The British Indian Ocean Territory Court of Appeal **12 November 2026**

His Majesty's Commissioner for the British Indian Ocean Territory v The King (on the application of Mandarin & Ors) **[2026] BIOT CA (Civ) 1**

JUDGMENT SUMMARY

Important note for media and public: this summary forms no part of the court's decision. It is provided so as to assist the media and the public to understand what the court decided. The full judgment of the BIOT Court of Appeal is the only authoritative document.

Judgments are public documents and will, in due course, be available in the 'Courts and Judgments' section of the BIOT Administration website, and on the website of the British and Irish Legal Information Institute ('BAILII')

1. On 16 February 2026, Louis Misley Mandarin, Louis Michel Mandarin, Louis Antoine Lemettre and Guy Shane Adrien Castel (the respondents) landed on Île du Coin, an island in the British Indian Ocean Territory ('BIOT'), approximately 135 miles north of Diego Garcia. They arrived without having obtained permission from the Commissioner for the BIOT (the 'Commissioner') to enter the territory. The respondents are United Kingdom citizens and Chagossians (also known as Chagos Islanders or Ilois (French Creole for 'islanders')). They or their ancestors had lived in the BIOT before the Chagossian population was removed by the United Kingdom government between 1968 and 1973.

2. On 18 February 2026, the Commissioner served on the respondents notices under section 12 ('the section 12 notices') of the BIOT Immigration Order 2004 ('the Immigration Order') requiring the master of the *SY No Excuse* (the vessel on which the respondents had arrived in the BIOT) to remove the respondents forthwith and requiring the respondents to remain outside the BIOT until further notice.

3. The respondents did not leave the BIOT. On 20 February 2026, they obtained from the BIOT Supreme Court an injunction preventing their removal. The respondents

also appealed to the appellant under section 10 of the Immigration Order against the removal notices. When those appeals were dismissed, the respondents filed an application in the BIOT Supreme Court to bring proceedings for judicial review. On 31 March 2026, the Chief Justice, sitting in the BIOT Supreme Court, handed down his judgment. The Chief Justice (i) granted permission to bring judicial review; (ii) declared section 9 of the BIOT Constitution Order 2004 ('the Constitution Order') to be unlawful and quashed the section; (iii) quashed the section 12 notices; (iv) made no order for costs between the parties.

4. The Commissioner appealed against that judgment to the BIOT Court of Appeal and the respondents brought a cross-appeal. The BIOT Court of Appeal granted permission to intervene in the appeal/cross-appeal to the Secretary of State for Foreign, Commonwealth and Development Affairs ('the Secretary of State') (the first intervenor), to Bernadette Dugasse, Michel Andre Vidot, Marie Michelle Cynthia Othello-Krihiff (the second intervenors); Bertrice Pompe (the third intervenor) and Human Rights Watch (the fourth intervenor). The second, third and fourth intervenors appeared by way of written submissions only.

5. There are four grounds of appeal. First, that the BIOT Supreme Court had no jurisdiction to consider an application to quash section 9 of the Constitution Order (**Ground 1**). Secondly, that the BIOT Supreme Court acted in way which was procedurally irregular and unfair by considering the lawfulness of the Constitution Order at all and, in particular, given that the respondents had never pleaded the issue, by finding that the enactment of section 9 had been unlawful from its inception. The BIOT Supreme Court had further erred by finding that there had been a change of circumstances in the BIOT without allowing the first intervenor and the applicant a reasonable opportunity to provide evidence (**Ground 2**). Thirdly, but only in the event that BIOT Supreme Court did have jurisdiction, it had erred in law by quashing section 9 of the Constitution Order (**Ground 3**). Fourthly, that the BIOT Supreme Court erred in law by quashing the section 12 notices (**Ground 4**).

6. The respondents cross-appealed on four grounds. First, given the BIOT Supreme Court's conclusion that the respondents have a right of abode in the BIOT, section 5 of the Immigration Order should be 'given a compatible reading' and/or that any 'offending parts' of the Constitution Order should be removed (**Ground A**). Secondly, that the intended enforced removal of the respondents from the Chagos Islands amounts to deportation constituting an offence under the United Kingdom International Criminal Court Act 2001 and, as such, should be prohibited on the basis that it is illegal and amounts to a crime against humanity (**Ground B**). Thirdly, that the exclusion of the Chagossians from their homeland under section 9 of the Constitution Order is a continuation of a crime against humanity and is accordingly an abuse of power (**Ground C**). Fourthly, that the correct order for costs in the BIOT Supreme Court should be that the Commissioner should pay the costs of the claimants before that court (**Ground D**).

7. **Ground 1:** Section 9 of the Constitution Order provides:

No Right of Abode in the Territory

9. (1) Whereas the Territory was constituted and is set aside to be available for the defence purposes of the Government of the United Kingdom and the Government of the United States, no person has a right of abode in the Territory.

(2) Accordingly, no person is entitled to enter or be present in the Territory except as authorised by or under this Order or any law for the time being in force in the Territory.

By his judgment, the Chief Justice held that the respondents and other Chagossians had a right of abode in the BIOT. Accordingly, he quashed section 9 of the Constitution Order.

8. The BIOT Court of Appeal holds that the BIOT Supreme Court had no jurisdiction to consider the lawfulness of section 9 of the Constitution Order. Matters of jurisdiction in such instances are determined by identifying the system of government within which the particular exercise of executive power takes place. The Constitution Order had been made by the Queen in Council in 'in right of the United Kingdom' and not 'in right of the BIOT' and any challenge to the Constitution Order must be made only in the courts of United Kingdom. The Constitution Order is the foundational document of the BIOT. As such, it was made within the system of government of the United Kingdom, not the BIOT. The courts of the BIOT do not have any joint or concurrent jurisdiction in respect of the Constitution Order.

9. The Chief Justice erred by giving excessive weight to positions on the matter of jurisdiction taken by made by the Secretary of State and the Commissioner in previous litigation, ignoring that it may be legitimate for parties to alter such positions. Jurisdiction is a legal absolute; it either exists or does not exist, cannot be qualified and cannot be conferred by a judge or created by the agreement of parties. Any 'vacillation' identified by the Chief Justice in the position of the Commissioner and Secretary of State was immaterial.

10. The Chief Justice had misunderstood or had incorrectly discounted the unequivocal statements as to jurisdiction made by Lords Carswell and Rodger in the case of *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2008] UKHL 61 (*Bancoult No. 2*). The Chief Justice found that a lacuna in the law as to jurisdiction remained after *Bancoult No. 2* where none existed. The House of Lords in that case had provided a definitive statement of the law on the matter of jurisdiction and the Chief Justice erred by failing to follow it.

11. The Constitution Order could, in principle, have been drafted so as to permit the courts of the territory to consider the lawfulness of its provisions. However, it does not do so. If the BIOT Supreme Court has jurisdiction to quash the governmental instrument by which it had been created, it could, in theory, abolish itself.

12. The Chief Justice also overlooked the consequences of the BIOT and courts of England and Wales having a concurrent jurisdiction. If it had such a jurisdiction, the BIOT Supreme Court would be able to adjudicate on executive acts taking place in the United Kingdom whilst a dissatisfied litigant in one jurisdiction could seek redress in the other thereby causing uncertainty as to the law and administrative chaos.

13. Whilst the BIOT Supreme Court could not consider the lawfulness of the Constitution Order, it is the appropriate court to interpret the Constitution Order and in which to bring public law challenges to the lawfulness of particular acts of executive power, such as the section 12 notices requiring the respondents to leave Ile du Coin. The Chief Justice was wrong to hold that requiring a litigant to challenge the lawfulness of the Constitution Order in the courts of England and Wales and the lawfulness of the section 12 notices in the BIOT courts was 'fanciful.' Different legal remedies arising from the same exercise of executive power often have to be pursued in different courts.

14. **Ground 2:** The respondents had never raised the lawfulness of the Constitution Order in their pleaded case before the BIOT Supreme Court and the Chief Justice erred in law by permitting them to advance the argument. The matter had been raised in the respondents' Reply but that was not an appropriate document in which to introduce new matters; the respondents should have sought permission to amend their grounds of claim but they failed to do so. The Commissioner had been fully entitled to hold the respondents to their pleaded case. As the issue had only been raised in the course of the hearing, the Commissioner had been denied any proper opportunity to adduce evidence on the issue. Accordingly, the hearing had been procedurally unfair.

15. The Chief Justice himself had introduced the notion that the Constitution Order had been unlawful since its inception ('*ab initio*'). When he granted permission to appeal, the Chief Justice considered that the '*ab initio*' argument had been 'unclear in the original grounds'. However, the argument was not 'unclear' in the grounds; it was from the outset, and remained throughout, wholly absent. The Chief Justice had unfairly allowed a wholesale departure from the respondents' pleaded case and, in doing so, he had impermissibly assisted one party to the detriment of another.

16. **Ground 3:** Ground 3 is only relevant if the BIOT Court of Appeal is wrong as to Ground 1.

17. At [116] of his judgment, the Chief Justice stated:

> If this Court does have jurisdiction it is common ground that this Court is not bound by the decision of the House of Lords in *Bancoult No.2* [ibid]: the speeches are highly persuasive but not binding.

The BIOT Court of Appeal allowed the Commissioner to resile from the concession made by counsel at the BIOT Supreme Court hearing that the court was not bound by *Bancoult No. 2*. Amongst other reasons, counsel had been unfairly 'bounced into' making the concession with no reasonable opportunity to consider the Constitution Order and the respondents had not suffered any prejudice.

18. Section 3(1) of the BIOT Courts Ordinance 1983 provides that the BIOT courts should apply the law of England and Wales in so far as it is compatible with local BIOT ordinances. *Bancoult No. 2* was binding on the BIOT Supreme Court. Moreover, the Chief Justice had erred by preferring the opinions of the minority in *Bancoult No. 2* to those of the majority. The opinions of the minority are wrong because they are minority opinions.

19. The Chief Justice also erred by seeking to interpret a treaty signed in May 2025 by the governments of Mauritius and the United Kingdom for the transfer of the sovereignty of the Chagos Archipelago to Mauritius ('the 2025 Treaty'). At [176], he wrote:

> 177. It follows from this Treaty that it is not possible to say that the outer islands are required for the defence purposes of the Government of the United Kingdom and the Government of the United States of America as set out in Section 9 of the Constitutional Order 2004 nor that repopulation is no longer feasible on economic grounds.

20. The bill which will incorporate the 2025 Treaty into United Kingdom law (The Diego Garcia Military Base and British Indian Ocean Territory Bill) completed its legislative stages in both Houses of Parliament in January 2026 but awaits final enactment and royal assent. The House of Lords in *JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry* [1990] 2 AC 418) held that courts had no authority to interpret a treaty which had not been incorporated into domestic law by legislation. It was not open to the Chief Justice to conclude from the unincorporated 2025 Treaty that resettlement of the BIOT is now feasible or that the outer islands are no longer required for defence purposes.

21. Contrary to the opinion of the Chief Justice, the Chagossians had never enjoyed a common law right of abode in the BIOT. Between 2000-2004, before the making of the Constitution Order, BIOT law (the Immigration Order 2000) had permitted Chagossians to enter the BIOT as of right but none had chosen to do so during that period.

22. **Ground 4:** The respondents complained that the Commissioner had not considered granting them any form of entry permit (for example, for a heritage visit); had not discussed the matter with them prior to issuing the notices; had acted unfairly in their appeal against the notices. The Chief Justice found in favour of the

respondents on all of those complaints. The BIOT Court of Appeal allowed the appeal on Ground 4. The section 12 notices are, therefore, lawful and effective.

23. The Chief Justice had been wrong to quash the section 12 notices. The fairness of any administrative decision is fact and regulation specific; there is no universal standard of fairness. The absence of a policy in addition to regulations is immaterial. The fairness of an administrative act should be assessed by reference to the act itself and also any appeal process by which that act may be challenged. The respondents had exercised their right of appeal to the Commissioner. In this instance, there had been no requirement for the Commissioner to discuss matters with the respondents before issuing the notices. The respondents had made it clear to the Commissioner's officer and widely on social media that they intended to remain in the BIOT indefinitely; it would therefore have been pointless to issue time-limited heritage permits to individuals who had stated unequivocally that they did not intend to leave the territory. Further, the respondents' appeal to the Commissioner had contained no grounds of appeal whatever. Consequently, there was nothing for the Commissioner to respond to in his decision and his brief dismissal of the appeal had been adequate in the particular circumstances.

24. **Cross-Appeal:** The BIOT Court of Appeal dismissed the cross-appeal on all grounds. No charge in respect of crimes against humanity allegedly committed in the BIOT has ever been brought. Moreover, the Rome Statute of the International Criminal Court (to which the ICCA 2001 gives effect) applies to crimes committed on or after 1 January 1991, 18 years after the last Chagossian left the BIOT. The order in respect of costs in the BIOT Supreme Court will need revisited in any event in the light of the BIOT Court of Appeal's judgment.

25. The BIOT Court of Appeal allowed the Commissioner's appeal on all grounds. The cross-appeal of the respondents is dismissed on all grounds.