

**Submission to the Committee on Economic, Social and Cultural Rights
By Minority Rights Group International**

**United Kingdom of Great Britain
and Northern Ireland**

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Introduction:

Minority Rights Group International (MRG) is an international NGO working to secure the rights of ethnic, religious and linguistic minorities worldwide. MRG has consultative status with the United Nations Economic and Social Council (ECOSOC), observer status with the African Commission on Human and Peoples' Rights (ACHPR) and is a civil society organisation registered with the Organization of American States (OAS). MRG and its partners have researched and advocated for the rights of the Chagos Islanders for many years.

In line with the mandate of MRG, this report focuses on the behaviour of the Government of the United Kingdom towards the Chagos Islanders in light of its obligations under the International Covenant on Economic, Social and Cultural Rights ('the Covenant'). It provides an overview of the situation of the Chagos Islanders and updates the Committee on the legal developments since the consideration of the previous periodic report of the UK. The report will then contest the inapplicability of the Covenant in the BIOT as well as evaluate the UK's behaviour towards the displaced residents of the BIOT in light of its obligations under the Covenant.

1. Overview of the Situation

a. Removal of the population

Up until the 1960s, the Chagos Islands in the Indian Ocean were inhabited by an indigenous people, the Ilois (also known as Chagossians), who were born there, as were their parents and many of their ancestors. In the early 1960s, the governments of the United Kingdom and the United States of America resolved to establish a major military base on the largest of the Chagos Islands, Diego Garcia. To facilitate the creation of the base, in 1965 the Chagos archipelago (including Diego Garcia) was divided from Mauritius (then a British colony) and constituted as a separate colony called the British Indian Ocean Territory ('BIOT') by way of Order in Council (SI 1965 No 1920).

Between 1967 and 1973, the United Kingdom removed the inhabitants of the Chagos Islands by *inter alia*, refusing to let them return from visits to Mauritius and closing down the plantations which provided for their employment. In 1971, an 'Immigration Ordinance' was issued by the Commissioner of BIOT (pursuant to powers contained in the 1965 Order) requiring the compulsory removal of the whole of the population of the territory, including all the Ilois, to Mauritius. The Ordinance also provided that no person could enter the territory without a permit. The last inhabitants were removed from the Chagos Archipelago in 1973. The Chagossians have never been appropriately consulted about their removal from the island. Subsequent to their removal, a treaty was concluded between the US and the UK by which the island of Diego Garcia was leased to the American military, which has constructed and operates a military base there.

The Chagossians now live in poverty and marginalisation in Mauritius, Seychelles and the UK. Adequate provision was never made by the UK Government for their housing, feeding, employment, healthcare, social needs and community facilities. They have suffered for over 40 years as a result of their resettlement.

b. Legal action

The Chagossians have brought a number of legal actions in the UK courts challenging their expulsion. In 2000, the High Court struck down the relevant part of the Immigration Ordinance on

the grounds that the relevant power contained within BIOT, the power to legislate for the ‘peace, order and good government’ of the territory, while broad, did not include a power to exile a people from their homelands.¹ The UK Government did not appeal the decision and passed a new Ordinance allowing inhabitants to return to the outer islands of the archipelago but not to Diego Garcia. However, the Government later overturned its decision to support the resettlement and revoked the original BIOT order, passing new orders - the BIOT (Constitution) Order and the BIOT (Immigration) Order - in 2004. These provisions reinstated full immigration control; they “declared that no person has the right of abode in BIOT nor the right without authorisation to enter and remain there. The Chagossians were thus effectively exiled.”²

A second case was brought challenging the legality of the new arrangement including the provision where (a) no provision had the right to abode in the BIOT and (b) that no person was entitled to enter BIOT without authorisation.³ The challenge was successful both in the High Court and the Court of Appeal, the latter holding that the orders amounted to an abuse of power because they negated the islanders’ rights to return to their homeland⁴. The Government appealed to the House of Lords, where the majority ruled that the exercise of power under the 2004 orders was essentially a concern for the government and Parliament and not properly a matter for the courts⁵. In dissent, one of the Lords stated that the Government’s submission “treats BIOT and the... power to make... laws relating to BIOT as if they related to nothing more than the bare land, and as if the people inhabiting BIOT were an insignificant inconvenience”.⁶

In 2014, the Chagossians challenged this ruling, lodging an appeal before the Supreme Court on the basis that key evidence had been withheld by the Government during the earlier litigation⁷. Specifically, papers suggested that a feasibility study conducted in the early 2000s – which found that a Chagossian resettlement would be difficult - was highly flawed. Documents released under the Freedom of Information Act suggested that the Foreign Office paid an academic to heavily critique the original draft of a study, which was generally more favourable to the return of the Chagossians than the final published version.⁸ The matter was heard by the Supreme Court on 22 June 2015 and, at the present time, the Supreme Court has yet to issue their ruling.

In 2012, the European Court of Human Rights (‘ECtHR’) issued its decision in *Chagos Islanders v. United Kingdom*, where the Chagossians alleged breaches of Articles 3, 6, 8 and 13 and Article 1 of Protocol 1⁹. In 2009, Minority Rights Group International, in conjunction with Human Rights Watch, submitted a third party intervention in this case. The ECtHR found that the application was inadmissible, since, in its view, the Chagossians’ claims about their removal were the result of

¹ *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2001] QB 1067.

² *R (Bancoult) v. Secretary of State for the Foreign and Commonwealth Affairs (No 2)*, [2007] EWCA Civ 498, para 11.

³ British Indian Ocean Territory (Constitution) Order 2004, available at:

² *R (Bancoult) v. Secretary of State for the Foreign and Commonwealth Affairs (No 2)*, [2007] EWCA Civ 498, para 11.

³ British Indian Ocean Territory (Constitution) Order 2004, available at:

<http://www.worldstatesmen.org/BIOT2004.PDF>, accessed on 27 June, 2011

⁴ *R (Bancoult) (n 2)*

⁵ *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No.2)* [2008] UKHL 61

⁶ *ibid* para 157

⁷ *R (on the application of Bancoult No 2) v Secretary of State for Foreign and Commonwealth Affairs* [2015] UKSC 2015/0021

⁸ FOI release: Chagos resettlement? (*Gov.uk*) <<https://www.gov.uk/government/publications/foi-release-chagos-resettlement>> accessed 11 May 2016

⁹ *The Chagos Islanders v UK*, Application no 35622/04

inappropriate treatment but they had been definitively settled by domestic courts.¹⁰ The ECtHR found that the Chagossians had accepted and received compensation, and therefore had lost their right to bring any further claims to determine the unlawfulness of their removal and to receive any other remedies as victims of a violation under the Covenant.¹¹ It is worth noting here that, in fact, only 1,344 Chagossians (those living in Mauritius) received any compensation, and this compensation totaled £2,976 per person, with no compensation paid to any Chagossians living in the Seychelles.¹² Further, on receipt of the monies, the Chagossians were required to sign an English-language document, yet many of the signees were illiterate, Creole-speaking and generally did not understand the true intent of what they signed.¹³

In April, 2010, the Chagos Archipelago was declared a marine preserve.¹⁴ This reserve is the largest in the world, more than twice the size of the United Kingdom, a move that made any fishing or deep sea mining within its boundaries illegal.¹⁵ The only exception to this ban was for traditional fishing around the island of Pitcairn by its local population.¹⁶ In 2013, the High Court upheld the Chagossians' challenge of the 2010 creation of the Chagos Marine Park. The Chagossians had argued that the Park was created for an improper purpose, and would effectively prohibit them returning because fishing was their livelihood. More disturbingly, in cables sent from then British diplomat Colin Roberts to US diplomats, in assuring them that the creation of the reserve would not adversely affect the US Air Force base present on Diego Garcia, Mr. Roberts wrote that the park would prohibit the resettlement of the island, meaning there would be "no human footprints" or "Man Fridays."¹⁷ Unfortunately, the judges in the case ruled that the Diplomatic Privileges Act 1964 forbade the cables or copies of them from being admissible as evidence.¹⁸

2. The Covenant is applicable to BIOT and to UK acts affecting the Chagossians

a. The Covenant is applicable to UK overseas territory

In submissions to other international mechanisms, including the ECtHR¹⁹ and the UN Human Rights Committee²⁰, the UK Government has taken the position that certain human rights conventions which it has ratified (notably, the European Convention on Human Rights ('ECHR') and the International Covenant on Civil and Political Rights ('ICCPR')) do not extend to the BIOT because the UK did not ratify them specifically in relation to BIOT. For the sake of completeness, this submission will briefly address this argument.

¹⁰ ECHR Press Release, 'Chagos islanders' case inadmissible because they accepted compensation and waived the right to bring any further claims before the UK National courts' (20 December 2012) ECHR 420 2012

¹¹ *ibid*

¹² *Chagos Islanders v the United Kingdom* [2012] ECHR 35622/04

¹³ *ibid* paras 12 and 53

¹⁴ 'About the Chagos Marine Reserve' <<http://chagos-trust.org/about/chagos-marine-reserve>> accessed 16 May 2016

¹⁵ *ibid*

¹⁶ Brian Clark Howard, 'World's Largest Marine Reserve Created in Pacific' (*National Geographic*, 18 Mar 2015) <<http://news.nationalgeographic.com/2015/03/150318-pitcairn-marine-reserve-protected-area-ocean-conservation/>> accessed 16 May 2016

¹⁷ 'HMG Floats Proposal for Marine Reserve Covering the Chagos Archipelago' (British Indian Ocean Territory) (*Wikileaks*) <https://wikileaks.org/plusd/cables/09LONDON1156_a.html> accessed 11 May 2016

¹⁸ 'Chagos Marine Park is lawful, High Court rules' (BBC 11 June 2013) <<http://www.bbc.co.uk/news/uk-22852375>> accessed 11 May 2016

¹⁹ *The Chagos Islanders* (n 9)

²⁰ Comments by the Government of the United Kingdom of Great Britain and Northern Ireland on the reports of the United Kingdom (CCPR/CO/73/UK) and the Overseas Territories (CCPR/CO/73/UKOT), 7 November 2002, para 88

Firstly, any limitation of the scope of applicability of the Covenant, if made within a specific reservation, would fall contrary to the international law on state reservations. According to Article 19(c) of the Vienna Convention on the Law of Treaties, a reservation may not be “incompatible with the object and purpose of the treaty.”²¹ Limiting the territories to which the Covenant applies not only modifies the “object and purpose” of Article 2, but completely negates it, denying whole classes of UK citizens, including those of the excluded territories, the ability to enjoy any of the rights enshrined in the Covenant at all.

In addition, the courts have accepted jurisdiction over the events that took place on the Chagos Islands. As a matter of international law, the BIOT is a UK territory and not a sovereign state. As a matter of domestic law, the BIOT is directly administered by the UK Government. The declared purpose of the BIOT is to further the defence of the UK and its allies. Moreover, the UK courts accepted jurisdiction over the merits of the entire Claimant’s complaints concerning events in the BIOT.

Further, the ECtHR has held, in multiple cases, that jurisdiction can be found outside of a nation’s physical territory. The Court has found that military intervention in an occupied territory requires a State to apply the ECHR within said territory.²² The Court upheld this decision in stating that, while traditionally jurisdiction is confined to a State’s physical territory, it can extend its jurisdiction outside its borders if it takes effective control of an area abroad, and that the obligation to uphold the ECHR’s human rights protections extends to these extraterritorial areas.²³ More recently, the ECtHR confirmed these decisions when it held that the UK Government’s human rights obligations are not limited to within the UK itself, but do extend to overseas territories where British officials exercise “control and authority” over foreign nationals.²⁴

With regards to the ICCPR, the Human Rights Committee has also found that it may be applied extraterritorially. The Committee stated that, “it would be unconscionable to so interpret the responsibility under article 2 of the Covenant as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory.”²⁵ This sentiment was further reiterated in General Comment No. 31: “States Parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all person who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within their power or effective control of that State Party, even if not situated within the territory of the State Party.”²⁶

The argument behind the application of the ICCPR to the BIOT supports the same argument for the extraterritorial application of the ICESCR. The UK government is obliged to observe the provisions of the Covenant, both in relation to its people and in its territories abroad.

²¹Vienna Convention on the Law of Treaties, art. 19(c), 23 May 1969, 1155 U.N.T.S. 331

²² *Loizidou v Turkey* [1995] ECHR 10

²³ *Issa and ors v Turkey* [2004] ECHR 629

²⁴ *Al-Skeini and others v. United Kingdom* [2011] ECHR 55721/07

²⁵ *Lopez Burgos v. Uruguay* (Communication No. 52/1979)

²⁶ Human Rights Committee, General Comment No. 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, adopted on 29 March 2004 (2,187th meeting), para 10

b. The United Kingdom retains responsibility for unlawful acts committed on Diego Garcia

In 1966, the United Kingdom and the United States exchanged notes leasing Diego Garcia from the UK to the US. In this agreement, the States agreed that, “The Territory shall remain under United Kingdom sovereignty.”²⁷ In Annex II of this same agreement, differentiation is made between “the military authorities of the United States” and “the authorities of the Territory,” where a plain language reading can only lead to the understanding that “the authorities of the Territory” is the United Kingdom herself. The agreement thus stipulates that “the authorities of the Territory shall have jurisdiction over the members of the United States Forces with respect to offenses committed within the Territory and punishable by the law in force there, and that, “the authorities of the Territory shall have the right to exercise exclusive jurisdiction over members of the United States Forces with respect to offenses [...] punishable by law in the Territory but not by the law of the United States.”²⁸

The United Kingdom thus remains responsible for actions committed in the Chagos Islands that are contrary to her obligations under human rights treaties.

The authors of this submission therefore maintain that the Covenant applies to the BIOT and the UK cannot be relinquished from its obligations to the Chagos Islanders.

Having established that the Covenant applies both to the BIOT and to the UK’s behaviour towards its Chagossian subjects, this submission will now analyse the UK’s substantive violations of the Covenant with respect to the situation of the Chagos Islanders

3. The continuing exile of the Chagossian people constitutes a violation of Article 2.2

Article 2.2 of the Covenant states that, “Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” This Committee has recognised that “discrimination undermines the fulfillment of economic, social, and cultural rights” and that “non-discrimination and equality are fundamental components of international human rights law and essential to the exercise and enjoyment of economic, social and cultural rights.”²⁹ The preamble, Articles 1, paragraph 3, and 55, of the United Nations Charter and article 2, paragraph 1 of the Universal Declaration of Human Rights also explicitly prohibit discrimination in the enjoyment of economic, social, and cultural rights, and similar prohibitions are included in international treaties on racial discrimination and discrimination against women.³⁰

This Committee defines discrimination as “any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of

²⁷ Exchange of Notes concerning the Availability for Defence Purposes of the British Indian Ocean Territory (United Kingdom-United States) (entered into force 30 December 1966) Treaty Series No. 15 1967

²⁸ *ibid* Annex II 1(a)(ii) and 1(b)(ii)

²⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, E/C.12/GC/20, paras 1 and 2

³⁰ *ibid* para 5

discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights.”³¹ Discrimination includes purposive or intentional discrimination and substantive discrimination.³²

Differential treatment constitutes discrimination unless “the justification for the differentiation is reasonable and objective”, which includes looking at, “whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society.”³³ Further, “there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects.”³⁴

An assessment of proportionality – or whether an action has an unjustifiable disparate impact on a group – will involve a consideration of whether the measure being taken was necessary (for example, a ‘pressing social need’), whether there is an alternative means of achieving the same with less or no interference, and the fairness of the decision-making process behind the measure. It is submitted that the UK Government’s actions in removing the Chagossians from their homes and continued failure to return them to their ancestral land and/or provide adequate compensation cannot be justified. There was no ‘pressing social need’, such as a state of emergency or the presence of hostile insurgents, which would justify such actions. Further, there has never been any suggestion that the Chagossians presented a threat to anyone. Indeed, the UK courts have already ruled that the removal of the Chagossians from their homes was unlawful.³⁵

In the past, the UK Government has argued that “anything other than short-term resettlement on a purely subsistence basis would be highly precarious and would involve expensive underwriting by the UK government...it would be impossible for the Government to promote or even permit resettlement to take place.”³⁶ This argument is insufficient to release the Government from its obligations under the Covenant. The determination that islands should not be resettled was made after the government conducted a deeply flawed feasibility study. The feasibility study was carried out without consultation with any former residents of the Chagos Islands. The Government also put limitations on its terms of reference which gave editorial control to the Government. This lack of transparency on the issue stems as far back as public pronouncements to the Decolonisations Committee of the United Nations on 16 November 1965, when the Government falsely claimed that the detachment of the Archipelago amounted merely to “new administrative arrangements”, and falsely claimed that there was no permanent population. It also claimed that consultation had taken place with “representatives of the people concerned”.

In addition, the UK Government has raised arguments that national security interests prevent the return of the Chagossians. Yet, like the feasibility argument, those security determinations were made without any consultation with the Chagossian people, and without considering their interests. This unilateral action runs contrary to the emphasis on participation found in ICCPR and ICERD jurisprudence. The UK courts have found this unilateral action problematic as well, noting that the security decision was made exclusively from the point of view of the United Kingdom and the

³¹ *ibid* para 7

³² *ibid* para 8

³³ *ibid* para 13

³⁴ *ibid*

³⁵ *R (Bancoult)* (n 1)

³⁶ Written statement of the Parliamentary Undersecretary for Foreign and Commonwealth Affairs, 15 June 2004, cited in *ibid.*, para 93.

United States, with regard for the interests of the Chagossians.³⁷ For this reason, the decision was found to be “irrational.”³⁸

4. The continued exile of the Chagossian people constitutes a violation of Article 11

Article 11 provides

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

The continued exile of the Chagossians falls foul of the UK Government’s recognition of the right to adequate housing under Article 11. From 1967 to 1973, the British Government forcibly removed the Chagossians from their homes through strategies which included deception and concealment. In particular, the Government concealed from the United Nations and from the British public the fact that there were permanent inhabitants of the BIOT who were to be removed from or excluded from the island without consultation or consent. Statements made by Government in the run-up to, and during, the Chagossians’ eviction evidence the racial discrimination behind their removal from the island.³⁹ Further, in 2004, the UK Government passed the BIOT (Constitution) Order 2004, which declares that

“Whereas [the BIOT] 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 of America, no person has the right of abode in [the BIOT]...Accordingly, no person is entitled to enter or be present in the Territory”.⁴⁰

In conjunction with passing the BIOT (Immigration) Order 2004, the Government has reinstated the prohibition to return to BIOT and thus prolonged the exiling of the Chagos Islanders. Both Orders are discriminatory in nature in that they directly target the Chagossians, and as explained above, cannot be justified. In particular, the BIOT (Immigration) Order 2004 prohibits anyone from entering the BIOT without a permit from the immigration officer. This Order bans Chagossians not just from Diego Garcia, home of the US military base, but also from the outlying islands located over one hundred miles away. Members of the armed forces and public officers are exempt from

³⁷ Written statement of the Parliamentary Undersecretary for Foreign and Commonwealth Affairs, 15 June 2004, cited in *R. v. Secretary of State for Foreign and Commonwealth Affairs, (No 2)* 1038 (Admin) (11 May 2006) at para 122

³⁸ *ibid*

³⁹ Contempt for the Chagossians is evidenced in a number of internal Government communications and memoranda, describing them as “a few tarzans and man Fridays” (Decision of Ouseley J in *Chagos Islanders v The Attorney General and HM BIOT Commissioner*, [2003] EWHC 2222 (QB) para 74). These memoranda proposed to conceal from the outside world the true nature of the population: “we would not wish it to become general knowledge that some of the inhabitants have lived on Diego Garcia for at least two generations and could, therefore, be regarded as “belongers”. We shall therefore advise ministersto say there is only a small number of contract labourers from the Seychelles and Mauritius engaged in on the copra plantations on the islands. That is being economical with the truth” (*ibid* para 284). Other memoranda advised “a policy of quiet disregard” and that it was “not at present HMG’s policy to advise “contract workers” of their dual citizenship”. The lawyer employed by the Foreign & Commonwealth Office who was charged with drawing up legislation to evict or prohibit the return of Chagossians referred to “maintaining the fiction” that there was “only a floating population”. (*ibid* para 259).

⁴⁰ British Indian Ocean Territory (Constitution) Order 2004, section 9

this requirement, and listed contractors working on the American base are deemed to possess a permit. It is also understood that British policemen are based on Diego Garcia, and civil servants involved in the administration of the islands are permitted to enter. Moreover, as argued by counsel for the Chagos Islanders in the UK courts, the Chagossians are prohibited from returning home on grounds of national security, yet private yachters are permitted to sail into the territorial waters (i.e. within three miles) of Diego Garcia.⁴¹ And still, the Chagossians are completely barred from living on, or even visiting, any of their ancestral homelands.

Under Article 11, the UK Government is required to “*take appropriate steps to ensure the realization of this right.*” To date, and despite a series of ongoing legal challenges and requests from the Chagossians, the Government has failed to amend or rescind the BIOT (Constitution) Order 2004 and BIOT (Immigration) Order 2004, and the Chagossians remain in forced exile.

In General Comment 4, this Committee wrote that, “[the right to housing] should be seen as the right to live somewhere in security, peace, and dignity.”⁴² The right to housing is “integrally linked” with other human rights and cannot be viewed in isolation from the other rights contained in both the ICESCR and the ICCPR.⁴³ This Committee notes that the full enjoyment of other rights such as the freedom of expression, the freedom of association, and the right to participate in public decision-making are “indispensable” if the right to adequate housing is not realized and maintained.⁴⁴ This Committee then concluded that forced evictions are *prima facie* incompatible with the Covenant.⁴⁵

This Committee defines “forced evictions” as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”⁴⁶ Forced evictions do not just affect an individual’s economic and cultural rights, but may also result in the violation of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, and the right to the peaceful enjoyment of possessions.⁴⁷ A State must refrain from forced evictions and ensure that the law is enforced against third parties who carry out forced evictions.⁴⁸ This right is also protected in Article 17.1 of the ICCPR, which protects individuals against arbitrary or unlawful interference with one’s home.

Under the Covenant, States are expected to use “all appropriate means” to ensure the fulfilment of the rights contained therein, which may include the adoption of legislative measures. This legislation must also apply to all agents acting under the authority of the State or who are otherwise accountable to it.⁴⁹ The non-discrimination clauses of Articles 2.2 and 3 impose an additional obligation on a State to ensure that, where a forced eviction does occur, appropriate measures are taken to ensure that said eviction is not based on discriminatory principles.⁵⁰ States are further

⁴¹ *R (Bancoult)* (n 5) para 138

⁴² UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 4: The Right to Adequate Housing* (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23, para 7

⁴³ *ibid* paras 7 and 9

⁴⁴ *ibid*

⁴⁵ *ibid* para 18

⁴⁶ UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions*, 20 May 1997, E/1998/22, para 3

⁴⁷ *ibid* para 4

⁴⁸ *ibid* para 8

⁴⁹ *ibid* para 9

⁵⁰ *ibid* para 10

obligated to, in consultation with the affected persons, explore all feasible alternatives before carrying out an eviction.⁵¹

In spite of these clear and unequivocal obligations, the UK Government has failed to take any measure to address the discrimination suffered by the Chagossians. The Chagossians now live in poverty and marginalisation in Mauritius, Seychelles and the UK and have been deprived of their land and livelihood for over 40 years. Despite repeated requests and numerous legal challenges, adequate provision has never been made by the UK Government for their housing, feeding, employment, healthcare and social needs nor community facilities, nor has adequate compensation been offered for their forcible removal from their homes. The UK Government is therefore in violation of Article 11.

5. The continuing exile of the Chagossian people constitutes a violation of Article 1

The right to self-determination is a fundamental principle of international law. It is enshrined in article 1 of the Charter of the United Nations, in article 1 of the ICCPR and article 1 of the Covenant, as well as in other international human rights instruments.⁵² The right to self-determination is considered essential for the “effective guarantee of individual human rights and for the promotion and strengthening of those rights.”⁵³

In respect of the self-determination of peoples, two aspects have to be distinguished. The right to self-determination of peoples has an internal aspect, that is to say, the rights of all peoples to pursue freely their economic, social and cultural development without outside interference. In that respect, there exists a link with the right of every citizen to take part in the conduct of public affairs at any level, as referred to in article 1.1 of the Covenant.

Article 1 provides:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

[...]

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

The Human Rights Committee wrote that Article 1.3 imposes specific obligations on States parties, not only to their own people, but to all people who have been unable to or deprived from exercising this right to self-determination.⁵⁴ This obligation extends to people who may not depend on a State party, and obliges States to take positive action consistent with their obligations under the Charter of the United Nations, meaning that States must refrain from interfering in the internal affairs of

⁵¹ *ibid* para 13

⁵² UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations*, 1994, para 2

⁵³ UN Human Rights Committee (HRC), *CCPR General Comment No. 12: Article 1 (Right to Self-determination)*, *The Right to Self-determination of Peoples*, 13 March 1984

⁵⁴ *ibid* para 6

other States in such a way that would adversely affect the exercise of the right of self-determination by the persons therein.⁵⁵

The second aspect of self-determination, the external aspect, is not examined here since the Chagossians only seek the less comprehensive right of internal self-determination.

In addition, CESCR's general recommendation on the right to take part in cultural life calls upon States to "guarantee that the exercise of the right to take part in cultural life takes due account of the values of cultural life," and that, "the strong communal dimension of indigenous peoples' cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or used or acquired."⁵⁶ States parties are instructed to take measures to recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands, and, where the lands have been otherwise inhabited or taken without their free and informed consent, to take steps to return these lands and territories.

As an indigenous, or at the very least a minority, people, the Chagossians are thus legally entitled to not only choose how to order their economic, social, and cultural affairs, but to do so freely and actively, and in consultation with the government in the case of state action affecting their internal self-determination. In practice, they are denied the ability to meaningfully, much less freely and actively, order their affairs.

As stated above, decisions regarding the Chagossians' fate have frequently been made without public debate, and have always been made without consulting them. Through its intervention, the UK has breached on the rights of Chagos Islanders to participate in public affairs according to Article 1.3 and their right to take part in cultural life under Article 15.1(a).

6. The failure to provide the Chagossians with an effective remedy and adequate compensation for their continued exile constitutes a violation of Articles 2, 11, and 15

The Covenant does not in itself provide judicial remedies for individuals who have been violated. However, the expectation of the Covenant is that States parties will provide domestic legislative remedies where individuals may seek redress.

General Comment 4, on the right to adequate housing (art. 11) states:

The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies

General Comment 7, on the right to housing and forced evictions (art. 11) provides:

States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected. In this respect, it is pertinent to recall article 2.3 of the International Covenant on Civil and Political Rights,

⁵⁵ *ibid*

⁵⁶ UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)*, 21 December 2009, E/C.12/GC/21, para 36

which requires States parties to ensure "an effective remedy" for persons whose rights have been violated and the obligation upon the "competent authorities (to) enforce such remedies when granted"

General Comment 20, on non-discrimination in economic, social and cultural rights (art. 2) says:

National legislation, strategies, policies and plans should provide for mechanisms and institutions that effectively address the individual and structural nature of the harm caused by discrimination in the field of economic, social and cultural rights

General Comment 21, on the right of everyone to take part in cultural life (art. 15) states:

The strategies and policies adopted by States parties should provide for the establishment of effective mechanisms and institutions, where these do not exist, to investigate and examine alleged infringements of article 15, paragraph 1 (a), identify responsibilities, publicize the results and offer the necessary administrative, judicial or other remedies to compensate victims.

In 2000, the UK High Court quashed the 1971 Immigration Ordinance requiring the compulsory removal of the whole of the population of the territory, including all the Ilois, to Mauritius on the grounds that the relevant power contained within BIOT, the power to legislate for the ‘peace, order and good government’ of the territory, while broad, did not include a power to exile a people from their homelands.⁵⁷ It is evident from the reasoning within that judgment that the purpose of quashing the order was to ensure the Chagossians could return to, and remain in, the BIOT.

The UK Government did not appeal the decision and passed a new Ordinance allowing inhabitants to return to the outer islands of the archipelago but not to Diego Garcia. The then Foreign Secretary, whose ministry maintains authority over the BIOT Commissioner, announced that he would be accepting the Court’s ruling and investigating possibilities for the Chagossians’ resettlement. However, the Government delayed and obstructed this action, and in June 2004, passed two Orders which completely denied the Chagossians’ right as recognised by the UK court in 2000. They were not consulted or warned about these Orders. This unilateral decision meant that a binding judicial decision respecting the Chagossians’ rights cannot now be implemented.

The Chagossians challenged the 2004 Orders through legal action, which was successful at first instance and in the Court of Appeal, but in 2008 the House of Lords ruled against them, finding that the issue was essentially a concern for the government and Parliament and not properly a matter for the courts⁵⁸.

The Chagossians are now completely barred from living on, or even visiting, any of their ancestral homelands and they are unable to organise their economic, social, and cultural affairs the way they were before their exile. Their poverty and marginalisation in Mauritius, a result of insufficient relocation assistance and compensation from the UK government, also limits the autonomy of their life in exile.⁵⁹ The UK has offered very limited compensation that does not allow the Chagossians

⁵⁷ *R (Bancoult)* (n 1)

⁵⁸ *R (Bancoult)* (n 5)

⁵⁹ That the UK government failed to adequately assist the Chagossians’ in the resettlement process has been recognized by the UK courts (*Chagos Islanders v. The Attorney General*, EWHC 2222 (QB), 154 (9 October 2003).

to lead dignified lives in exile. Indeed, the need for additional compensation has been recognised by the Human Rights Council in its concluding observations⁶⁰

The Chagossians have therefore been wholly deprived of an effective remedy and/or adequate compensation for their treatment by the UK Government within the national courts, in violation of Articles 2, 11 and 15.

7. Conclusions and Recommendations

Substantive analysis of the UK's behaviour towards the Chagos Islanders reveals that the UK is in violation of articles 2, 11 and 15 of the Covenant due to its prolonged exiling of the Chagossians. The authors of this submission respectfully request the Committee to inform the UK Government of its obligations to the Chagossian people under the Covenant, to recognise the violations that are currently taking place, and to recommend to the Government that they facilitate and support the Chagossians right to return to the islands immediately.

To this end, MRG specifically recommends that the UK Government:

- recognise the violations that the Chagossians have endured after being removed from the islands;
- repeal the two 2004 Orders in Council;
- facilitate and support the Chagossians right to return to the islands immediately;
- pay the Chagossians adequate compensation for the violation of their rights over the past 40 years; and
- appropriately consult with and seek the free, prior and informed consent of the Chagossians in relation to the return and compensation process.

⁶⁰ Human Rights Committee, 'Concluding Observations of the Human Rights Committee, United Kingdom of Great Britain and Northern Ireland and Overseas Territory of Great Britain and Northern Ireland', U.N. Doc. CCPR/CO/73/UK (2001) para 38