

The Paradox of Procedural Rights: Chagos, Consultation and Commonwealth Silence

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Bhavya Johari argues that the Chagos sovereignty transfer exposes a structural blind spot in international human rights architecture, where procedural rights validated by the ICJ, CERD and a domestic court remain practically unenforceable once affected populations lack standing in the state-to-state negotiations that decide their fate, and calls on the Commonwealth to confront its institutional silence before consultation rights become meaningless for populations without a seat at the table.

On 31 March 2026, a British judge sitting in the British Indian Ocean Territory (BIOT) ruled that [excluding the Chagossian people from their homeland violates fundamental legal principles](#). Two months earlier, a British minister told Parliament that there exists [no duty to consult Chagossians about transferring sovereignty over the Chagos Archipelago](#) (a strategic Indian Ocean territory including the Diego Garcia military base) under the [United Kingdom \(UK\)-Mauritius Chagos Agreement](#) (22 May 2025). The Commonwealth Secretariat, the institutional home of both sovereign parties negotiating that transfer, said nothing. Why?

The Chagos sovereignty transfer reveals how procedural rights can be legally validated across multiple jurisdictions yet remain operationally void when institutional architecture privileges state discretion over enforcement.

When legal validation meets institutional void

The right of Chagossians to participate in determining their political future has been validated through three distinct legal pathways. The International Court of Justice (ICJ) in its Advisory Opinion [Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965](#) (25 February 2019) found that the UK's 1965 detachment of the

Chagos Archipelago from Mauritius during decolonisation violated self-determination because it *was not based on the free and genuine expression of the will of the people concerned*, establishing that territorial disposition without ascertaining the affected populations' will lacks foundation under customary international law. The UN Committee on the Elimination of Racial Discrimination (CERD) transformed that principle into a treaty obligation. Its [Early Warning Decision of 2 December 2025](#) expressed being *gravely concerned about the reported lack of consultation with the Chagossian people during the negotiations, drafting and conclusion of the bilateral agreement*, recalling obligations under Articles 2 (policy measures), 5 (equality rights), 6 (remedies) and 7 (education) of the [International Convention on the Elimination of All Forms of Racial Discrimination](#) (ICERD), which both the [UK and Mauritius have ratified](#).

The BIOT Supreme Court completed the legal encirclement when, in [R \(on the application of Mandarin and Others\) v His Majesty's Commissioner for the British Indian Ocean Territory](#), Chief Justice James Lewis KC struck down legislation excluding Chagossians, holding that *a claimed power to exclude a whole population must be justified by legal source, not administrative necessity*. Yet Baroness Chapman of Darlington (Minister of State, Foreign, Commonwealth and Development Office) told the House of Lords that [the view of successive Governments, and of the courts to date, is that there is no duty to consult](#) (5 January 2026). The Foreign, Commonwealth and Development Office's Human Rights Memorandum maintained that the islands have, and have had, no settled population and therefore [no question of self-determination for such a population arises now](#). A government contradicted by the ICJ, CERD, and its own appointed judge nevertheless asserts that no obligation exists. This is institutional power operating between legal validation and enforcement capacity.

The machinery of institutional silence

The Commonwealth's role in sustaining that gap is structurally determined. The Commonwealth Secretariat issued no public statement on the sovereignty transfer. The Commonwealth Ministerial Action Group (CMAG), meeting on 7 March 2026, [did not name the issue despite Mauritius attending](#). This silence reflects institutional architecture designed for intra-state, not inter-state, human rights scenarios. CMAG's mandate addresses [serious or persistent violations of Commonwealth values](#). When Canadian Prime Minister Stephen Harper [boycotted the 2013 Colombo Commonwealth Heads of Government Meeting over Sri Lankan human rights violations](#), the institutional logic fitted this template: violations within a state, by that state, against its population. Chagos inverts this architecture. The sovereignty transfer is consensual between the two member states; the affected population lacks state standing within bilateral negotiations. There is no perpetrator state to isolate, no single member to sanction.

The contrast with CERD illuminates what Commonwealth silence reveals. CERD can issue Early Warning Decisions because ICERD is a binding treaty creating enforceable rights.

The [Commonwealth Charter](#) commits member states to *the protection and promotion of civil, political, economic, social and cultural rights* but creates no treaty body, no enforcement mechanism, no procedural standing for affected populations. When two member states agree on sovereignty transfer, Charter values become what those states say they are. The institutional void is definitional: the Commonwealth exists to facilitate cooperation between sovereign states, not to adjudicate rights claims by populations caught between them.

A commentary published by the Commonwealth Lawyers Association notes that [the Commonwealth \(the Commonwealth of Nations\) has itself made no declarations with respect to the right to self-determination](#) in the Chagos context. After the ICJ Advisory Opinion, the CERD Early Warning Decision, and the domestic court judgment, the Commonwealth's institutional voice remains confined to a generic affirmation of [the territorial integrity and sovereignty of all member states](#). The formulation treats state sovereignty as self-evidently legitimate while procedurally erasing the population whose territorial connection the BIOT court recognised. The [Commonwealth's Strategic Plan 2025-2030](#) identifies *support for small and vulnerable states* as a priority. A displaced population of [approximately 10,000 Commonwealth citizens](#), negotiating between two Commonwealth sovereigns, embodies that vulnerability, yet without institutional competence to intervene in consensual inter-state agreements, strategic priorities remain declarative.

Rights without enforcement

The Chagos case exposes the fundamental architecture of contemporary international human rights frameworks: procedural rights can achieve legal validation across multiple jurisdictions yet remain practically unenforceable when institutional mechanisms depend on state consent for activation. The consultation obligation has been established through customary international law, treaty obligation, and domestic common law. What it lacks is an institution with both a mandate and the capacity to enforce compliance when two sovereign states agree to transfer territory affecting a third population. The gap is not a legal void but an institutional design. States retain discretion to comply or not, and when compliance would constrain sovereignty negotiations, discretion prevails.

The disappearance of Chagossian consultation rights is thus not defeated through legal argument but through institutional architecture that permits states to ignore judicial findings, treaty-body decisions, and advisory opinions when enforcement depends on the very states being called to account. Until international frameworks develop institutional capacity to enforce procedural rights where affected populations lack state standing within member-state negotiations, rights frameworks will remain what the Chagos case reveals them to be: enforceable for populations who already possess state voice, aspirational for those who do not. The Commonwealth's silence is not failure. It is the system operating as designed.

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