

[REDACTED]

24 February 2011

Professor Salmon,

THE MIGRATED ARCHIVES : WHAT WENT WRONG AND WHAT LESSONS SHOULD WE DRAW?

1. I was asked to look into the circumstances surrounding holdings of colonial administration files at Hanslope Park, with Terms of Reference at Flag A.
2. To explain why relevant files from these holdings were not identified for the purposes of particular requests, it is necessary to understand the genesis and history of the "migrated archives".

History of the Migrated Archives and uncertainty over their status

3. As British dependent territories came to independence decisions had to be taken about which papers to destroy, which to leave for successor administrations, and which to ship back to the UK. The general rule, as set out in a Colonial Office guidance telegram of 3 May 1961 on the 'disposal of classified records and accountable documents', was that successor Governments should not be given papers which:
 - might embarrass HMG or other Governments;
 - might embarrass members of the police, military forces, public servants or others eg police informers;
 - might compromise sources of intelligence information; or
 - might be used unethically by Ministers in the successor Government

In addition "*There would be little object in handing over documents which would patently be of no value to the successor Government*". A great many documents were destroyed on this basis, but others were returned to the UK. These became the so-called 'migrated archives', eventually totalling around 8,800 files.

4. Apart from some highly classified files that were subsequently destroyed or lost, which are the subject of a separate enquiry, the Kenyan archive was stored in 294 boxes of some 1500 files that were sent back in 1963. The papers include, *inter alia*, Executive Council minutes from 1939 to 1957, War Council minutes from 1954 to 1961, Council of Ministers' minutes from 1954 to 1963, Intelligence Committee minutes from 1953 to 1961, and a complete set of Provincial and District Intelligence Summaries for 1953 to 1961. The Acting Governor commented at the time that this last series, in particular, could not be made available to research workers for many years to come, but should nevertheless be preserved because it contained material of historic value [recorded in LRD's 1981 chronology, para 8 below].

- [REDACTED]
5. Between 1963 and 1994 the files were stored at Hayes repository. In 1994 they were moved to Hanslope Park, to save on storage costs.
 6. Almost from the beginning, there was uncertainty about the status of the migrated archives. As time went on, as will be seen, this extended to confusion within IMG about the content of the holdings. This investigation has been restricted to the Kenyan files, but the same uncertainty applies to the migrated archives as a whole.

Ownership of the Kenyan files within the migrated archives

7. The Kenyans made their first request for return of the documents in 1967. They were told that the papers were the property of HMG, which would not return the material. It is clear from internal minuting leading to this response that the content of the Kenyan holdings was well understood at that time: *"The vast majority of the files concern the Emergency (eg intelligence reports and summaries, African associations, activities of Africans, unrest in the districts etc, collective punishment, detainees and detention camps... Many others are no doubt indirectly connected with the Mau Mau, especially those referring to individuals and political parties"* [Folio 4 of piece number FCO 31/211]. The decision not to return the files was based on a combination of a 'thin end of the wedge' argument (If we return some files, we shall draw attention to the existence of others for which we shall then be asked, and that we may not wish to release) and a 'dangerous precedent' one (If we return Kenyan files after reviewing them for sensitivity we might find it difficult to withhold un-reviewed and potentially sensitive papers from other former colonies).
8. The Kenyans returned the charge in 1974 and again in the early 1980s. In the latter context, Library and Records Department (LRD) produced a useful chronology of the origin of the Kenyan papers and subsequent action in connection with them ([REDACTED] [file reference redacted]). It included some PQs from Andrew Faulds MP who had asked in 1971 why the Kenyans had been denied access to pre-independence Executive Council records. He was told it was because these related to a *"UK Government interest, not a Kenya colony interest"*. In the background note accompanying the draft of that reply it was noted that the files were time-barred. But the Minister was advised to say, if pressed, that the papers would end up in the Public Records Office (PRO).
9. That was in 1971. But a decade later the PRO position had changed. At a meeting with LRD in March 1982 [REDACTED] of the PRO explained, in relation to the migrated archive from Aden, that these *"were not UK public records within the meaning of the Public Records Act. They were records of the former Colonial Government Administration most of which, but for concern over their safety, would have been handed over to the incoming government on Independence"* ([REDACTED] [file reference redacted]). [REDACTED], proposed that *"the general question of the return of colonial records should be examined 50 years after the date when the first colony, Ceylon, became independent – ie in 1998."* The Legal Adviser, [REDACTED], minuted that *"I doubt we can wait until 1998 before looking more closely at the general question of the return of colonial records. We are bound to come under continuing pressure on this"* ([REDACTED] [file reference redacted]). But this did not prompt further action at the time.

[REDACTED]

10. In February 1995, [REDACTED] confirmed successful physical transfer of the migrated archives from Hayes to Hanslope Park ([REDACTED]) [file reference redacted]. He went on to note that the question of what to do with these papers had last been seriously addressed in 1982, and set out the options as he saw them:

"Four options:

- a) *Since none of the countries concerned has in the last 12 years shown any interest in these records there is no point in keeping them, and they should be destroyed.*
- b) *It is decided that they are UK public records and they should go through the same process as FCO files prior to transfer to the PRO.*
- c) *Selection and sensitivity review and return to the successor government.*
- d) *Use the line taken with Kenya as a precedent and answer any queries from the successor governments by admitting that certain records were destroyed or returned to the UK, but these are the property of HMG and we do not intend parting with them.*

He recommended that "it should be determined by reference to the PRO and the Lord Chancellor's Office, whether or not we are dealing with public records". If not, he favoured the final option above – though rather than retain these records within FCO (covered by a so-called "Lord Chancellor's Instrument" to permit retention beyond 30 years) his thought was that we might weed/review the files sufficiently to enable them to be handed over to a repository such as Rhodes House Library, Oxford.

11. [REDACTED] observed in her comment on this minute that the papers were "surely" public records. "The question then is whether to proceed and review now or wait until the spuriously agreed 1998 date". The outcome was further postponement. This clearly frustrated [REDACTED], who continued to press for a decision. As he had noted in his February minute: "We continue to have 2000 boxes of files gathering dust, some of the contents of great interest, but which cannot be seen by researchers etc in case the cat is let out of the bag" (by this I take him to mean not that any particular dark secret would be exposed, but that it would emerge that the status of the archives had never been determined).

12. I have contacted [REDACTED] in retirement for her recollection of why no action was taken at this time. She says she was certainly aware that the migrated archives "might contain potentially sensitive /interesting material which could become the focus of FOI requests or any other requests for access. Just as all of the unreleased and unreviewed miles of records held by the FCO all the time is now open to such requests.... We should of course have wished to defuse and deal with them by getting them reviewed and assessed on a detailed basis and deciding what to do with them. But I am afraid we did not have the time or resources to deal with them all. Indeed in the run up to FOI we could barely manage to do the annual 30 year review on time [which, she might have added, is a statutory obligation.] Of course you might reasonably say that the case for getting more resources to deal with collections such as the migrated archive should have been made more forcibly. But it wasn't – and I think

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that may have had as much to do with some basic risk assessment as simply – and regrettably – being too busy to cover all bases.”

13. ██████████ minute of February 1995 also made reference to the status of the Cyprus pre-independence migrated archive: “Sometime after their arrival in LRD in 1969 they went through the process of selection review and listing ready for despatch to the PRO”. The PRO had gone so far as to give the papers a reference number (CO 979). But they had second thoughts about taking the papers. ██████████ commented, about the migrated archives as a whole, that: “although in the past the PRO has said that these are public records, their status under the Public Records Acts has not been determined. I believe that the PRO would not now accept them.”
14. In the “Planning and Review Framework” for 1995, ██████████ enjoined the FCO to “use best efforts to ensure that a review programme to process the records transferred in the last year from Hayes to Hanslope Park...is put in place. A complete schedule of these records will be completed by the end of 1995 to allow planning of the action required.” But there were too many competing priorities. ██████████ minuted to ██████████ that “from statistics already produced there are early indications of resource problems ...As soon as further statistics and information are available to enable me to form my decisions I will minute you the programme and my suggested recommendations” (██████████) [file reference redacted]. But no programme was ever carried out – or at least not a comprehensive one. I have spoken to ██████████ in retirement, but she no longer has any recollection of the particular circumstances that caused this postponement.
15. In February 1996, ██████████, ██████████ who was responsible for the annual programme for the review of old papers, informed ██████████ that he had now had time to research the papers in some detail and he was in no doubt that the PRO should accept the Kenyan migrated archive, at least, on the grounds that they belonged to Government House rather than to the Kenyan Government (██████████) [file reference redacted]. But either PRO refused that request, or the case was not pressed again at that time.
16. ██████████ annual report on FCO documentation performance in 1997 (██████████) [file reference redacted] noted that: “Work is continuing to deal with the older records recently moved to Hanslope Park, a large number of which are awaiting a decision from another Government Department before action can be taken”. A footnote explains that this refers to registers of births, deaths and marriages believed to be copies of master registers passed to predecessors of the Office of National Statistics – and this allusion to administrative holdings within the migrated archives may help to explain how the impression began to take hold that the archives as a whole were essentially administrative and uninteresting. In a Note for the File of 29 August 1997 ██████████ recorded that “In the opinion of the ██████████ (ie ██████████) approval is not required for the Western Pacific and migrated records (my underlinings) as they are not in fact or technically speaking proven to be our official public records” (██████████) [file reference redacted]. This epitomises the confusion that by then reigned over the status and content of the archives. Because the papers were not deemed to be official public records, and because the FCO now saw itself as their custodian rather than their owner, they came to be almost ‘off limits’.

[REDACTED]

Hong Kong

17. In 1995/6 there was discussion about how to treat migrated Hong Kong files once Hong Kong's sovereignty transferred to China. An FCO/PRO submission to the Lord Chancellor argued that these were not UK public records and did not fall within the Lord Chancellor's Ministerial responsibilities, but that any original or filmed copies that passed into the ownership of the FCO would become UK records on 1 July 1997 ([REDACTED]) [file reference redacted]. In 1996 the Lord Chancellor gave his approval in principle for the retention of certain HKG records of special sensitivity for 50 years after their transfer to UK Government ownership ([REDACTED]) [file reference redacted].

Recent activity relating to the migrated archives

18. As a consequence of confusion over ownership, the Kenyan migrated archive was left in limbo: neither accepted by TNA for the public record, nor formally acknowledged by the FCO. Unless it catalogued the files and conducted a full sensitivity review, the FCO could neither release the files (whether to successor Governments or to private repositories) nor consult them in any systematic way for the purposes of FoI and other search requests, nor even apply for a Lord Chancellor's Instrument to authorise retention of them. But no such review was conducted. In part, this was because of resource constraints: the Department has struggled to keep up with the annual statutory requirement to select, review and redact files for acceptance by the the National Archives (TNA), and in recent years it has also faced an unrelenting flow of FoI requests. But in part it also reflected a failure by successive senior managers to grip what should have been seen to be an unresolved and potentially explosive problem.
19. Over recent years the Department also lost collective memory about the content of these archives. The erroneous conviction developed that the papers (which do indeed contain some material such as birth/death/marriage registers) were essentially administrative and/or ephemeral, and that insofar as there might be substantive papers these would be replicated in Colonial Office records that were already in the National Archive. It is clear from para 25 ii below that this was also the TNA's view. It also came to be wrongly understood that the records were unsearchable because there were no file lists. In fact there are file lists, though there is no data-base for the purposes of systematic searches.

Physical storage of the migrated archives

20. The way in which the files were stored also contributed to the failure to consult them.
21. Originally, as noted, they were stored at Hayes. When they were transferred to Hanslope Park in 1994 they were kept alongside the main FCO Archive. But since 2006 they have been stored on a different floor of the building from other historic papers. They are lodged with the Retrievals Section, which is responsible for searches of FCO material of between 3 and 30 years old, rather than being lodged with the section responsible for searches of historic papers.
22. I have no doubt that [REDACTED] would have searched the migrated archives had they understood the contents better and had they

[REDACTED]

believed the papers to be relevant to any of the requests they had received. That was the main reason that the files were overlooked. But the fact that neither saw the migrated archives as their particular lead – because of their age, in [REDACTED] case, and because of their physical situation in [REDACTED] – undoubtedly contributed to the recent problems.

23. Another point is that the files are stored in stacks labelled “Hayes Classified Archive”. This gave some staff the impression that the FCO was holding the files on behalf of some other agency called Hayes – where, according to a canard that was widely shared and passed down during handovers, there had been a fire in the mid-90s. These staff did not feel that the files were really ‘ours’ to consult for search purposes.

2007 discussion of the disposition of the migrated archives

24. A train of emails from 2007 makes clear the uncertain status of the archives. But it also shows that there have been major exceptions to the general principle that these papers have been considered ‘out of bounds’. It is worth mentioning that I only came across this train because I found one of the messages on iRecords as an orphan HTML document at S:\ITD\IMG\Records Management\Retrieval\General\Finding Aids List. From this IMG were able to recover the rest of the exchange from TNA.

25. The key exchanges were as follows:

- i) In August 2007 [REDACTED] sought confirmation from [REDACTED] that TNA still did not want the migrated archives.
- ii) [REDACTED] said there had been no change to TNA’s position. The files were not wanted by them as *“any significant material should be duplicates of the selected Colonial Office London HQ files. We are content for FCO to dispose of these records by destruction without further reference to TNA”* (my underlining).
- iii) On the strength of this, [REDACTED] to go ahead with destruction. But [REDACTED] objected on the grounds that the files contained much important material which was being quite regularly consulted, albeit on an ad hoc basis, and contained information not found in TNA. As examples she cited:
 - searches by the Research Analysts, mainly [REDACTED], who had regularly used the BIOT files in connection with the ongoing court cases concerning the Chagos Islanders and Diego Garcia.
 - review of the Basutoland files by two academics writing a book on “Medicine Murder in Colonial Lesotho”. They had known about the papers as they had been given a file list by the last Governor’s widow. They found so much new material that they had to rewrite their book.
 - information provided to BHC Mbabane on the founding of that capital.
 - an academic request for papers related to the New Hebrides for research into a particular cargo cult. [REDACTED] had reviewed the relevant files and sent him papers from them.