to the Court were the following (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 2019, para. 1):

- (a) ‘Was the process of decolonization of Mauritius lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius and having regard to international law, including obligations reflected in General Assembly resolutions 1514 (XV) of 14 December 1960, 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967?’
- (b) ‘What are the consequences under international law, including obligations reflected in the above-mentioned resolutions, arising from the continued administration by the United Kingdom of Great Britain and Northern Ireland of the Chagos Archipelago, including with respect to the inability of Mauritius to implement a programme for the resettlement on the Chagos Archipelago of its nationals, in particular those of Chagossian origin?’

The first question focuses on determining the international legality in 1965. To this end, four documents are presented including resolution 1514, also known as the Colonial Declaration, which specifies how decolonisation of non-self-governing territories shall be done (UNGA, 1960). Determining if these documents developed into legality at that moment is essential as, according to the principle of intertemporal law, any “judicial fact must be appreciated in the light of the law contemporary with it” (Island of Palmas, 1928, p.845).

The second question is problematic in itself and reflects Mauritius’ interests. It tackles the consequences of British control and the resettlement of “Mauritian nationals of Chagossian origins”. The wording excludes those Chagossians with no links to Mauritius

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<sup>9</sup> The United Kingdom has formally made a declaration to the ICJ by which it “accepts as compulsory ipso facto and without special convention, on condition of reciprocity, the jurisdiction of the International Court of Justice” with some exceptions including “(ii) any dispute with the government of any other country which is or has been a Member of the Commonwealth” (United Kingdom, 2017). Thus, effectively impeding its ex-colonies to resort to ICJ without its explicit consent.

-including those in Seychelles and the UK- and dilutes Chagossian identity as dependent on Mauritian identity (Jeffery, 2019, p.26).

The Court presented its advisory opinion in 2019, with a robust majority of 13 votes in favour and 1 against<sup>10</sup>. The opinion states that the Colonial Declaration was a legally binding source of law by 1965 and dismisses the Lancaster House Agreement's validity (2019, para. 160, 172). Thus, "the decolonization of Mauritius was not conducted in a manner consistent with the right of peoples to self-determination, [and] it follows that the United Kingdom's continued administration of the Chagos Archipelago constitutes a wrongful act" (2019, para. 177). Moreover, "the United Kingdom is under an obligation to bring an end to its administration of the Chagos Archipelago as rapidly as possible, thereby enabling Mauritius to complete the decolonization of its territory" (2019, para. 178).

The UNGA subsequently demanded the withdrawal of the UK's colonial administration in "no more than six months" (UNGA, 2019a, para. 3). Nonetheless, the UK reaffirmed its sovereignty over Chagos and its intent to continue administering it (Roscoe, 2019). As of today, the decolonisation process started by ICJ remains unfulfilled. However, its legal effects have already been displayed.

In *Dispute concerning delimitation of the maritime boundary (Mauritius/Maldives)*, a case instituted by Mauritius in September 2019, the interpretation of ICJ's decolonisation process is necessary to adjudicate the boundary between Mauritius and the Maldives, as both states only border through Chagos. Although the award has not been presented, the International Tribunal of the Law of the Sea held in the preliminary objections that: "while the process of decolonization has yet to be completed, Mauritius' sovereignty over the Chagos archipelago can be inferred from the ICJ's determinations" (2021, para. 246). This interpretation completely revokes the preceding understandings of British sovereignty over Chagos<sup>11</sup> and embodies the *de jure* change of sovereignty of the archipelago in a strict state-centric perspective.

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10 Coincidentally, the only vote against the advisory opinion was issued by Judge Donoghue, an American national (*Legal Consequences...*, Donoghue, 2019). It must be noted that currently the UK does not have any judge in the Court.

11 The case *In the Matter of the Chagos MPA Arbitration (UK vs Mauritius)* (2015) was decided before ICJ's opinion and it established that the UK could not establish a Marine Protected Area -MPA- surrounding

## 5.2 The Colonial Grounds of the Opinion

In the following section, the paper focuses on how the advisory opinion is sustained upon or reinforces colonial practices through a contrapuntal reading in the light of postcolonialism. Specifically land title, territorial integrity, and peoples in the context of self-determination.

### 5.2.1 Acceptance of Colonial Land Title

The “law of territory” guides how title to land and sovereignty are obtained. It emerged in the 15<sup>th</sup> century as European powers colonised the rest of the world and a new legality was required to determine the colonial territorial order (Huh, 2015, p.710). To this end, *terra nullius* was adopted to obtain new land that was uninhabited or “misused” by its native inhabitants, according to European standards. Having effective control of one such territory implied European states acquired “original title” and it became part of their national territory (Kohen, 2013, p.154; Cotula, 2017, p.229).

Like Mauritius, Chagos was not inhabited before colonialism and France claimed original title to the islands. The subsequent British sovereignty emanates from the cession of the territory<sup>12</sup>. Accordingly, the acquisition and maintenance of Britain’s sovereignty is legal and complies with the principle of intertemporal law. There is no mention in the advisory opinion regarding the obtention of sovereignty over the islands, putting the neutrality and universality of international law in question.

Grovogui argues that international law has “enabled Western Christendom (and, later, the West) to create juridical instruments with which to maintain exploitative relations with other continents within presumed universal orders” (1996, p.16). Complementarily, Krishna maintains that International Relations is based upon “abstraction” by rewarding theorisation over historical accounts. While abstraction is needed to build any knowledge, it derives into amnesia when dealing with “theft of land, violence, and slavery”. What is

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Chagos as it would infringe Mauritius’ rights agreed in the Lancaster House Agreement of 1965. Nonetheless, the Arbitral Tribunal found it had no jurisdiction to question sovereignty (2019, para. 547). Therefore, the UK was presumed to be the coastal state of Chagos with sovereignty over the archipelago (Qu, 2016, p.49).

<sup>12</sup> It should be remarked that, as of today, the British government keeps exercising its sovereignty over the archipelago taking into account the character of “ceded or conquered colony” of Chagos. British courts have recognised the legality of this status and the extended powers that it grants to the Crown (Lakin, 2018, p.13).

more, deciding what should be abstracted is far from an “innocent power” (Krishna, 2001, pp.401, 403).

In the advisory opinion, there is no questioning on slavery’s role to establish French settlements or how their permanence depended on plantations. The acceptance of Britain’s sovereignty, however, entails accepting the legality of slavery, as one cannot be separated from the other. The lasting effects of the acritical recognition of sovereignty imply today’s dispossession of Chagossians. Had their ancestors been born in Chagos instead of being brought against their will to the islands, their legal situation would now be different.

Consequently, the interpretation of international law benefits white European settlers by recognising the action of establishing a slavery-based society as a way to acquire sovereignty and property. Nonetheless, after more than 150 years of continued Chagossian inhabitation, no recognition of Chagossian property or rights over land and communal resources has arisen. British courts have also dismissed Chagossians’ ownership of the homes where they lived for generations. Because all property belonged to the plantation company, Chagossians could not own property but only occupy it (Allen, 2007, p.466).

The upholding of the colonial territorial sovereignty -albeit legal- should not be characterised as neutral, impartial, or universal. In the same manner, “property” as a concept and the rights it entails should not be applied devoid of context. The inhabitants of a plantation society could not legally buy or own property, but their connection to land and resources over generations has been extensively documented (Vine, 2011a, p.18; Bhatt, 2018, p.4). Consequently, treating property and land tenure as if it was continental Europe can be construed as being highly arbitrary and reinforces the idea of transient Chagossians with no rights that legitimised the expulsion.

### 5.2.2 Territorial Integrity at the Base of Decolonisation

The right to self-determination was internationally fostered after WW2 to repair the wrongs committed during the colonial period. This right, which is currently considered one of the pillars of International Law, entails the capacity of peoples to “freely determine

their political status and freely pursue their economic, social and cultural development” (UNGA, 1960, para. 1).

According to the International Court of Justice, self-determination as defined in the Colonial Declaration had already crystallised as binding customary law when Chagos was excised. In this case, the sixth provision of the Declaration is essential as it establishes that “[a]ny attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations” (UNGA, 1960, para. 6). Consequently, the right to self-determination needs to be exercised while complying with territorial integrity. This aims to protect peoples under colonial subjugation from the establishment of new colonies before independence, which may allow the administering power to maintain sovereignty over part of the territory (Trinidad, 2018a, p.61).

Therefore, the right to self-determination is applied to the so-called “self-determination units” (Crawford, 2007, p.645). To identify them, *uti possidetis juris* principle is usually employed which provides “that new States will come to independence with the same borders that they had when they were administrative units within the territory or territories of one colonial power” (Shaw, 1997, p.97). In effect, it preserves colonial borders and, thus, cannot be separated from the colonial territorial order and its legislation (Lima, 2017, p.123).

ICJ’s advisory opinion enshrines “the right to territorial integrity [...] as a corollary of the right to self-determination” (2019, para. 160). Judge Sebutinde specifies in her separate opinion that territorial integrity is only used to delimitate the self-determination unit but not to perpetuate colonial borders (*Legal Consequences...*, Sebutinde, 2019, para. 36). However, even if *uti possidetis juris* is not mentioned in the advisory opinion, the Court’s argumentations mirror its practical effects (Papanicolopulu and Burri, 2021, p.194). Following this reasoning, the totality of the Mauritian colony, including the Chagos archipelago, is identified as the self-determination unit to which decolonisation has to be applied.

Upholding the colonial territorial integrity has the effect of freezing the narrative prior to the excision of Chagos. Given that they were expelled after the unlawful excision, the

human rights violations they suffered take second place. Chagossians' situation is then a deriving consequence of a bilateral dispute between states. These patterns of representation contribute to "othering" Chagossians and deny their capacity of self-representation. Moreover, the Court omits any discussion regarding Chagossians' views on territoriality and to what extent they felt -and feel- attached to Mauritius. Indeed, Mauritius' claim on territorial integrity can only be sustained on the colonial relationship that both entities had. Given that both islands were *terra nullius* there are no direct cultural, historical, or social ties (Allen, 2007, p.458; Lynch, 1984, p.109).

Enforcing the concept of territorial integrity to an isolated archipelago whose history revolves around colonialism is troubling as it hands to the metropole a key role in decolonisation. Trinidad described the potential disenfranchising effect of territorialising self-determination for the peoples conforming the administrative unit (2018b, p.12). The case of Chagos exemplifies it. Through these provisions, dispossession of Chagossians' ancestral land is perpetuated instead of being contested.

Nonetheless, the pernicious effects of over-reliance on territorial integrity were signalled within the Court. Judge Gaja reminded UNGA of its capacity to re-evaluate the self-determination unit (*Legal Consequences...*, Gaja, 2019, para. 6) and Judge Abraham warned of the consequences of "regard[ing] territory as being sacred in some way, its indivisibility taking precedence over the will of the people" (*Legal Consequences...*, Abraham, 2019, p.154).

### 5.2.3 The Peoples in Self-Determination

The backbone of self-determination is that it situates peoples as the holders of the right rather than individuals. However, this ambiguous concept is substantially narrowed down when applied to international law. A broad definition of peoplehood would imply a threat to the international order by questioning sovereignty, the pillar upon which it rests. For this reason, the concept of peoples as the subjects of self-determination only considers colonial scenarios, military occupations, and the event in which racial groups do not have full access to government. Thus, it does not include ethnic groups, and national, religious, and linguistic minorities (Cassese, 2005, p.63). In determining who are the peoples in a colony, territorial integrity and the concept of peoples are linked.

ICJ's opinion declares that peoples in Mauritius will exercise self-determination "in relation to their territory as a whole" (2019, para. 160). In an exercise of apparently not taking sides, the Court states that "[t]he modalities necessary for ensuring the completion of the decolonization of Mauritius fall within the remit of the UNGA" (2019, para. 179). Judge Iwasawa illustrates it by signalling the indeterminacy of "the eventual legal status of Chagos" (*Legal Consequences...*, Iwasawa, 2019, para. 10). However, the Court's emphasis on territorial integrity and Mauritian decolonisation seem to point otherwise.

By narrowly associating the right to self-determination to the process of decolonisation, the Court has "no need" to identify what constitutes the concept of peoples (Klabbers, 2019, p.7). Therefore, there is no enquiry on Chagossians' "peoplehood" and they are not recognised as "peoples" as far as it concerns the decolonisation of the archipelago. This decision contributes to erasing Chagossian socio-cultural traits, and the trajectory of resistance and identification<sup>13</sup>.

According to the opinion, any modification regarding Chagossian peoplehood would have to be championed by the UNGA and, ultimately, Mauritius. Once again, the state-centred nature of the opinion is portrayed, as it grants the decision-making power to the state which claims the territory and to the UNGA, forum of all sovereign states. Identifying Chagossians as peoples with rights over their land would imply setting a precedent that states are not willing to accept.

While the opinion avoids mentioning Chagossians as legal subjects, Judge Gaja refers to them as the "indigenous" inhabitants of Chagos and Judge Cançado Trindade makes extensive mentions to indigenous peoples' rights (*Legal Consequences...*, Gaja, 2019, para. 1, 3; Cançado Trindade, para. 81, 82, 243). Given the legal ramifications linked to indigeneity, the judges' considerations are of special importance.

In determining indigeneity several approaches have been subjected to postcolonial criticism, as they put the European experience at the core by emphasising continuity with

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13 The recognition of Chagos as part of Mauritius implies a setback for Chagossians' identification as refugees, which is recurrent and part of the post-exile narrative, as there would be no grounds for such status for those Chagossians with Mauritian nationality. This move would be closely aligned with Mauritian interests, as the state has consistently rejected Chagossian refugee claims (Jeffery, 2011a, p.52).

pre-colonial societies (Bhatt, 2018, p.6). Therefore, it seems that Indigenous peoples cannot exist without being “discovered” by colonial agents. Nonetheless, in the last decades more comprehensive criteria has emerged taking into account territoriality, self-identification, and cultural distinctiveness. Within this new framework, Chagossians self-identify as the Indigenous inhabitants of the islands (Bontemps, 2021; Tong, 2011, p.173; Jeffery, 2011a, p.51). Moreover, studies by Professor Allen on Chagossian culture and identity also reaffirm their character as Indigenous and the UN Group on Indigenous Populations recognised them as such in 1996 (Allen, 2007, pp.468-480; UN ECOSOC, 1996).

However, the Court’s avoidance to tackle indigeneity reinforces the idea of their transient nature. What is more, it deters the application of international treaties regarding Indigenous land rights, as ILO Convention n.169 (Indigenous and Tribal Peoples Convention, 1989, art. 14). In this manner, it would be possible to circumvent the intertemporal principle, which effectively protects colonialism and its heritage in the archipelago. Denying the applicability of Indigenous rights because they were developed once Chagossians had already been expelled would entail the acceptance of the expulsion’s consequences. Had Chagossians not been expelled, the legal instruments regarding indigeneity would have had to be applied.

All in all, by not considering Chagossians as the subjects of self-determination it is understood that the peoples concerned for decolonisation are located more than 1,000 kilometres away from the archipelago. The Court’s exercise of abstraction and decontextualization allows it to avoid mentioning Chagossians for the application of self-determination. Not even in the only paragraph discussing their own resettlement Chagossians are given a say (*Legal Consequences...*, Advisory Opinion, 2019, para. 181). This theoretical approach to a case of sustained human rights violations undermines the suffering experienced by the victims and adjudicates the case as if the wrong happened in 1965 ended at that moment.



## 6. Chagossians and the Advisory Opinion

The release of ICJ's advisory opinion 2019 was much expected by the Chagossian community given the implications it could have had for their rights. It was also on the radar of international media, providing momentum to the Chagossian cause and a powerful platform for their international visibility. A possible solution could have emerged to amend the wrongs perpetrated and provide a viable future for victims and their descendants.

Chagossian protests to decide upon their home are not only about land. Chagos is as much geographical as it is emotional, historical, political, and idealised. Considering Said's "imaginative geography", spaces acquire "emotional and even rational sense by a kind of poetic process whereby the vacant or anonymous reaches of distance are converted into meaning for us here" (2003, p.55), a process heightened in the "discontinuous state of being" of exile (2000, p.205). Chagossians have articulated a mythic history through collective imagination, which encompasses the hardships experienced, cultural expressions, and a re-imagination of homeland that becomes a synonym of abundance, happiness, and beauty in opposition to life in Mauritius (Jeffery, 2011a, p.59; Ziethen, 2013, p.4).

The fight to return, consequently, implies re-gaining livelihoods, connections with land, and agency. Therefore, any review of the opinion's impact must identify the interpretation that community leaders and activists make of it. To this end, statements regarding their opinion have been gathered, including newspaper articles, interviews, and tweets. The analysis encompasses sources dated between February 25<sup>th</sup> and mid-March 2019. In this manner, it can be captured the general views within the Chagossian community before it was clear that the UK would not accept the requirements of the judgment.

However, when considering Chagossians' views, it is necessary to escape essentialist conceptions of identity. Postcolonial scholars put emphasis on identity being a "constantly dynamic and performative practice" (Krishna, 2002, p.171). That is especially true in this case, where exile interplayed with identity to become a vehicle for resistance, socialisation, and remembrance. Moreover, a sizeable portion of Chagossians married non-Chagossians, portraying the diversity within the community (Jeffery, 2011a, p.34). Thus, it would not be accurate to portray Chagossians as a monolithic group.

The impacts of the diversity of experiences are well illustrated by the onward migration to the UK that Chagossians have done since 2002<sup>14</sup>. As of 2017, more than 3,000 Chagossians live in the UK, most of them in the town of Crawley (Demetriadi, 2017). Professor Jeffery recounts how the Chagossian diaspora in the UK has reconceptualised concepts like home and the British role through their positive and negative experiences in the UK while keeping a chiefly negative view of Mauritius (Jeffery, 2010, pp.1105-1111; 2011a, p.126).

Considering the singularities of Chagossian identity, the paper divides public opinions into three main blocks according to the place of residence of activists, showing the different existing patterns. On the one hand, in Mauritius, the Chagos Refugees Group and its leader Olivier Bancoult -the driving force behind the British litigation- transmitted general sympathy towards the judgement. In his own words, he has been “fighting alongside the government of Mauritius since 2015” (Bancoult in Prayag, 2018) and qualified the opinion as a “triumph of justice” (Bancoult in ION News, 2019). Chagossians celebrated in the streets the opinion in the belief that resettlement was closer (Le Mauricien, 2019; St Cyr, 2019). Nonetheless, doubts regarding the application of the judgement were already present (AFP, 2019).

On the other hand, reactions coming from the UK were not that positive. Sabrina Jean, chairwoman of the UK’s CRG, shared the sentiment of victory announced by Bancoult while acknowledging the different points of view within the community (Jean, 2019, as cited in Stephen, 2019). Quite tellingly, Jean shared via Twitter an article which questioned whether ICJ’s opinion was a victory for Chagossians or only for Mauritians (Yandangael, 2019; McQue, 2019).

One step further, UK-based Chagossians not associated with CRG shared their doubts. Emmanuelle Ally, a member of UK Chagos Support, was happy about the recognition of British unlawful control but asserted that “giving Mauritius the islands back is not a good choice” and that “Mauritius doesn’t really care about Chagossians” (Ally, 2019). Similarly, Marie Isabelle Charlot, who takes part in the Chagos Islanders Movement,

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14 In 2002, the UK passed the British Overseas Territories Act which awarded full UK citizenship to those born in Chagos and their descendants born in a certain period following the expulsion (Jeffery, 2011c, p.37).

regarded the opinion as a “first step” but regretted that “it was not about Chagossians, it was more about governments” (Charlot, 2019). However, others expressed completely negative reactions, too. Allen Vincatassin, president of the Diego Garcia and Chagos Islands Council and supporter of a British administered resettled Chagos, signalled his disappointment and reaffirmed the willingness “to conserve British passports” (Vincatassin, 2019, as cited in Stephen, 2019). Finally, Chagossians residing in Seychelles emphasised the need to obtain “assurances” from Mauritius concerning their rights as non-Mauritian nationals (Ernesta, 2019).

The existing variety of positions within the community is closely linked to different views on the appropriate strategy of action and the perceived role that the implicated states should take in the process. Accordingly, Mauritius’ role was a common concern. Even though the Mauritian Prime Minister ensured that all Chagossians could return to the archipelago regardless of their nationality, it did not convince the whole community (Defimedia, 2019). In the same way, the commitment of Mauritius towards the continuity of Diego Garcia’s American base contributed to certain distrust (UNGA, 2019b, p.8). Especially, considering that the government might regard Chagos as an economic opportunity and a source of rent (Jeffery, 2019, p.27), resounding with some Chagossians’ opinion that Mauritians “sold” the archipelago to obtain independence and compensations (Jeffery and Vine, 2011, p.83; Bontemps, 2021).

It can also be observed that, as time passed, reservations expressed by Chagossians were confirmed. The UK’s refusal to abide by the opinion has impeded any advance towards resettlement. Not even those who saw the judgement as an opportunity to work along with Mauritius have attained their plans. The state-centrism of the judgement neglected Chagossians as a collective and made them dependent upon other states will. Professor Arvind described Chagossian standing in British courts before ICJ’s ruling as “not simply one of control by the imperial power, but one of abject dependence on the decisions of the government” likening their situation to “civic ghosts”. Nonetheless, ICJ’s opinion has provided no change to this status of “hav[ing] no basis to articulate their grievances in any legal forum [...] unless those who exercise dominion over them choose to grant such a forum” (Arvind, 2018, p.92). This perpetuates Chagossians situation of legal vulnerability, dependence, and lack of agency.

However, not only their rights are permanently dependent -both to be demanded and to be exercised- but their voices are also constrained. ICJ's procedures contributed to the construction of a narrative based on victimhood. The touching declaration of Liseby Elisé offered the only Chagossian testimony in the Court and recalled the sufferings experienced due to expulsion (*Legal Consequences...*, Verbatim Record, p.74). Several judges<sup>15</sup> individually mentioned their sympathy towards Chagossians and the UK regretted the "very badly" manners in which Chagossians were treated (*Legal Consequences...*, Written Statement of the UK, 2018, para. 1.5, 4.3). During the whole judicial procedure, Chagossians were seen either as figurants of distant past events or agentless victims. Neither of these roles confer agency or autonomy. Without this constructed vision, it would have been more complex to deal with Chagos decolonisation without considering their points of views or providing no compensations for the continuing wrongful act.

This othering process culminates with the disregard of any contribution Chagossians could provide to settle the situation. Several activists have expressed the need to pursue a real exercise of self-determination in which the diaspora can have a say regarding their future. As activist Frankie Bontemps articulated, a comprehensive consultation should include three options: an autonomous Chagos under Mauritian sovereignty, an autonomous Chagos as a British Overseas Territory, or an independent Chagos (Bontemps, 2021). That would be an act of empowerment, recognition, and self-ownership.

Postcolonial studies emphasise the process by which certain entities have cognitive authority and, therefore, have the power to speak for themselves and for others without that power (Chowdry and Nair, 2002, p.16). ICJ and the sovereign states taking part in its procedures have cognitive authority and can fill the gaps left by Chagossian involuntary silence. This can lead to troubling consequences, as shown by the rejection of Chagossian testimony at a British trial for being based on "collective memory" or the claim of a former Mauritian Prime Minister of knowing better Chagos "than those who had been evicted" (Jeffery, 2006, p.239; Johannessen, 2011, p.196). In the analysed advisory

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15 Namely Judge Cançado Trindade (*Legal Consequences...*, Cançado Trindade, 2019, para. 218-230), Judge Robinson (*Legal Consequences...*, Robinson, 2019, para. 101-106), and Judge Tomka (*Legal Consequences...*, Tomka, 2019, para. 1).

opinion, it had the effect of deciding for Chagossians without Chagossians. The free and genuine will of people, consequently, was considered unnecessary.

## 7. Conclusions

Fifty years after the last Chagossians were forced to leave their homes on board of *Nordvaer*, time seems to have stopped in the archipelago. The waves of decolonisation that swept Western colonial empires did not reach the shores of Chagos which remain subject to the same direct rule that was in place during plantation days, thus constituting an exceptional example of colonial survival tolerated by the international community.

Historically, colonialism has used Chagossians according to its interests. In the 19<sup>th</sup> century as slaves to sustain the Imperial economy and, subsequently, as exiles to vacate the islands and contribute to Western hegemony through military means. The colonial status of Chagos -now and two hundred years ago- has always benefitted the metropole at the expenses of Chagossians' human rights, agency, and capacity to decide.

The analysis of the International Court of Justice's advisory opinion of 2019 reaffirms the reliance of the proposed decolonisation of Chagos on several colonial grounds. Among them it should be noted: firstly, the Court's lack of enquiry regarding British obtention of sovereignty, which does not reflect on the role of slavery and forced displacement; secondly, the restoration of colonial administrative borders, which has been used to deny Chagossian ownership of the decolonisation process and has put the emphasis on Mauritius; and, finally, the non-identification of Chagossian peoplehood based on restrictive legal definitions, which effectively bars the community from exercising the right to self-determination and being identified as meaningful political subjects.

The decolonisation process proposed by the Court reinforces the historical patterns of neglect towards Chagossians and their lack of agency as a collective. Otherwise, the Court would have had difficulties framing the decolonisation of Chagos without considering Chagossians in the whole process. By linking the exercise of self-determination to the totality of Mauritius, the Court's opinion has the effect of changing *de jure* the administrator of the archipelago from the United Kingdom to Mauritius, while not providing any role to Chagossians.

In this manner, the situation of Chagossians remains equally dependent on a sovereign state -Mauritius- to demand and exercise their rights. The Court's approach to

decolonisation implies the belief that colonialism can be dismantled through the withdrawal of Western forces from territories subject to colonialism. Nonetheless, the case of Chagos illustrates how decolonisation is not just about changing the labels of maps.

Can a territory be free of colonial domination if the rights of its peoples are not recognised? In 1966, British Indian Ocean Territory's Commissioner argued that Chagossians, if identified as permanent inhabitants of the islands, would conform a "population whose democratic rights [had] to be safeguarded" ('The Queen (ex parte Bancoult) v. Secretary of State for the FCO', 2000, para. 13). To avoid granting those rights, Chagossians were expelled from their homeland and prohibited to return. The International Court's judgment accepts the consequences of the expulsion by not recognising the democratic rights that Chagossians were entitled to if they had not been unlawfully expelled. In so doing, the British quest to make Chagossians a rightless people is perpetuated.

The findings ascertain that the application of international law principles has not addressed the root causes of Chagossians' dispossession. Hence, it does not provide the necessary relief to challenge the situation of colonial subjugation that they experience. Moreover, not recognising Chagossians as relevant political subjects for the case precludes them from obtaining further international recognition and capacity to wage challenges by themselves.

However, this project does not intend to question the legality of the International Court's opinion. On the contrary, through the postcolonial criticisms that arise, the paper has aimed to illustrate how international law coexists, legitimises, and is based upon deeply entrenched colonial grounds. Therefore, what can be extracted is that the current international justice still has a long way if it wants to provide fair outcomes for the victims of colonialism and not just state-centric and Westphalian-focused responses to questions that have real and egregious impacts on peoples.

The legal analysis developed in the paper together with the review of Chagossian statements and secondary sources has made the development of the thesis possible. However, as in any research project, I have encountered several limitations. In this sense,

the lack of access to more Chagossian voices and organisations impeded further inquiry on Chagossians' vision of the opinion two years after its release. Nonetheless, linguistic differences and the fact that Chagossian activists combine their resistance with full-time jobs have been among the factors that diffculted these engagements. For this reason, the analysis has focused on the theoretical implications of the advisory opinion for Chagossians.

After the development of this project and keeping in mind the existing academic literature regarding Chagos, the paper opens new doors for possible research. I would argue that there exists a gap that International Relations researchers could fill by analysing the singularities of the case situating Chagossians as the central piece. In this regard, it would be of great interest to perform field research to enquire about Chagossians' visions on self-determination. To this end, it would be necessary to be in contact with Chagossians residing in Mauritius, the United Kingdom, and Seychelles. Such a project could also have the potential to be used as a policy paper to press for the recognition of Chagossians' will.

In the meanwhile, unfortunately, it seems easy to predict which will be the future of the archipelago and its people. In a world dominated by power, Chagos has become an emblem of the strength of the strongest. It is unlikely that both the United Kingdom and the United States will leave the archipelago voluntarily. The current leasing of Chagos is set to end in 2036 and that will possibly be a crucial year for the islands. However, we should not forget that by that moment it will have been nearly sixty years of continued dispossession for Chagossians and most of those who were born there will have spent their entire life without setting a foot again on their native land.



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## 9. Annex

Selected Fragments of the Interview with Frankie Bontemps.

Interviewer: Oriol Galobart Raset, International Relations student and Final Degree Project author.

Interviewee: Frankie Bontemps, Chagossian activist and committee chair of the Chagos Islands Welfare Group

Date: March 24<sup>th</sup>, 2021.

Oriol Galobart (O): What is your link to Chagos and how are you engaged to the cause?

Frankie Bontemps (F): My name is Frankie Bontemps, I am Chagossian by descent and my mom was born in Diego Garcia. I have been engaged since back in 2000 when I was in Mauritius and in 2006 I came to the UK. After 2002, the UK government made a change to the BIOT passport, which only allowed to be in the UK for six months and you didn't have the same rights as the rest of British citizens. But in 2002, in the British Overseas Territory Act, changes were made so the citizens of British Overseas Territories would have the same rights as British people. Even at that time, they didn't want to include the Chagos as they argued that no people lived there so they couldn't have the same rights. At that time, I was living in Mauritius and I wasn't that involved. I was a simple member of CRG with Olivier Bancoult. At that time, we made a sit-in in front of the British Embassy in Mauritius for, I think, 20 days where we said this was unfair. We had backing from Jeremy Corbyn and other MPs that said it was unfair what Chagossians were experiencing. That it was not on Chagossians to not be in Chagos, as they were expelled so it's not their choice to not be there. But even then, for a woman that was born in Chagos, like my mom, their children if they were born before 1969 and after 1983 are not entitled to British citizenship. With these unfair laws some families are separated, some in Mauritius some in the Seychelles.

For example, yesterday we met with some parliamentarians, in a group that integrates MPs of different parties where Chagos is discussed. The parliamentary group of Chagos, which includes about 40 MPs, and it is focused on lobbying. Yesterday, I told them "Our main goal is to return to Chagos, but after 50 years, how many people and natives of the island, lots of them struggling, will have died?". About 2,000

Chagossians were forced to exile, right now about only 400 native inhabitants are alive. Most of them are in their 60s and 70s. We don't know when it will happen, it can be tomorrow, in ten years, thirty years, not even in my lifetime, but at least the government has to take some responsibility and try to solve even this nationality. And try to talk to us, engage in meaningful dialogue.

I think it was in 2014 or around, when the government said "okay, we are going to do a feasibility study". One who had to be independent, managed by KMP. They headed to Crawley and Manchester, to know Chagossians views. They went to Mauritius and the Seychelles. And then in 2016, in March, I think, they released the report, and we were like "wow". An independent report that said that in Diego Garcia, where the base is located, resettlement was possible. Before that moment, the only resettlement proposed was in the Outer Islands which have been abandoned for fifty years. Thick vegetation, nothing there. While Diego Garcia has a long runway, a harbour, and place to accommodate about 1000 people. A small-scale resettlement was possible. There was the issue of cost too. At that time I thought the government would go ahead with it. But, unfortunately, in 2016 they came and Parliament said no because of security and cost to taxpayer. When they forced all these people to exile, they were not concerned by the cost to taxpayers.

And now, this support package of 40 million pounds offered by the UK for Chagossians, whatever they are in UK, the Seychelles, or Mauritius. Between November 2016 and 2020, we have had seven meetings all the groups here in the UK with the Foreign Commonwealth Office, those who are actually in charge of this dossier. However, whatever we propose -for example culture is very important for us and we don't have a place to meet and the elderly in maybe 10-20 will no longer be here, we need to foster our culture, so we need a cultural centre for people to meet- but they keep putting excuses. After four years, that makes me very annoyed and angry. Last time we talked to them, they said "no, now we are going to present the call for bids". Actually, you have to have an organisation and expertise. All the criteria exclude Chagossians from presenting the bids. We have to partner with British charities or foundations in order to participate. Also, they put a timeframe of only one month, how can they expect us in this situation to find partners to work?

O: So they are excluding you, not directly but indirectly?

F: Yeah, by the criteria. And, we feel like, you know as the declassified documents that said "among some rocks and seagulls, we have to remove some men Fridays and Tarzans of obscure origin"

O: I could read this part, and I was horrified for the little respect of human rights and how they have not acknowledged the wrongs and not put a remedy of them.

F: That's why we say to our local MP, who is part of the governing party, "we know it is not your fault, you were not born at that time, we can't accuse you of the problems, but if you are in power today, please use your power to do the correct thing, rectify, and end the injustice. Try to do it, step by step."

O: So you mentioned the cultural centre, would you say culture is a thing that unites all Chagossians, wherever they are living?

F: Yes. My mother and grandma used to tell histories in the coconut plantations. Life was not that easy, there was a quota of coconuts that had to be gathered and processed. So, it was a lot of hard work. But in the weekends they would gather all and set a fire and dance and sing. Music is very important for Chagossians, a foundation for Chagossian culture. But music is also a centrepiece of Mauritian culture. I am of mixed origin, my mom is of Chagossian origin, descendent of Africans, while my dad is Mauritian of Chinese origin. During slavery most of the slaves -coming from Mozambique and Madagascar- after a week of work and suffering gathered to sing and express their problems. As descendants of slaves is part of the inheritance.

O: That's part of the history that the British and Americans tried to hide, that population was native and not temporary.

F: Yes, that's the thing. They kept saying that there were only contract Mauritian workers because they didn't want the UN to know there was a permanent population so that our fundamentals rights would not be applied. For example, the right to self-determination. I think that is the reason the US didn't want the Chagossians. If you don't have a

permanent population, they cannot say that they want the Americans out and a referendum of self-determination to vote to create our country. I think that was the main reason, so we can't have a claim.

[...]

O: I would like to ask you a question in regards to the right of self-determination. Do you think that Chagossians should be the "people" with the right to self-determination?

F: Yes! Mauritius should not be considered the "peoples" in this case. Mauritius is part of the African continent and the French brought African slaves to work on sugar plantations. But after slavery, the slaves abandoned the plantation. So the English brought Indians to work in sugar plantations and they were paid. As of today about 70% of population is of Indian origin and the creole, descendants of African slaves and mixed origins, in Mauritius are marginalised. Among them there are Chagossians, who have been treated the worst. They used to use the term "Ilois", those born in an island -which by the way all Mauritians were born in an island-, and they used it to depict Chagossians as if they were less. Mauritian government is run by politicians of Indian origin.

There's another island, Agalega. My grand-mother was born there. And do you know what Mauritians are doing there? There are about 200 people living there, there was an understanding between Mauritius and India in 2015 and India said there wanted to establish observation facilities. Actually, they are establishing military facilities, spending millions of dollars on it. The runway they are building in Agalega is longer than the one in Chagos.

And what makes me angrier, the ICJ case say the Mauritius can get sovereignty back to the islands and then Chagossians can be allowed to settle there. I don't think this will ever happen. Even on Agalega, all the women giving birth on the island -there is no hospital there- they have to go to Mauritius to give birth, and the birth certificate establishes that the babies were born in Mauritius. So, in 20 years or 30 there will not be people born in Agalega. And the Indian press keeps saying that the island has already been leased, while the Mauritian government says it has not and does not show



the official documents. When Biden came to power, the PM of Mauritius said the US should not be worried if the islands were returned to Mauritius as they could continue there but paying a rent. So I don't think Chagossians would return to the island.

Before we obtained British nationality, most Chagossians were living in Mauritius, but now I don't know. Lots of us are living in the UK. So, when people see Chagossians giving testimonies in ICJ about suffering, it's not like they are consulting all Chagossians. No one asked us here. All Chagossians should be consulted wherever they are. Those in the UK were not consulted. Even if the US close the military base today, Mauritius would lease it to India or China as the government wants the rent. Chagossians are the least of their concerns.

O: So, when the ICJ says that Chagossians should be returned to Mauritius, I see you don't like the option. What would be in that case of the Chagossians living in the Seychelles?

F: In case of self-determination, all Chagossians should be included wherever they are, we should all decide. It is a common future.

[...]

O: For you the best way to decide Chagos' future would be Chagossians to decide?

F: Of course, even after all talks on independence, our parents, mothers, most of them were illiterate and didn't know what was going to happen. For example, in 1982 and compensations. Chagossians were living in very poor conditions and they asked for compensations. The British government said OKAY and established four million pounds and these compensations had to be given to Chagossians. But as of today, we still don't know how much of this money actually was given to Chagossians. Also, Chagossians had to fill a form by which Chagossians could not file charges in the future against the actions that had happened. Full and final.

The compensations would be today around less than 1,000 pounds per person. Chagossians didn't know what they were signing, but they told them that if they didn't

sign they would not receive the money. In any case, now they can use it in courts as "full and final". And most of them could not read or understand English. They didn't know what they were signing. The European Court of Human Rights used it as a way to not address the case.

O: How do you think that Chagossians could be consulted and express what do they want to do with Chagos?

F: Yes that's the thing. We should be able to say if we want to be an independent nation. Also Chagos is a very remote chain of islands. For us to start it would be very hard. First, the economy could be sustained on eco-tourism and small fishing industry. I don't think the coconut plantations could be useful. The Chagossians should have three options: independent country or state, whether they want to stay in Britain like a colony or to stay with Mauritius. Because in Mauritius one of its dependencies, Rodrigues, has 40,000 people and have an autonomous government with the local assembly to run their country. A limited autonomy.

O: It would be a good step for Chagossians to be able to decide from these three options?

F: Yes and always all options had to be put in front of Chagossians so they can decide. The Mauritian government says that if they have the islands given back they are going to start resettlement, but I still doubt that with the base the US will allow Chagossians there.

When I went to Chagos in 2011, about 2,000 Philippine workers were living there and we had a meeting with the US contractor of the moment. We asked why Chagossians are not allowed to work there. They said that previously it was prohibited, but that today it is possible and some are working there. We asked about the salary, they said that employees don't have to pay rent, accommodation or food, but salaries are about 200 dollars per month. Working 6 days a week. No one would come to work with these conditions, it is like modern slavery. They are far from everything. But, at least, they have a small community that can meet on Saturdays and Sundays before working again.

O: Certain Chagossians identify as indigenous inhabitants of the Archipelago, would you also define yourself as Indigenous?

F: Yes. Mauritius or the UK don't want to acknowledge us as Indigenous. Because that would imply we are a different people. Mauritius doesn't like this term, that's why they use "Mauritians of Chagossian origin". Mauritius keeps saying that the islands were forcibly detached, but so were the Seychelles detached in about 1906 from the Mauritian colony to establish their own colony. We as the Seychelles, have our own cuisine, language, culture... different from Mauritius. But the Mauritian government doesn't want to hear it, as that would jeopardise their claim. As, if we had the right to self-determination and we could run the islands, it would be a threat to them. Also, the economic zone is very important of all the islands. For example, in 2011, the Marine Protected Area was done to protect the Economic Exclusive Area, it is an area doubling UK's size. So, there are lots of resources lying on this zone, including minerals, oil, fisheries... That makes Mauritius very interested in the islands.

We are also concerned if Mauritius gets sovereignty, as Mauritius has been giving lots of permits to Chinese, Korean, Japanese ships to fish that are "poaching" all the natural resources and fishes. Mauritius is only interested in selling these fishing licenses and dilapidating all these resources. That's our other concerned. If Mauritius receives our islands, how many Japanese or Chinese ships would be fishing there?

O: So that would represent a change to the sustainable life that Chagossians established there?

F: Yes, it would be a change from a small-scale fishing for our needs. They don't have a connection with the islands. The American have a nuclear submarine there, what would happen if there was an accident? It is so secretive there could be nuclear weapons there. Even appalling reports of torture.

Even if we could start resettlement in the outer islands, which I doubt as there is no infrastructure and ways to develop transport, the 40 million pounds package could be devoted to developing and to establishing first settlements in the outer island. A small-scale fishing cooperative could be established and the benefits could be used to help

the community and help with other projects for the resettlement. People could choose if they want to return and have a relation with the islands.

Even little eco-tourism could be established. The islands of Salomon are full of yachts that go there to relax and Salomon is very far from Diego Garcia. So, rich people go there with no problems.

O: One last question, maybe utopian, what would be for you a dream scenario for Chagos and for Chagossians?

F: For me the ideal one would be if Diego Garcia could be included in the resettlement plan as it is the main and biggest island, the others are very small atolls. It is a place that could accommodate Chagossians. Some of us want to come back, some to stay in Mauritius or the UK, fair enough, but at least those who want to go should have the choice to return. When I went to Salomon, I was like in a novel by Robinson Crusoe, I couldn't imagine those places could exist. Pristine. I had it clear I wanted to come back even though I could not have the same level of comfort. Come back to the place of my mother, my ancestors, and have a connection. When we visited the cemeteries it was very sad and we put flowers and had a mass. It was very important for older generations who could not take care of the cemeteries for decades.

My mom told me that people in Chagos didn't have money. In the end of the month, they were given a voucher that could be exchanged in the only shop in the island. Money was only received once people wanted to travel to Mauritius. They were not corrupted by money. Similarly that happened in Agalega until 2002. My brother, who was working as a police officer in the island, told me that once they started paying with money, some men bought lots of alcoholic drinks. They didn't know how money worked. The situation of Agalega reminds me of Chagos, but now what is happening to them is being done by Mauritian authorities and not the British.

There's a politician in Mauritius that says, "Mauritius sold Chagos to the British". They got 3 million pounds, why would you accept it if you're against it? from declassified files I read that Mauritius was asking for 10 million, but the UK didn't agree. They

even asked to the Americans more quotas for sugar and textile for the American market. They tried to obtain the most out of it. So, that's why I say I don't trust the UK.

O: Thank you so much for the interview. Is there anything else you would like to say regarding Chagossians visions, demands...?

F: The other day, in a meeting with scholars, what we said is that if you can create more awareness about the situation would be fine, as this essay you are writing. But if you could talk with other academics to spread the work and increase awareness would be great. Because all that has been happening has been done in secrecy and without peoples knowing. If you could help us with this, and especially if we want to obtain self-determination, if some academics could help us that would be really helpful.