

The 'Migrated Archives'



ACARM Position Paper

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The Association of Commonwealth Archivists and Records Managers (ACARM) recognises and celebrates the heritage shared by Commonwealth countries. It wishes to promote a spirit of cooperation between Commonwealth archivists and records managers, and between Commonwealth countries. To that end, it believes that the issue of the 'migrated archives' must be resolved. ACARM believes that archives removed from British dependencies on the eve of their independence form an important part of the archival record of the independent states. Ways should be found to secure their repatriation to those states, or to make copies available free of charge. The background to this issue is set out below.

Until 2011, the official position of the British Foreign and Commonwealth Office (FCO) was that records created by colonial governments were, at independence, routinely passed to the successor governments.¹ However, in 2011 a successful claim² against Britain by elderly Kenyans seeking compensation for mistreatment and torture during the Mau Mau uprising, forced the FCO to admit the existence in the UK of c.1,500 Kenyan Government files as well as files from another 37 former colonies. A report examining 'what went wrong' emphasised bureaucratic incompetence and loss of corporate memory rather than any intention to conceal.³ The Foreign Secretary promised 'to release every part of every paper of interest subject only to legal exemptions.'⁴ The documents were transferred to the UK National Archives (TNA) in 2012-13, and are available there in their original format for public scrutiny, although there are redactions and some extracts have been retained at the FCO.⁵

¹ Timothy Lovering, 'Expatriate Archives', in *Archives*, Volume XXIV, Number 121, October 2009

² *Ndiku Mutua and 4 Others v. the Foreign and Commonwealth Office*:

<https://www.judiciary.gov.uk/judgments/mutua-others-fco-judgment-051022012/> [accessed 3 Oct. 2016].

³ The Cary Report on the release of colonial administration files:

<https://www.gov.uk/government/publications/cary-report-on-release-of-the-colonial-administration-files> [accessed 3 Oct. 2016].

⁴ Daily Hansard - Written Ministerial Statements, 5 May 2011: Column 23WS The Secretary of State for Foreign and Commonwealth Affairs (Mr William Hague)

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110505/wmstext/110505m0001.htm> [accessed 3 Oct. 2016]

⁵ TNA series reference FCO 141 <http://discovery.nationalarchives.gov.uk/details/r/C12269323>

Close examination of files of the FCO and its predecessors previously in the public domain, and others released in 2013, shows the gradual development of policy concerning the disposal of colonial government records. This policy was not directly concerned with the removal of records to the UK, but with the withholding of those that should be kept from incoming national governments,⁶ i.e. documents which,

- (a) Might embarrass H.M.G. [Her Majesty's Government] or other Governments;
- (b) Might embarrass members of the police, military forces, public servants or others (such as police agents or informers);
- (c) Might compromise sources of intelligence;
- (d) Might be used unethically by Ministers in the successor Government.⁷

We now know, as many had long believed, that huge numbers of documents were destroyed.⁸ Our concern now can be only with those that survive in the UK.

FCO officials refuse to disclose details of a 2011 legal opinion⁹ that these are UK public records, but use it as an irreversible reason to refuse requests for repatriation. This is unfortunate given that decision's unexplained reversal of an earlier legal opinion, and the uncertainties about status expressed by the FCO, TNA, and their predecessors over many decades.

The impression given by FCO statements since 2011 is that the archives, on receipt in London, were warehoused and simply forgotten, but there is ample evidence of sporadic interest and activity. In 1967, when the Kenyan government first asked for the return of its records (as it continues to do), the FCO insisted that they were British property.¹⁰ However, in 1972 an FCO official stated categorically that Cypriot records belonged in Cyprus. These records had been sent to the UK for temporary safekeeping because of their sensitivity and the many criticisms of still prominent persons contained therein. 'But these considerations do not make the records UK public records, any more than are the records of any other former Colonial Government.'¹¹ The intention had always been to hand them back to Cyprus when their sensitivity diminished. Public Record Office staff, however, thought that they were UK public records. Four years later the question was referred to the Lord Chancellor's Office, which agreed with the FCO – the records from Cyprus were not

⁶ Mandy Banton, 'Destroy? "Migrate"? Conceal? British Strategies for the Disposal of Sensitive Records of Colonial Administrations at Independence', *The Journal of Imperial and Commonwealth History*, vol. 40, no. 2, June 2012; Mandy Banton, "Lost" and "found": the concealment and release of the Foreign and Commonwealth Office "migrated archives", James Lowry (ed.) *Comma: The Journal of the International Council on Archives*, 2013.

⁷ Guidelines were subsequently updated and wording may differ. This is from the version sent to the East African dependencies on 3 May 1961. CO 822/2935, disposal of files in Tanganyika, 1960-62.

⁸ See, for example, David M. Anderson, 'Guilty secrets: deceit, denial, and the discovery of Kenya's "Migrated Archive."' *History Workshop Journal* 80 (Autumn 2015): 142-160; Hampshire, Edward: 'Apply the flame more searingly. The destruction and migration of the archives of British colonial administration, a South-East Asia case study', *The Journal of Imperial and Commonwealth History*, Vol. 41, No. 2, 2013, pp. 334-352.

⁹ FCO response, 12 February 2013, to FOI request 0066-13 submitted by Dr Mandy Banton.

¹⁰ L. Reid to M. Scott, 2 November 1967, FCO 31/211, Kenya request for return of records.

¹¹ H. G. F. Harcombe, FCO, to A. J. McDonald, PRO, 18 July 1972, PRO 69/426.

UK public records.¹² By 1982 the PRO and the FCO had reversed their positions in respect of another case: the PRO said that files from Aden were not UK public records; the FCO held that they were.¹³

The 1970s saw international interest in displaced archives when UNESCO noted:

Archives ... not only document the historical, cultural and economic development of a country and provide a basis for a national identity they are also a basic source of evidence needed to assert the rights of individual citizens. Changes in territorial boundaries and sovereignty have deprived many countries of at least part of their rightful archival heritage. It is important to all nations and to mankind generally that the problem of providing access to archives, and their restitution ... where ... required, should be dealt with urgently.¹⁴

Deliberations resulted in drafting of the *Convention on Succession of States in respect of State Property, Archives and Debts*. Although it was ratified by too few member states to come into force, it has continued to inform thinking about displaced archives within the international archival community.

In 1978, the head of FCO's Library and Records Department, aware of international interest and understanding that it had always been the FCO's intention to return the 'few sensitive items', instigated a survey of the records, their relisting, and, apparently, some weeding. However, she subsequently doubted the wisdom of repatriation, stressing that even Kenya was not fully aware of the quantity and sensitivity of material in British hands. Any return would set a precedent, act as a warning to territories yet to achieve independence, and perhaps provoke further international debate.¹⁵

In 1995, an FCO official recommended that the Lord Chancellor be consulted again. 'If they are not public records', he noted, 'we have *carte blanche* over their fate.'¹⁶ The following year FCO stated that the PRO should accept the Kenyan files on the grounds that they belonged to Government House.¹⁷ This was a common sleight of hand; documents had routinely been removed from colonial government departments to the governor's or high commissioner's office before being sent to London, and their provenance obscured.

In 2007, TNA said if records were releasable their return to the successor administrations should be arranged,¹⁸ but in 2011 it advised FCO to take legal advice, which resulted in the opinion that the migrated archives are UK public records. It is unclear why the definition of 'public records' in the 1958 Public Records Act has proved so difficult to interpret. Many questions remain unanswered.

¹² T. S. (later Sir Thomas) Legg, Lord Chancellor's Office, to A. W. Mabbs, PRO, 8 March 1976, PRO 69/426.

¹³ Cary Report, para. 9.

¹⁴ UNESCO, Archival claims, preliminary study on the principles and criteria to be applied in negotiations, 1977. Available at <http://unesdoc.unesco.org/images/0002/000298/029879eb.pdf> [accessed 3 Oct. 2016]

¹⁵ Miss E. C. Blayney to Mr Streeton, 28 July 1982, FCO 141/19933.

¹⁶ R. R. M. Hollas, 1 February 1995, FCO 141/19933.

¹⁷ Cary Report, para. 15.

¹⁸ Cary Report, para. 25, section vi.

The ACARM position is that the migrated archives are the property of the countries from which they were removed. It believes that repatriation of the records is the legally and ethically correct course. Furthermore, it recognises the archival principles of 'territorial provenance' and 'functional pertinence' as set out in the UNESCO and International Council on Archives (ICA) documentation on archival claims. According to these principles, the migrated archives are displaced archives. ACARM encourages all of its members to abide by the ICA's *Code of Ethics* (1996), which states that 'Archivists should cooperate in the repatriation of displaced archives'.

If repatriation continues to be unacceptable to the British Government, ACARM encourages it to demonstrate transparency by making public the legal opinion of 2011 that is the basis of its decision to retain the records. ACARM also encourages the British Government to demonstrate good will to the governments and peoples with which its history is intertwined by providing free digital copies of the records to the countries from which the records were removed.

ACARM is confident that a satisfactory conclusion to this problem is possible, and encourages all parties to work towards that conclusion in a spirit of cooperation.