

IN THE EUROPEAN COURT OF HUMAN RIGHTS

BETWEEN: -

THE CHAGOS ISLANDERS

Applicants

- and -

THE UNITED KINGDOM

Respondent

- and -

**HUMAN RIGHTS WATCH
MINORITY RIGHTS GROUP INTERNATIONAL**

Interveners

SUBMISSIONS ON BEHALF OF THE INTERVENERS

Introduction

1. These Submissions are made by Human Rights Watch and Minority Rights Group International (“the Interveners”), pursuant to leave granted by the President of the Chamber in accordance with Rule 44 § 2 of the Rules of Court.¹ A short statement about each of the Interveners, and detailing their experience and interest in this matter, is set out at Annex 1 to these Submissions.
2. These Submissions address three main issues:
 - (1) Extraterritorial application of human rights duties, with reference to Articles 1 and 56 of the Convention.
 - (2) International law on the rights of indigenous peoples, with particular focus on the definition of indigenous peoples and their property rights.
 - (3) International law on the rights of those who suffer forced evictions.

¹ Letter dated 5 May 2009 from T. L. Early, Section Registrar, to Minority Rights Group International on behalf of the Interveners.

All three issues will be addressed in the context of the international and comparative law principles that can be drawn from law and practice beyond the Convention itself.

Extraterritorial application of human rights duties

3. Where a state party violates one or more Article of the Convention, the fact that the violation has some extraterritorial impact should not be a barrier to the Court accepting jurisdiction. Thus the United Kingdom Government should be held accountable for decisions made within the United Kingdom which have, at least in part, extraterritorial impact.
4. As set out in the Applicants' Application dated April 2005 (the "Application") (§§202 – 216), there are two Articles of the Convention potentially in play in this context: 1 and 56. The Interveners are concerned to avoid any duplication of submissions which the Applicants have made or will make. Accordingly, these Submissions set out the key points, in part by reference to the Application in this case and to Written Comments submitted to the Court by a group of non-governmental organisations including Human Rights Watch in *Al-Skeini and others v The United Kingdom* (Application No. 55721/07) ("the First Written Comments"), and *Al-Saadoon and Mufdhi v. The United Kingdom* (Application no.61498/08) ("the Second Written Comments"). A copy of the First Written Comments is at [Annex 2](#), and the Second Written Comments at [Annex 3](#).

Article 1 of the Convention

5. The responsibility of the United Kingdom is engaged under Article 1 of the Convention because:
 - (1) The relationship between the UK Government and the British Indian Ocean Territory ("BIOT") is not and never has been of such a character as to require the voluntary extension of the Convention under Article 56 (former Article 63) to the territory for it to apply: Application §§207 and 212.
 - (2) In particular, the *travaux préparatoires* for the Convention show that the purpose of Article 56 was to cater for overseas dependencies which possessed some form of domestic autonomy. The BIOT has never had any such autonomy or anything which could properly be described as a government. Accordingly, Article 56 has no application: Application §§ 208 – 211.
 - (3) In this respect the present case must be distinguished from *Quark Fishing Ltd v UK*.² Unlike the situation in South Georgia and the South Sandwich Islands, which were ruled from the Falkland Islands, the BIOT is and was at all material times wholly under the control of the metropolitan government of the UK. The BIOT was created expressly for the defence purposes of the UK and her allies, the land is owned by the Crown, and laws for the BIOT are made by the UK Parliament or Order in Council in London. Furthermore, it is significant that the UK assumed direct control of the islands, removed all of the inhabitants, prevented them from returning, and continues to occupy and administer the territories. These additional distinctions from the situation considered by the Court in *Quark Fishing* constitute "exceptional circumstances" as contemplated at §80 of the decision in *Banković* (Application no 52207/99): Application §§ 2-4.
 - (4) Further or alternatively, the relevant decisions, or some of them, were taken in the United Kingdom and/or in relation to Applicants who in many cases now live in the UK and are British citizens. Responsibility under Article 1 of the Convention is accordingly engaged in that way: Application § 215.

² Application No. 15305/06, 19.9.06.

6. As to jurisdiction under Article 1 of the Convention:

- (1) It is inconceivable that those who drafted the Convention in the aftermath of two world wars did not intend that states should be responsible for their extraterritorial actions: First Written Comments § 3.
- (2) It would be unconscionable to permit a state to perpetrate violations overseas which it could not perpetrate on its municipal territory: First Written Comments §6 and Second Written Comments § 5, quoting from the UN Human Rights Committee and the Advisory Opinion of the ICJ on *The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.³
- (3) This principle applies just as much where the impugned act took place outside the regional space of the Council of Europe. The Convention has been considered applicable in territories outside the Council of Europe, for example in Northern Iraq, Kenya, Iran, Sudan, Costa Rica, in a UN neutral buffer zone, and in international waters. This approach is consistent with the practice of other regional and international bodies, which do not refer to an *espace juridique* doctrine of the sort referred to by the Court in *Banković*: First and Second Written Comments §§ 6, 20 and 21, and the cases cited therein.
- (4) Article 1 should be interpreted in line with the ‘jurisdiction’ provisions of other international human rights instruments. Article 2 of the ICCPR has been interpreted to mean that State parties are required to respect and ensure Covenant rights to all persons in their territory and to “anyone within the power or effective control of that State Party even if not situated within the territory of the State Party”: First Written Comments § 7 and Second Written Comments §§ 7 – 8, both quoting the Human Rights Committee.⁴
- (5) Within the Inter-American system, the notion of jurisdiction has been broadly interpreted to include responsibility for acts and omissions of a state’s agents which produce effects or are undertaken outside that state’s own territory: First Written Comments §8; Second Written Comments §9. The African human rights bodies have taken a similar approach: First Written Comments § 9; Second Written Comments § 10.
- (6) Where the State exercises its control, authority or power abroad, there should be a presumption of extraterritorial reach of the State’s human rights obligations, in view of the purposes and objects of human rights treaties. This approach is also consistent with the approach in public international law: First Written Comments §§ 10 – 11; Second Written Comments §§ 14-15.
- (7) At least where there is a direct and immediate link between the extraterritorial conduct and the alleged violation of individual rights, the individual is to be treated as falling within the State’s control, authority or power, and therefore jurisdiction: First Written Comments § 13.

³ The CCPR Concluding Observations adopted up to December 31 2003 on Israel stated at § 11 “The Committee therefore reiterates that, in the current circumstances, the provisions of the Covenant apply to the benefit of the population of the Occupied Territories, for all conduct by the State party’s authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant and fall within the ambit of State responsibility of Israel under the principles of public international law.”. UN Doc. CCPR/CO/78/ISR. Annex 4. ICJ Advisory Opinion, 9 July 2004, § 109, Annex 5.

⁴ HRC, General Comment 31, UN Doc. CCPR/C/21/Rev.1/Add.13, § 11. Annex 6. See also General Comment 2 on Article 2 of the Convention Against Torture which states at § 16: “Article 2, paragraph 1, requires that each State party shall take effective measures to prevent acts of torture not only in its sovereign territory but also “in any territory under its jurisdiction.” The Committee has recognized that “**any territory**” includes all areas where the State party exercises, directly or indirectly, in whole or in part, de jure or de facto effective control, in accordance with international law.” (emphasis added). Annex 7.

- (8) In the Court's jurisprudence, the focus of the analysis of extraterritorial applicability of the Convention has been on whether the impugned State's actions involve "authority and/or effective control" over persons outside its territory, or "effective control" over territory. Other international human rights courts and bodies do not draw this distinction, and the Interveners respectfully submit that the correct test is that set out at § 6(7) above: First Written Comments § 13; Second Written Comments § 16.
- (9) With specific regard to the application of human rights treaties in the cases of overseas territories, the approach of the UN human rights bodies is important. Most specifically the Human Rights Committee has been very clear that the ICCPR does apply with respect to the United Kingdom in BIOT, despite the UK's view that it does not due to the lack of population. In its most recent Concluding Observation on 30 July 2008, the Committee specifically "regretted" this view of the UK, again requested the UK to report on BIOT, and addressed both the situation of the Chagossians and the use of BIOT for renditions to torture.⁵

Article 56 of the Convention

7. Alternatively, if, contrary to the submissions set out above, the Court were to hold that this is a case to which Article 56 applies, the United Kingdom extended the Convention (but not its First Protocol) to the territories of Mauritius and the Seychelles, which at the time included what was to become BIOT, by declarations made on 23 October 1953: Application § 203.

The United Kingdom has never denounced the application of the Convention to the Chagos Islands or BIOT in accordance with the requirements of Article 58 (former Article 65). Accordingly, and notwithstanding the fact that the United Kingdom did not include the BIOT on the lists of territories to which the Convention has been extended when it submitted lists to the Secretary General of the Council of Europe,⁶ the Convention continues to apply. Convention rights cannot be taken away from a territory without a clear denunciation which fully complies with the formal requirements of Article 58: Application §§ 205 – 206.

8. In terms of other human rights bodies, one of the clearest statements about the continuation of human rights obligations has been made by the Human Rights Committee with respect to the ICCPR, in its General Comment No. 26. It stated:

"4. The rights enshrined in the Covenant belong to the people living in the territory of the State party. The Human Rights Committee has consistently taken the view, as evidenced by its long-standing practice, that once the people are accorded the protection of the rights under the Covenant, such protection devolves with territory and continues to belong to them, notwithstanding change in government of the State party, including dismemberment in more than one State or State succession or any subsequent action of the State party designed to divest them of the rights guaranteed by the Covenant."

International law on the rights of indigenous peoples

9. It is well established in international human rights instruments that "peoples" have collective rights. The United Nations Charter begins with the phrase "We the peoples of the United Nations....".⁷ Additionally, common Article 1(3) of the International Covenant on Civil and Political Rights ("the ICCPR") and the

⁵ Concluding observations: United Kingdom of Great Britain and Northern Ireland, 30 July 2008 UN Doc. CCPR/C/GBR/CO/6, at para. 22, Annex 8; see also Concluding observations of the Committee on the Elimination of Racial Discrimination: United Kingdom of Great Britain and Northern Ireland. 10 December 2003, UN Doc. CERD/C/63/CO/11 at para. 26. Annex 9.

⁶ On 30.6.69 and 3.4.84.

⁷ Preamble, United Nations Charter.

International Covenant on Economic, Social and Cultural Rights refers to the right of self-determination, which the Human Rights Committee has explained is a right of “all peoples”.⁸

The definition of indigenous peoples

10. During the 1960s and 1970s, as the movement for decolonisation gained wide support, the term “peoples” referred primarily to colonised populations.⁹ More recently, however, international attention has shifted towards the collective rights of indigenous groups. Newer definitions of peoples reflect the unique characteristics of indigenous populations.

11. A study on the discrimination of indigenous people by the UN Special Rapporteur for the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, Martínez Cobo, produced a widely-cited working definition of indigenous peoples:

“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.”¹⁰

12. One of the most comprehensive definitions of the term indigenous peoples that has been developed to date is that put forward by Erica-Irene Daes, a past chairperson of the United Nations Working Group on Indigenous Populations (now the Expert Mechanism on the Rights of Indigenous Peoples).¹¹ As she has explained, criteria used in determining the existence of an indigenous people include:

- (a) the occupation and use of a specific territory;
- (b) the voluntary perpetuation of cultural distinctiveness;
- (c) self-identification as a distinct collectivity, as well as recognition by other groups;
- (d) an experience of subjugation, marginalisation, dispossession, exclusion or discrimination.

13. The United Nations, considering the diversity of indigenous peoples, has not adopted an official definition of “indigenous”. Instead the United Nations Permanent Forum on Indigenous Issues¹² has developed a modern understanding of this term based on the following:

- (a) Self- identification as indigenous peoples at the individual level and accepted by the community as their member.

⁸ Human Rights Committee, General Comment 12, Article 1 (Twenty-first session, 1984), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 134 (2003), § 6. [Annex 10](#).

⁹ See, e.g., Declaration on the Granting of Independence to Colonial Countries and Peoples, GA Res. 1514 (XV), 15 U.N. GAOR Supp. (No. 16) at 66, U.N. Doc. A/4684 (1961), Annex 11; Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, GA Res. 2625, (1970). [Annex 12](#).

¹⁰ Jose Martinez Cobo, Special Rapporteur, *Study of the Problem of Discrimination Against Indigenous Populations*, Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, UN Doc. E/CN.4/Sub.2/1986/7/Add.4 (1986). [Annex 13](#).

¹¹ See, for example, E. Daes, ‘Indigenous Peoples’ Rights to Land and Natural Resources’ in N. Ghanea and A. Xanthaki (eds.) *Minorities, Peoples and Self-Determination: Essays in Honour of Patrick Thornberry* (Leiden: Martinus Nijhoff, 2005) pp. 75-91.

¹² United Nations Permanent Forum on Indigenous Issues: Factsheet, in *Indigenous Peoples, Indigenous Voices*, May 2007, available at http://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf.

- (b) Historical continuity with pre-colonial and/or pre-settler societies
- (c) Strong link to territories and surrounding natural resources
- (d) Distinct social, economic or political systems
- (e) Distinct language, culture and beliefs
- (f) Form non-dominant groups of society
- (g) Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.

The rights of indigenous peoples

14. The rights of indigenous peoples have been recognised at the international level in a number of ways. First, by the creation of specialist bodies on indigenous peoples at the UN and regional human rights bodies, including the UN Working Group on Indigenous Peoples, special rapporteurs on Indigenous Peoples, a Permanent Forum on Indigenous Issues and a Working Group of the African Commission on Human and Peoples' Rights. These have all produced comments and descriptions of what indigenous rights mean in practice, both generally and in specific cases.
15. Second has been the use of existing human rights protection to give special protection to indigenous peoples. Examples include, at the international level through specific reference to indigenous peoples in the Convention on the Rights of the Child and by the UN Committee on the Elimination of Racial Discrimination through its General Recommendation XXIII on Indigenous Peoples. Furthermore, cases brought under Article 27 of the ICCPR¹³ have largely been by indigenous people. The Inter-American Court on Human Rights has used its own Convention rights, which make no reference to indigenous peoples, to develop a jurisprudence that requires the particular needs, customs and history of indigenous peoples to be respected and protected, including restoring historic lands to them.¹⁴

The United Nations Declaration on the Rights of Indigenous Peoples

16. In 2007, after many years of discussion and debate, the United Nations adopted the Declaration on the Rights of Indigenous Peoples ("the Declaration").¹⁵ The Declaration sets out indigenous peoples' rights in many areas in more precise language than in any previous international instrument. Of course, the Declaration is not a legally binding treaty, but it is nonetheless an important source for developing customary international law. It represents, at the very least, a consolidation of the law affecting indigenous peoples in a universal framework. As the former UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Rodolfo Stavenhagen, stated in a report in February 2007, prior to the Declaration's adoption by the General Assembly:

¹³ Article 27 provides: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

¹⁴ See also The Council of Europe Framework Convention for the Protection of National Minorities, Article 5(1): "The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity namely their religion, language, traditions and cultural heritage."

¹⁵ <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=157&CL=ENG>.
General Assembly Resolution 61/295, 13 September 2007. Annex 14.

“Having been adopted by the Human Rights Council, the Declaration is now an essential frame of reference for actions both by the Council itself and the Office of the United Nations High Commissioner for Human Rights, and by other United Nations agencies. The Declaration will also serve as a guide for the actions of the international human rights treaty bodies. The Declaration must be a fundamental part of the discussion about future international standards relating to indigenous peoples, not only at the international level, but also in regional or specialized areas. Its adoption also gives a strong impetus to the clarification of emerging customary law concerning indigenous rights at the international level, and should similarly energize the processes of legislative reform and domestic court proceedings.”¹⁶

17. 143 states voted in favour of the Declaration, including the United Kingdom and all other members of the Council of Europe.¹⁷ The Declaration has already begun to have a significant impact on international law. For example, in *Case of the Saramaka People v Suriname* the Inter-American Court of Human Rights referred to the Declaration when addressing the need for a community to give prior and informed consent to the use of its land.¹⁸
18. The preamble to the Declaration notes that indigenous peoples have suffered from historic injustices. In the context of the present Application, the most relevant Articles of the Declaration include 8 (right not to be subjected to forced assimilation or destruction of culture), 10 (right not to be forcibly removed from lands or territories), 26 (right to lands, territories and resources), 27 (obligation on states to establish law, tradition custom and land recognition processes), 28 (right to redress for lands territories and resources which have been taken), 30 (military activities prohibited unless justified by a relevant public interest or otherwise freely agreed) and 40 (prompt and fair hearing right).

The property rights of indigenous peoples

19. There is a growing understanding and acceptance in international human rights law of property rights for indigenous peoples.¹⁹ In particular, it is now well-established that property can be acquired through traditional occupation of lands, rather than requiring indigenous or other peoples to have held the property in accordance with conventional domestic legal systems. This accords with the approach taken in *Doğan and others v Turkey*,²⁰ where this Court held that although the applicants did not hold title to the property, living in houses on the lands and deriving economic resources and revenue from them might constitute ‘possessions’ for the purposes of Article 1 of Protocol No. 1.²¹

¹⁶ United Nations, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, Rodolfo Stavenhagen, UN Doc. A/HRC/4/32 (2007), § 79. Annex 15.

¹⁷ Only four states voted against (the United States, Canada, Australia and New Zealand), however Australia announced its support for the Declaration on 3 April 2009 and the parliament in Canada has called on the Canadian government fully to implement the standards contained in the Declaration (8.4.08). 11 states abstained. The United Kingdom made a statement to the General Assembly immediately following adoption of the Declaration in which it “... welcome[d] the Declaration on the Rights of Indigenous Peoples as an important tool in helping to enhance the promotion and protection of the rights of indigenous peoples.” The UK went on to claim, *inter alia* that “National minority groups and other ethnic groups within the territory of the United Kingdom and its overseas territories do not fall within the scope of the indigenous peoples to which this Declaration applies...” UN Doc. A/61/PV.107. A unilateral statement of this sort cannot determine whether a group of people were or were not indigenous peoples. Annex 16.

¹⁸ Judgment of 28 November 2007, § 131. The case is also significant in the present context as the Inter-American Court held that the Saramaka - descendants of African slaves who fought themselves free from slavery in the 18th century and established autonomous communities in the rainforest interior of Suriname - were a tribal people (§84). The Court’s jurisprudence regarding indigenous peoples’ right to property was also applicable to the Saramaka as a tribal people (§86). Annex 17.

¹⁹ In particular: the right to adequate housing (Art.11 (1)); CESCR General comment 4 (General Comments), 13/12/91, [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+4.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+4.En?OpenDocument). Annex 18; and Fact Sheet No.25, Forced Evictions and Human Rights, Vienna Declaration and Programme of Action (Part 1, para. 30), adopted by the World Conference on Human Rights, Vienna, 23 June 1993 (A/CONF.157/24 (Part 1), chap. III), <http://www.unhchr.ch/html/menu6/2/fs25.htm>. Annex 19.

²⁰ Application Nos. 8803-8811/02, 8813/02 and 8815-8819/02 (2004).

²¹ In particular §§ 136-139.

20. Accordingly, it is commonly understood that indigenous and other peoples' ownership of land is guaranteed irrespective of title deed. Indeed, in one of the leading international cases on this issue, *The Mayagna (Sumo) Awas Tingni v Nicaragua*,²² the Inter-American Court of Human Rights stated that possession of the land should suffice for indigenous communities lacking real title to obtain official recognition of that property.²³ There is no express reference to indigenous peoples or to a collective right to property in the American Convention on Human Rights. Nonetheless, the Inter-American Court of Human Rights has in recent years consistently interpreted its Convention so as to recognise and address important rights for indigenous peoples, including in particular the right to property. For example, in *Case of the Saramaka People v Suriname* referred to at paragraph 17 above, the Inter-American Court of Human Rights concluded:

"... the members of the Saramaka people make up a tribal community protected by international human rights law that secures the right to the communal territory they have traditionally used and occupied, derived from their longstanding use and occupation of the land and resources necessary for their physical and cultural survival, and that the State has an obligation to adopt special measures to recognize, respect, protect and guarantee the communal property right of the members of the Saramaka community to said territory" (§96)

21. Courts have addressed violations of indigenous property rights stemming from colonial seizure of land, for example when modern states rely on domestic legal title inherited from colonial authorities. There has been widespread condemnation of the acquisition of indigenous title by the colonial authorities.²⁴ National courts have recognised that the historic indigenous association with particular lands should be considered a 'property' right continued long after the seizure of their lands. Such decisions have been made by the United Kingdom Privy Council as far back as 1921,²⁵ the Canadian Supreme Court²⁶ and the High Court of Australia.²⁷ In the *Richtersveld* case, the South African Constitutional Court held that the rights of a particular community survived the annexation of the land by the British Crown and could be held against the current occupiers of their land.²⁸
22. In particular, the protection afforded to indigenous peoples under international law extends to the protection of ancestral land. This is in view of how closely ownership of resources on those lands is associated with the most fundamental human rights, such as the right to food, shelter, the right to exist as a people, as well as the right to life itself.²⁹ The recognition of indigenous property rights introduce a set of obligations upon states in terms of restitution and compensation, particularly when prior, informed consent was not sought from the evicted communities.

²² *The Awas Tingni Case* (2001), §§ 145-146, 148-149, and 151-152. [Annex 20](#).

²³ *Ibid.* at para. 151. Emphasis added.

²⁴ See, for example, Erica-Irene A. Daes, Special Rapporteur, Indigenous peoples and their Relationship to Land: Final working paper by the Special Rapporteur, Commission on Human Rights, UN Doc. E/CN.4/Sub.2/2001/21, (2001), §§ 31-32. The Special Rapporteur observes that the international Community has come to see that the concept that the "discovering" colonial power may take free title to indigenous lands is illegitimate [Annex 21](#).

²⁵ *Amodu Tijani v. Southern Nigeria* [1921] 2 AC 399, (PC). [Annex 22](#).

²⁶ *Calder et al v. Attorney-General of British Columbia*, Supreme Court of Canada, 34 D.L.R. (3d) 145 (1973). [Annex 23](#).

²⁷ *Mabo v. Queensland*, High Court of Australia, 107 A.L.R. 1, (1992). In this case the High Court rejected the idea that Australia was *terra nullius* at the time of British colonisation, instead recognising the indigenous customs and law (including land ownership) that would continue after colonisation unless specifically extinguished. This case was extremely significant for its recognition that indigenous rights were not extinguished by colonisation, and should be restored to the greatest extent possible. Subsequent litigation and negotiation in Australia has restored land title over large amounts of land to the indigenous population. [Annex 24](#).

²⁸ *Alexkor Ltd v Richtersveld Community*, Constitutional Court of South Africa, CCT 19/03, (2003). [Annex 25](#).

²⁹ See the case of *Yakye Axa v Paraguay*, Inter-American Court of Human Rights, 17 June 2005. [Annex 26](#). This is also firmly supported by Erica-Irene Daes, former chairperson of the UN Working Group on Indigenous Populations.

International law on the rights of those who suffer forced evictions

23. There is a significant body of well-established international jurisprudence holding that forced evictions are serious human rights violations. The Court itself has had occasion to consider forced evictions, for example in *Selçuk and Asker v Turkey* (App. Nos.12/1997/796/998-999, 24 April 1998) where the applicants' homes and most of their possessions had been destroyed by Turkish security forces. Finding a violation of Article 3, the Court held:

"79. Bearing in mind in particular the manner in which the applicants' homes were destroyed ... and their personal circumstances, it is clear that they must have been caused suffering of sufficient severity for the acts of the security forces to be categorised as inhuman treatment within the meaning of Article 3."

The Court went on to conclude that the acts also constituted "particularly grave and unjustified interferences with the applicants' rights to respect for their private and family lives and homes, and to the peaceful enjoyment of their possessions." (§86).

24. A number of other international instruments also acknowledge the grave human rights violations that may arise out of forced evictions. For example the United Nations Committee on Economic, Social and Cultural Rights has issued General Comment No. 7 on Forced Evictions (1997).³⁰ The General Comment:

- (a) Acknowledges the interrelationship between forced evictions and violations of other human rights (Article 4). For example, forced evictions may breach Article 11.1 of the International Covenant on Economic Social and Cultural Rights (the right to an adequate standard of living), whilst at the same time breaching a number of civil and political rights (the right to life, right to security of person, right to peaceful enjoyment of property);
- (b) Acknowledges that indigenous peoples are often affected disproportionately by forced evictions (Article 10);
- (c) Requires that before a forced eviction may occur, states must explore all alternatives in consultation with affected groups (Article 13).
- (d) Requires that states must ensure adequate compensation for all affected property, in accordance with Article 2(3) of the ICCPR.
- (e) Requires that any forced eviction which is considered justified must comply with international human rights law, and shall be reasonable and proportionate (Article 14).³¹

25. The United Nations Committee Against Torture, which monitors state compliance with the Convention Against Torture, has held on a number of occasions that forced evictions amount to acts of cruel, inhuman or degrading treatment or punishment (contrary to Article 16 of the CAT). For example:

- (a) In 2001 the Committee expressed concern about Israeli demolition policies "which may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment",³²

³⁰ Annex 27.

³¹ Article 14 refers to General Comment No. 16 of the HRC on Article 17 of the ICCPR which provides that no one shall be subject to arbitrary or unlawful interference with inter alia his home. The General Comment makes clear that any interference must be in accordance with the law and with the provisions, aims and objectives of the ICCPR. Annex 28. The UN Human Rights Committee has had occasion to consider Article 17 of the ICCPR in the context of a number of cases concerning housing and property restitution (for example, *Eliska Fábryová v Czech Republic*, Communication No. 765/1997, UN Doc. CCPR/C/73/D/765/1997 (17 January 2002), violation of Article 26 on grounds of discrimination). Annex 29.

- (b) In 2004 the Committee expressed concern regarding the ill-treatment in Greece of "... Roma by public officials in situations of forced evictions or relocation."³³
- (c) In *Hijrizi v Yugoslavia* (Communication No. 161/2000) the UNHRC held that the destruction of a Roma settlement constituted "acts of cruel, inhuman or degrading treatment or punishment" contrary to Article 16 of the CAT.³⁴

26. Forced evictions have also been recognised as crimes against humanity. For example, Article 7.1.d of the Rome Statute of the International Criminal Court provides in material part that:

"...'crime against humanity' means any of the following acts when committed as part of a widespread or systemic attack directed against any civilian population ... (d) Deportation or forcible transfer of population..."

In *The Prosecutor v Ahmad Muhammad Harun and Ali Muhammad Al Abd-Al-Rahman* (ICC-02/05-01/07; 27.4.07 arrest warrant) and *The Prosecutor v Omar Hassan Ahmad Al Bashir* (ICC-01/05-01/09; 4.3.09 arrest warrant) the defendants are accused of crimes against humanity including forcible transfer in violation of Article 7.1.d.

27. Numerous international conferences have issued strong statements, declarations and recommendations in relation to forced evictions. They advocate international legal condemnation of forced evictions, state responsibility for finding alternative solutions, and mandatory compensation and adequate conditions where evictions are unavoidable.³⁵ UN bodies have also made a number of statements concerning forced evictions which emphasise that they may constitute a gross violation of human rights.³⁶

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³² Conclusions and Recommendations of the Committee Against Torture regarding the third periodic report of Israel (23/11/2001), § 6(j). <http://www.unhchr.ch/tbs/doc.nsf/0/60df85db0169438ac1256b110052aac5>. Annex 30.

³³ Conclusions and Recommendations of the Committee Against Torture regarding the fourth periodic report of Greece, UN Doc. CAT/C/CR/33/2 (10/12/2004), § 5(j). Annex 31.
³⁴ Annex 32.

³⁵ For example: Habitat Agenda: Goals and Principles, Commitments and Global Plan of Action 14 June 1996, Istanbul; The Copenhagen Programme of Action, World Summit for Social Development 12 March 1995; Vienna World Conference on HR 14 June 1993, Vienna; Agenda 21 UN Conference on Environment and Development June 1992; UN Global Strategy for Shelter 2000 – Gen. Ass. Resolution 43/181; UN Vancouver Declaration on Human Settlements 1976

³⁶ For example: (1) in 1993 the UN Secretary General issued a study on forced evictions containing proposals, with an emphasis on prevention (a similar study was conducted as a follow-up in 1996); (2) UN Human Rights Fact Sheet No. 25 on Forced Evictions advocates the conceptualisation of forced evictions as human rights abuses, rather than simply as side effects of development; (3) UN Commission for HR Resolution 1993/77: Article 1 – Affirms that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing. Article 3 – recommends that all governments provide immediate restitution... or appropriate alternative accommodation or land, consistent with their wishes... to persons and communities which have been forcibly evicted...; (4) UN Commission for Human Rights: Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1996/27 on forced evictions: recommends restitution, urges elimination of the practice of forced eviction.

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