IN THE EUROPEAN COURT OF HUMAN RIGHTS

B E T W E E N :

LOUIS OLIVIER BANCOULT
JEANETTE ALEXIS
THE CHAGOS ISLANDERS

Applicants

-and-

THE UNITED KINGDOM

Respondent

GROUNDS OF ALLEGED VIOLATION OF THE CONVENTION

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A. SUMMARY

1. The Applicants (collectively known as the "Ilois" or "Chagossians") are natives of, or are descendants of natives of, the Chagos Islands. Between about 1967 and 1973 the Applicants, or their ancestors, were removed from the Chagos Islands, or prevented from returning to the Chagos Islands, or have subsequently been prevented from returning to the Chagos Islands, by the Respondent or its servants or agents. The Applicants' complaint is that their property and other rights under the Convention have thereby been violated, and that they have been denied any effective remedy or redress under the law of England and Wales. The Applicants further complain that as a result their rights under Articles 3, 6, 8 and 13 and Article 1 of the First Protocol of the Convention have been breached.

B. FACTUAL FRAMEWORK

B1. The administration of the Chagos Islands

2. The Chagos Islands are in the middle of the Indian Ocean. They comprise 3 main island groups, namely Diego Garcia, Peros Banhos and Salomon, and consist of 65 islands in total. Since the early 19th century they have been part of a colony of the United Kingdom, and until 8th November 1965 they were administered as part of the Colony of Mauritius. On that date the British Indian Ocean Territory Order in Council (SI 1965/1920) was made, establishing a new colony, the British Indian Ocean Territory (BIOT), which included the Chagos Islands, other islands formerly part of the colony of Mauritius, and islands formerly part of the Colony of Seychelles. The Governor of the Seychelles became its Commissioner. Mauritius became independent from the United Kingdom on 12th March 1968. Seychelles became independent in 1976.

3. Since the independence of the Seychelles, BIOT has been ruled directly from London, where the BIOT Commissioner has always been an ex-officio civil servant in the Foreign and Commonwealth Office. The BIOT Order in Council provided the Constitution of BIOT, gave legislative powers to the Commissioner and provided for the general continuance in force of the existing laws applicable to the islands, either Seychellois or Mauritian.

4. On 23rd October 1953 the United Kingdom government informed the Secretary General of the Council of Europe that the European Convention on Human Rights would extend to the Colony of Mauritius. Such application was confirmed by further notification dated 9th June 1964. Throughout this period the Colony of Mauritius included the Chagos Islands and the European Convention on Human Rights therefore extended to those islands. On 12th June 1969 the Council of Europe was informed that Mauritius had become independent on 12th June 1968 and that the responsibilities of the United Kingdom government for the former Colony of Mauritius had therefore lapsed. At no stage has the United Kingdom government followed the procedure necessary for there to be a denunciation of the applicability of the European Convention on Human Rights as regards BIOT or the Chagos Islands.

B2. Population and Economy of the Chagos Islands

5. At all times since the 1770's the economy of the islands was based on the production of copra and its by-product, coconut oil, from the coconut plantations.

6. During the 19th century the ownership of the plantations passed into the hands of the companies which ran the plantations. They thus owned or exercised effective control of all the islands, subject only to some small reservations of land retained by the Government.

7. In 1962 a company called Chagos Agalega Company Limited was formed in the Seychelles. It acquired almost all of the plantation islands from the Mauritian companies which had previously owned them. Neither this nor any previous change in ownership of the plantations altered the way in which the Chagossians used the islands and surrounding seas for their own purposes; their way of life and activities are described more fully below, but essentially islanders had accepted rights of occupation of dwellings which they could pass on to their heirs on death, and rights in common over land outside the plantations and over fishing rights. At no time until the UK government acquired the plantations (those events are described below) was it suggested by the plantation owner that its rights as landowner gave it a right to evict the islanders.

8. The plantation managers were in day-to-day charge of the islands. There were occasional visits by Mauritian officials and a Magistrate. Plantation managers had powers as police officers to imprison insubordinate labourers for short periods or to detain those threatening to breach the peace. Plantation managers recorded births, marriages and deaths.

9. The plantation companies provided virtually the sole source of employment on the islands. The exceptions were the staffing of a meteorological station, and a few children, women and elderly people who worked as servants for the plantation company staff. Company shops provided household goods. The company provided food, basic medical attention and educational facilities and a priest. Transportation to and from Mauritius was provided by a company agent, assisted by a Mauritian Government subsidy for leave-taking Chagossians or for those seeking more serious medical attention.

10. After the abolition of slavery in 1835, Magistrates were sent regularly from Mauritius to study the conditions of the liberated slaves on the islands, to review any prisoners and to hear complaints.

11. Most Chagossians worked without written contracts, although written contracts were occasionally put in place or renewed when a worker was recruited from Mauritius or Seychelles or, incorrectly, if a Chagossian returned from Mauritius following leave or from a trip for medical purposes.

12. Chagossians enjoyed a good standard of life in the 1960s, and the islands were popular, drawing in labour from abroad. There was a house for each family, which was allocated on the basis of permanence with the right of alienation and inheritance by heirs, and each property had a garden or land around it to provide vegetables or to keep poultry or pigs; in addition fishing and coconuts added variety of the diet yielded by the company's rations. Building plots and materials were provided by the company as necessary. Many types of work were available, though mostly in the copra industry; there was also some domestic work for women, construction, administration, and fishing or boat building for men. The population had a varied and healthy diet and lifestyle, with no unemployment. Because basic rations were provided by the company, and because wages and expenditure were recorded in books, the population rarely handled cash.

13. There was rudimentary education provided in a missionary school in Diego Garcia. When advanced medical treatment was required, people would go to Mauritius.

14. There was community life peculiar to the islands, which had their own food, drink, games and festivities. It was a religious Roman Catholic community. There was a church on Diego Garcia. Members of the community worshipped there. There are communal cemeteries. The Chagossians placed a high value on being able to pay their respects at the graves of their ancestors, and have been deprived of the ability to do so.

15. In summary, the adult plantation workers were poorly-educated, very largely illiterate, Creole speakers, living a simple life with few modern facilities, dependent on their employer for their jobs and their necessities of life, and with no independent means of existence. Children however received some education. Over two centuries a separate culture had developed and the life of the Chagossians was valued by them and others who sought employment and inter-married on the islands.

16. At the date of the events described below the population was approximately 2,000. However Government estimates drawn up since the establishment of the BIOT in 1965 consistently understated the population, and ignored the records of births and deaths on the island.

B3, Nationality and Citizenship of the Chagossians

17. In what follows, the legally recognised citizenship (or citizenships) which Chagossians have held and now hold are identified, without considering the particular citizenship of any Chagossian who has acquired a particular citizenship by a voluntary act e.g. by registration or naturalisation, rather than by birth or descent or who has acquired it by virtue of his or a parent's birth in another British overseas territory.

18. In 1965 and at all times until after the last Chagossians left the Chagos Islands in 1973, the position was governed by the British Nationality Act 1948. Under that Act (see Sections 4 and 12) a person who was born in the Chagos Islands, whether before or after the commencement of the Act, became a citizen of the United Kingdom and Colonies (CUKC) by birth. Similarly, a person who was born outside the Chagos Islands, whether before or after the commencement of the Act, but whose father (of whom he was the legitimate child) had been born in the Chagos Islands, became a CUKC by descent. CUKCs were also "British subjects" and "Commonwealth citizens".

19. In general terms, those Chagossians deported to or forced to remain in Mauritius also acquired Mauritian citizenship on Mauritian independence, and those deported to Seychelles acquired Seychelles citizenship after its independence, thus possessing, in either case, dual citizenship.

20. The status of the Chagossians was changed by the enactment in the United Kingdom of the British Nationality Act 1981. This came into force on 1 January 1983 and repealed and replaced the British Nationality Act 1948. It abolished the status of CUKC (and also, except in limited circumstances not relevant for present purposes, the status of British subject). In its place there were established a number of separate citizenship statuses. The Chagossians became British Dependent Territories citizens (BDTC). This is the status they enjoyed until 2002, whether by birth in the Chagos Islands before the last of the former population left the islands in 1973 or by descent in the case of birth in Mauritius (or elsewhere) thereafter. The relevant provisions of the 1981 Act (disregarding special cases) are Sections 15, 16 and 23. It is to be noted that the 1981 Act provided for the first time (but without retrospective effect) for citizenship by descent to be acquired through either parent, so that, for example, a child born in Mauritius after 1 January 1983 to a Chagossian mother became a BDTC by descent irrespective of the nationality of the father.

21. The position changed again with the enactment of the British Overseas Territories Act 2002 (Annex 17). The citizenship provisions of this Act came into force on 21 May 2002. Its main purposes are, first, to replace the term "dependent territory" by the term "British overseas territory" (see Section 1), so that BDTCs are now styled "British overseas territories citizens" (BOTCs) (see Section 2); and, second, to confer full British citizenship on all BOTCs except those belonging to the Sovereign Base Areas in Cyprus (see Section 3). Full British citizenship carries with it the right of abode in the United Kingdom and freedom of access to the other countries of the European

Union. S.6 makes special provision for those Chagossians who, as a result of the decision in April 1969 to remove the population were born outside the Chagos Islands.

B4. The creation of BIOT and surrounding events

22. In 1964 discussions had started between the Governments of the United States of America and the United Kingdom over the possible establishment of American defence facilities in the Chagos Islands (or other Indian Ocean islands which were also considered for the purpose). From an early stage the United Kingdom and United States Governments decided that once islands had been chosen for this purpose the transfer or resettlement of those on the islands would be necessary. This was for the purpose of evading the international obligations set out in Article 73 of the UN Charter to protect the population of a non-self governing territory and to develop their constitutional rights towards independence (Annex 18).

23. The US Government proposed that the islands chosen should be detached from Mauritius and the Seychelles and be formed into another, separate dependent territory. By this means the US government could be confident that the use of its new facilities would not depend on the goodwill and stability of Mauritius and/or Seychelles, whose independence was in prospect at that time.

24. On 8th November 1965 BIOT was created.

25. On 30th December 1966, in an exchange of notes, the UK and US Governments agreed that the islands should be available to meet their various defence needs for an indefinite period with provision for a review in 2016. The entire Archipelago (comprising 65 islands spread over 200 miles) was included in the international agreement (Annex 22).

26. The UK Government acquired the land interests held by Chagos Agalega Company Limited on 3rd April 1967; on 15th April 1967 the Commissioner then leased the islands back to that company by a lease terminable on 6 months' notice, to run the plantations on the islands. Moulinie & Co (Seychelles) Limited took over the management of the plantations in January 1968. There was an unsigned management agreement in which Moulinie & Co were appointed agent of the UK Government to administer the islands. The document was accepted by the FCO as providing the legal basis for the relationship between BIOT and Moulinie ("whereby the company agreed to manage on behalf of the owner of the island") (Annex----). Marcel Moulinie was paid by the UK Government for discharging his functions as civilian administrator (Annex 32).

27. The UK and US governments had agreed at an early stage of their discussions that the islands to be used for the proposed defence facility would be evacuated (see the joint US/UK memorandum dated 30th May 1964 - Annex 21).

28. The UK government had been aware for many years that there was a permanent population of the islands who could not properly be regarded as mere contract workers. This information did not just come from the records of births and deaths. (indicating approximately 2970 births on the islands since the 1890's). For example, in about 1955 a government information film made by the Colonial Film Unit, entitled *Peaks of Limuria*, referring to the islands, included the commentary that there were "half a dozen permanently inhabited" islands, populated "mainly by men and women born and brought up on these fragments of land".

29. Furthermore, in 1961 Sir Robert Scott, Governor of Mauritius in the mid-1950s, published *Limuria* in which he provided an authoritative description of the Chagos Archipelago, including a detailed discussion of the population –

its make-up, its origins and its size. Quite clearly there was a long-established permanent population: "The permanent residents in the vast area… now average about 1,500…. The word ['permanent'] is used to exclude from the count the managers, accountants, clerks and others of the headquarters staffs of the companies operating the coconut, fishing, and guano industries… It excludes those labourers, usually men from the Seychelles unaccompanied by their families, who engage themselves to work in the islands for about a year at a time… The term 'permanent residents' is, in fact, intended to designate the true islanders… There are some families who have been established in the islands for five generations and over; many which have been there for two generations and upwards." (Annex 33)

30. It is quite clear that (as would be expected) that book was familiar to the Foreign and Commonwealth Office: it is referred to in UK government documents. In his own book *Peak of Limuria*, which concentrated on Diego Garcia, Richard Edis, BIOT Commissioner from 1988 to 1991, referred to it as a "masterly and beautifully written survey of [the islands'] history" and "essential [reading] for anyone who wants to go deeply into the history of the area as a whole".

B5. Evacuations and Departures

31. The evacuation of the islands was effected between about 1967 and 1973. The circumstances of this evacuation are set out below. Broadly, some islanders left the islands for their own purposes, intending to return (and having no inkling that they would not be able to return in the usual way), but were prevented from returning, whilst others were deported. At no time was it suggested that the evacuation of the islands was necessary to meet an immediate or pending emergency.

32. A point of overarching importance is that the clearance of the islands was planned and implemented by or on behalf of the UK government. The actual arrangements were, on the whole, made by Marcel Moulinie, the plantation manager, but he was a paid UK government agent in this respect. The islanders were removed unwillingly and without consultation. They were effectively dumped on the quayside in Mauritius or Seychelles (whichever happened to be their final destination), with no provision for their housing or employment. No provision was made for compensation to be paid to them.

33. From an early stage the UK government policy had been to evacuate the population of the islands. It could only do so consistently with its international obligations if the population of the islands consisted of transient workers as opposed to being a permanent, indigenous population. The UK government knew that the population consisted, at least in part, of families who had lived on the islands for several generations. In order to carry out its policy the UK government therefore decided to lie to international organisations about the nature of the population, and about its intentions towards them.

34. The Fourth Committee of the United Nations was addressed by the UK representative Mr F D W Brown on 16 November 1965 (8 days after the detachment of the Chagos Archipelago and its establishment as a separate territory of the British Crown). This Committee of the General Assembly was concerned with the issue of decolonisation. A copy of Mr Brown's speech is annexed together with typescripts of paragraphs 80 (Chagos Islands) and paragraphs 89-93 (Falkland Islands) which was also the subject of Mr Brown's address (Annex 34).

    i. Mr Brown stated that the population of the islands numbered about 1,500, who "apart from a few officials and estate managers, consisted of labourers from Mauritius and the Seychelles, together with their dependants. The islands had been uninhabited when the

UK Government first acquired them." This statement, which was untrue (or at best deliberately misleading) was made on the direct instructions of the Foreign Office, and was intended to avoid reference to "permanent inhabitants" even though that phrase would have conveyed the true state of affairs. It suppressed the truth that the UK government had already decided to remove the population as soon as the islands were required for defence purposes, and also suppressed the truth that the islands would not achieve independence when Mauritius and Seychelles achieved independence and that there was an intention to dismember a non-independent territory for military purposes.

ii. That meeting was also told by the UK representative that the re-organisation of the administrative arrangements for the islands was "freely worked out with the Governments and the elected representatives of the people concerned". This was plainly intended to convey the idea that there were elected Chagossian representatives, who had been involved in working out their own futures, matters that were simply untrue. There were no elected Chagossian representatives, there were no plans to establish representative democracy in the Chagos Islands, and there had been and would be no consultation with Chagossians, whether elected or not.

iii. In March 1966 and/or on 6th October 1966 the UN Committee met. The UK representative repeated the matters already reported to the Fourth Committee (above), referring to the population as "almost all migrant labourers" and added that the interests of the inhabitants of the islands were "fully protected under the new arrangements". The reference to migrant labourers was deliberately misleading, and the reference to the protection of the interests of the inhabitants was

untrue, especially if, as the Defendants now assert, the Mauritius Constitution had been disapplied from BIOT territory by the BIOT Order 1965.

35. Thus it is plain that false representations were made to the UN by or on behalf of the UK Government.

36. The clearance of the islands began as follows. In 1967 and 1968, in two voyages, the ship the "Mauritius" brought Chagossians , to Port Louis in Mauritius. Those who left the islands did so on leave or for medical reasons. The "Mauritius" was operated by Rogers & Co, the agent for Moulinie & Co (the plantation owners) in Port Louis. Half the cost was met by the Mauritius Government. When those who arrived in Mauritius at that time subsequently tried to return to the Chagos Islands in 1968 and later, they were refused passage and were unable to return.

37. The Chagossians were not given any warning prior to their trips that they would not be able to return to the islands. Nor were they given any explanation by the UK government at this time as to why they could not return to the islands. The situation was subsequently much the same for those who were deported from the islands: they were told very little beyond the bare information that the plantations were being shut and they had to leave.

38. On 12th March 1968 Mauritius became independent.

39. In July 1968 the "Nordvaer" had been acquired by the BIOT administration to connect the Seychelles and BIOT, and from that time the shipping link between Mauritius and Chagos largely ceased.

40. On 5th July 1968 the UK Government was told that the US Government had decided to proceed with communication and other facilities on Diego Garcia.

41. On 25th July 1968 the UK Foreign Secretary sent a minute to the Prime Minister (copied to the Defence Secretary, the Chancellor of the Exchequer and the Commonwealth Secretary) (Annex-----), seeking approval for the UK response to the US decision to proceed. In this minute and in the documents annexed to it the Prime Minister was made aware that there was an indigenous population of the Chagos Islands but that the UK government intended to proceed as if, to all intents and purposes, there was no indigenous population, both as regards its presentation of events to the outside world ("we would propose … to deny … the competence of the United Nations to concern itself with a territory which has no indigenous population") and in its dealings with the population itself (whom it was proposed, without consultation with them, would be "evacuated" and "resettled"). The Prime Minister (and the other ministers to whom the minute had been sent) approved the proposal.

42. A further submission was made to the Prime Minister in April 1969 (Annex ---). This submission made it clear that some of the inhabitants of the islands had "established roots" there, and might, if given the choice, have expressed a preference to stay there. It was proposed that they would not be consulted. The submission and the proposals it contained were approved by the Prime Minister, the Chancellor of the Exchequer and the Secretary of State for Defence.

43. Thus the information available to the Prime Minister and the other most senior ministers in 1968 and 1969 included the following:-

i. That there was a substantial population of native Chagossians born on the islands;

ii. The population of the Chagos Islands were citizens of the UK and Colonies;

iii. That population had legal rights to reside on the islands; and

iv. To remove the population would be a breach of International Law, including Article 73 of the United Nations Charter which imposed a *"sacred trust"* to promote the economic social and educational advancement of the inhabitants of a non-self-governing territory and to develop self government.

44. The UK government continued to have internal discussions about resettlement options between 1969 and 1970. Memoranda from this period show that the UK Government, was aware that it proposed to expel native islanders from their homeland, and insofar as they considered the legal rights of the islanders, showed determination to override such legal rights.

45. Government planning turned to effecting the evacuation of the islands. For example on 23rd December 1970 the FCO sent a telegram to the BIOT Commissioner dealing with how best to meet the US request for total evacuation of Diego Garcia by July 1971 – *"we must try our utmost to meet this timing"* (Appendix to Ouseley J's judgment paragraph 290) (Annex-----).

46. Other memoranda showed contempt for the islanders, describing them as "a few tarzans and man Fridays", 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 ministers …….to 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"). 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". (Judgment Appendix para.259). The policy of lying to the outside world continued the policy seen in the speech by the British Representative, Mr F.D.W Brown at 4th Committee (1558 meeting) of the United Nations on 16 November 1965 referred to in para 34 above.

47. In December 1970 Congressional approval for the construction of the defence facility was announced. The US Government told the UK Government that it wanted Diego Garcia evacuated by July 1971. It was decided by the UK Government that Peros Banhos and Salomon could run as plantations for some time after that, although this was seen by as a temporary solution to resettlement whilst longer term arrangements were put in place.

48. Those longer term arrangements disregarded the rights of indigenous Chagossians, treated all inhabitants as "returnable" and proposed the return to the Seychelles of the inhabitants who were considered Seychellois, and to Mauritius (subject to the Mauritian Government's approval) of the families regarded as of Mauritian origin.

49. On 24th January 1971 the BIOT administrator Mr Todd called a meeting of the inhabitants of Diego Garcia and informed them that *"we intended to close the island in July but, that for some time, we would be continuing to run* Perhos Banhos and Salomon *and we would send as many people as possible from Diego Garcia to those two islands"* (paragraph 303 of the Appendix to the judgment).

50. On 25th March 1971 the Governor of BIOT indicated his disregard of the population by describing them in a letter to the FCO: - *"they are extremely unsophisticated, illiterate, untrainable and unsuitable for any work other than*

the simplest labour tasks on a copra plantation. This is not altogether surprising because they have spent all of their lives on remote islands" (see para. 312 of the Appendix to the Group Litigation Judgment of Ouseley J). (Annex 36).

51. On 16th April 1971 the BIOT Commissioner enacted the Immigration Ordinance 1971, No.1 of 1971 (Annex 6). This made it unlawful for anyone to enter or remain in the territory without a permit It made no provision for the population to remain, and constituted a criminal offence for any person to be present in the islands without holding a permit.

52. In about March 1971 the first detachment of the US construction team arrived in Diego Garcia, and made preparations for construction work to begin. Mr S.S. Mandary, the meteorologist working at Diego Garcia at the time (a non-Chagossian), was an eyewitness to the destruction of the villages and homes of the Chagossians. He reports that the whole of the north west of Diego Garcia, which comprised many villages including Pointe Mariane, Norwa, Langar Madame, Minimini, and others, all of which villages were fully inhabited, were occupied by the US Construction Battalions. The entire population of these villages were forced out by the arrival of the US military and obliged to move to the eastern half of Diego Garcia. Heavy equipment was moved in, and all of these villages were bulldozed and flattened, together with any communal facilities or graveyards which stood in their way. There was one building only that was retained for use by the military as a clubhouse. All the domestic animals were killed, and a program of exterminating the domestic pets began. By 19 July 1971, an airstrip had been completed. Mr Mandary also describes in a witness statement how the inhabitants were first informed on 23 January 1971 by the British Administrator, John Todd in the presence of Paul Moulinie and Commander White of the US Navy, that they would be removed from the island of Diego Garcia. He produced photographs of a mass meeting being addressed by

Messrs. Todd, Moulinie and Commander White. He described how the inhabitants, when informed of the enforced removal "got very upset". They asked to be allowed to stay on the east side of the island, but this was immediately refused by Todd who stated that "the decision of removal was taken at higher level and there was nothing he could personally do to change things". (Para. 3 of his witness statement dated 14 July 2000) (Annex 50).

53. In July 1971 the "Nordvaer" left Seychelles to effect the evacuation of Diego Garcia. It took some of the islanders to Salomon and Peros Banhos before going on to the Seychelles.

54. One native resident of Diego Garcia, Marie Therese Mein (whom the trial Judge described as *"an honest witness, although clearly some of the detail had dimmed in her memory and her ability to follow a line of questions had diminished over time and with ill health, because I would judge that she had a clear general picture of what life was like on Diego Garcia and how it had subsequently changed""* (see paragraph 175 to the Group Litigation Judgment of Ouseley J). (Annex 3a). Her account in a formal witness statement dated 29th November 1999 described the following events:-

i. A meeting attended by her husband when Mr Todd the BIOT administrator told the islanders that Diego Garcia had been sold and that all of the residents would have to leave, causing shock to her husband and others.

ii. If Ilois did not leave force would be used against them. Americans (i.e. members of the US armed forces) were present at the meeting when the islanders, devastated by this news became distressed and cried.

iii. Immediately afterwards the US navy began occupying areas of Diego Garcia, and began bulldozing land and villages. She stated; *"very soon the Americans intensified their presence on Diego Garcia. They reclaimed land and began construction work. Visitors were banned from certain areas such as Laverdan, Trois Piquets, Semen Long, Pointe Marianne, Norwa (all villages in the North of Diego Garcia). The Americans brought in heavy plant and equipment, tractors, tanks, caterpillars, helicopters by landing craft. Heavy building materials were unshipped and soon the whole area of Norwa became a building site".*

iv. This created a tense atmosphere of suspense because the islanders did not know what was going to happen to them. They were threatened by the US naval forces that if they did not leave they would be bombed. Vague promises of compensation were made but not specified.

v. As boats arrived to take the population away, some people refused to go but they were threatened that they would be starved to death if they did not leave.

vi. Mrs Mein's husband (the deputy administrator and leader of the Chagossian community) appealed on behalf of the Chagossians saying they had every right not to leave their homeland where they were living happily, but Mr Todd, the BIOT administrator threatened him saying *"do you people want to go the same way as the dogs?".* The plantation administrator Marcel Molinie, with the assistance of US naval forces went round the residential areas catching dogs and burning them alive in the calorifer (sheds where coconut husks are burnt to dry copra) (Annex 49).

vii. Mrs Mein was removed to Peros Banhos, but after 6 months Peros Banhos closed down and she and her family were removed to the Seychelles. The boat trip was dreadful. Although they were privileged by having a cabin, it was shared with a family of 10, the port holes could not be opened because the ship was so heavily laden and horses were occupying the upper decks. No meals were provided on a sea journey that took several days whereas the horses were fed grass. The passengers were sea sick, there was urine and manure from the horses on the lower deck. All passengers suffered from an extremely rough passage and were sick and weary after a six day crossing. Mrs Mein who was three months pregnant at the time soon miscarried as a result of the intolerable conditions and of shock and depression caused by their expulsion from the islands.

55. This account was corroborated by Marcel Moulinie the plantation administrator and agent of the British Government who also gave evidence to the trial Judge. He described that the first advance working party of US naval personnel arrived at the end of 1969 with 75 personnel. In November 1970 a contingent of US navel contract personnel, Seabees, arrived comprising around 1,200 military personnel. By November 1970 the west side of Diego Garcia had been occupied by the Americans who were actively developing it for military purposes, whilst the population was still there (paragraph 13 of his witness statement dated 22nd November 1999) (Annex 59).

56. Ouseley J held (at paragraph 317 of Appendix 36) that on Diego Garcia meanwhile (i.e. by April 1971) construction work had commenced shortly after the landing of US construction battalions. A report from a British royal naval captain visiting the island noted the rapid build up of men and machines and the prodigious progress which they were making. He said of the plantation manager that he was sad that he and his workers had received no offers of compensation and reported his comments that the older islanders

were also apparently sad at going and those born on Diego Garcia were apprehensive.

57. Marcel Moulinie described at paragraph 14 of his statement that the population of the islands began to dwindle between 1968 and 1970 and this created a problem of stray dogs. During 1971 he received written instructions from the BIOT Commissioner *"to destroy all the dogs but to save the horses".* He employed US sharp shooters to shoot some dogs and then, after experimenting with strychnine poisoning, enlisted the help of the US military by arranging to gas the dogs in the calorifer by channelling exhaust fumes from military vehicles through a pipe and killing them with carbon monoxide by revving up the vehicles' engines. A total of around 800 dogs were exterminated in this way. Mouline hated doing this but was acting under orders from BIOT. He agreed that these actions caused fear to the islanders that some of form of violence would occur to them.

58. A further vessel, the "Isle of Farquhar" was chartered, arriving in Diego Garcia early in September 1971 and then sailing to Peros Banhos and Salomon. The islanders left behind their homes, their pets and domestic animals and their larger items of movable property. They took only a small quantity of personal possessions. They regarded Diego Garcia, rather than the Chagos Islands as a whole, as their home. Their dogs were rounded up and gassed or burnt in a "calorifer" used in the process of copra production. In early September 1971 the Nordvaer arrived in Diego Garcia to take the remaining workers and some horses to Seychelles.

59. The conditions for the Chagossians on the voyage to the Seychelles were dreadful. They were crowded together in bad weather, without cooking facilities or proper sanitary arrangements. The conditions became more squalid as the voyage progressed. The horses were in better conditions. The

horses were fed but there was no food for the passengers, on the 3 day journey to Seychelles and 5 days to Mauritius.

60. In Mahe in the Seychelles they were accommodated in the unused section of the prison between arrival on 30th September 1971 and departure on 8th October 1971. They were then taken on the "Mauritius" to Mauritius.

61. The evacuation of Diego Garcia was completed by the Isle of Farquhar which arrived in Mahe on 31st October 1971.

62. At this juncture the population of Peros Banhos and Salomon was now estimated at 65 men, 70 women and 197 children. The Mauritian authorities estimated that 1000 islanders were already in Mauritius, having arrived either in the recent evacuations or since the formation of BIOT in 1965 and remained stranded since. The UK Government made no attempt to count or identify those removed nor to make any provision whatsoever for their reception, housing or employment on expulsion from their homeland.

63. There were ongoing discussions between the Mauritius Government and the UK Government as to who should pay for the resettlement of the displaced islanders. On 4th September 1972 a payment of £650,000 was agreed between those Governments in discharge of an obligation undertaken in 1965 to meet the cost of resettlement. This was paid in March 1973 to the Mauritius Government, but not released for several years. No payment was offered to those removed to Seychelles and no provision made for them by the UK Government who remained the colonial power until Seychelles independence in 1976.

64. Meanwhile the operation of the coconut plantations and copra plantation on Peros Banhos and Salomon Islands continued, but, with no assurance as to the future, investment was limited and the plantations gradually ran down. In

May 1972 the population on Salomon was told to move to Peros Banhos so as to concentrate the workforce, but they refused. In June 1972 the "Nordvaer" sailed to Seychelles with 53 islanders, who then went on to Mauritius. In November 1972 the "Nordvaer" took a further 120 islanders to Mauritius. By now Salomon had closed down.

65. In October 1972 a UK/US exchange of notes agreed to construction of a naval base at Diego Garcia. The plantation on Peros Banhos was by now regarded as uneconomic (and Moulinie was refused a lease by the UK Government).

66. Mouline had believed that the islands had a sound economic future and could have been developed not only for agriculture but for exploiting the exceptionally rich fishing grounds of the Great Chagos Bank, and by developing a tourist destination. In evidence to the Court he described the natural advantages of the islands with deep water anchorage sheltered from the ocean, a benign climate and abundant rainfall.

67. The owners and the BIOT administration agreed that closure and evacuation was appropriate. By this time food for the Chagossians was scarce. The contemporaneous documentation shows that there were problems maintaining adequate food supplies to the islands. This had never been a problem whilst the plantations were being properly run. The "Nordvaer" made two trips, on 27th April 1973 and 26th May 1973 evacuating the last of the population.

B6. Lives of the Chagossians after the closure of the islands

68. The islanders were experienced in working on coconut plantations but lacked other employment experience. Some had relatives with whom they could stay for a while, and some had savings from their wages.

69. The dreadful conditions on arrival were described by Ouseley J at paragraph 423-438 of his judgment. The Judge described as unchallenged the general description of conditions *"which can be therefore accepted and it is supported by much contemporaneous material".* These included descriptions of the following conditions:-

i. Mrs Talate was forced to live with her 6 children in 4 rooms which she shared with her brother his wife and 10 children.

ii. Two of her children died in hospital of malnutrition.

iii. She then lived in a corrugated iron roofed home having to pay for rent, light and water (unlike Chagos, where she had her own home and where all her belongings had been left). She fell into debt and become aware of drugs

iv. Their diet was poor unlike Chagos where there was plenty of rice and fish.

v. Cyclones devastated her home in Mauritius destroying their houses and furniture (Chagos is outside the cyclone zone). She experienced only poverty and misery. Sometimes people asked for charity or drank river water to live.

vi. Sewerage was a mere hole in the ground which was flooded when it rained. There was all kinds of rubbish and the conditions were unsanitary and bad for the children's health. People laughed at the poor conditions and poverty of the Chagossians.

vii. In Mauritius, some received some social security, but extreme poverty routinely marked their lives. Mauritius already had high unemployment and considerable poverty. Jobs, including even very

low paid domestic service, were hard to find. The islanders were marked out by their poverty and their background for insults and discrimination. Their diet, when they could find food to eat, was very different from what they were used to. They were unused to having to fend for themselves in finding jobs and accommodation, and had little enough in the way of resources with which to do either. The contrast with their island lifestyle which they had left behind could not have been more marked.

These were the degrading conditions suffered for years by the family of Mrs Talate and were similar to the conditions suffered by the other Chagossians who were deported to or forced to remain in Mauritius.

viii. Marie Therese Mein described that, on arrival in Seychelles, the family was very poor and had nothing to eat. She stayed for a few months in a cattle area.

ix. Jeannette Alexis, the daughter of Mrs Mein (described by the Judge as *"honest")* described how they were put in quarantine on arrival in Seychelles. They lived in an abandoned cow shed for many years.

x. Her family had to steal fruit for food.

xi. She could not go to school because they were regarded as foreigners. Seychelles citizenship was only available on payment of large sums of money. Chagossians in Seychelles suffered poverty. When she got a job she was told that as a Mauritius citizen she was working illegally. Her family had been well off in Chagos, her father being the Deputy Administrator.

These were the degrading conditions suffered for years by the family of Mrs Mein and were similar to the conditions suffered by the other Chagossians who were deported to or forced to remain in Seychelles.

70. In Mauritius there was no resettlement scheme when the islanders arrived. Various schemes, including a pig breeding scheme of improbable viability (of which the islanders anyway had no experience) were debated over a time before being abandoned. Rampant inflation in Mauritius between 1973 and 1978 substantially reduced the value of the payment of £650,000. It was eventually distributed in the form of cash in 1978 to the islanders in Mauritius. This was derisory compensation for what had been taken away.

71. The evacuees to the Seychelles fared just as badly if not worse, and no compensation has ever been paid in respect of their suffering and losses. The British Government has never satisfactorily explained why they did not extend any compensation to those deported to Seychelles nor even made any enquiry as to their needs. Instead vague excuses were deployed. In a letter dated 24 November 1997 (Annex 53) to Jeanette Alexis the British High Commission in Seychelles stated "following their departure from the Chagos, almost all the Ilois settled in Mauritius. The British Government made a financial grant to the Mauritian Government to help with the structural costs arising from their resettlement. Subsequently, following discussions between the two Governments, a Trust Fund was set up under Mauritian law to assist further with the community's resettlement. No such arrangement was made between the British and the Seychelles Governments. Only a small number of Ilois chose to resettle in the Seychelles. Most of those who disembarked in Seychelles after the evacuation were migrant workers returning home, with, in some cases, children born in Chagos during the contract period. The structural problems which the Mauritian arrangements were intended to address did not arise here".

72. No Chagossians have been employed on the US base in Diego Garcia, even from amongst those who have, since the evacuations, obtained relevant skills. Applications for work on the base by Chagossians are always refused. BIOT revenues from granting licences to fish in the Territorial waters of BIOT amounted to £2.2 million in 1998/9 (Annex 54).

B7. The Vencatassen Case

73. In February 1975 one Chagossian Michel Vencatassen issued a Writ in the High Court in London against the Attorney General acting for the Secretaries of State for Defence and for Foreign and Commonwealth Affairs. He had left Diego Garcia on the last voyage of the "Nordvaer". The action proceeded through the 1970s. In February 1978 the UK Government made an open offer to settle all the potential claims of all the islanders for £500,000 plus costs. Eventually, after negotiations between the UK and Mauritian Governments in March 1982 a settlement was reached in which the UK Government agreed to pay £4,000,000 to the Mauritian Government in addition to the £650,000 previously paid. The Mauritian Government also agreed to put in land to the value of £1,000,000.

74. A trust fund was set up by the Mauritius Government (Ilois Trust Fund), and between 1982 and 1984 payment was made to 1,344 Chagossians in Mauritius (but nothing to Chagossians in Seychelles who numbered around 500), totaling £2,976 each. No proper enquiry had been made of the needs of the displaced and impoverished Chagossians. Many were heavily in debt and the money merely paid off some of their debts so they continued to live in squalor and poverty. Some were able to purchase a plot of land but never had money to build a house. The Mauritius Government provided some low cost housing. No compensation was contemplated for replacing the employment enjoyed by Chagossians on the islands, or retraining them for self-sufficiency in Mauritius or Seychelles.

75. No attempt was made to explain the terms of the intergovernmental settlement to the islanders by the UK Government. Newspapers reports (Le Mauricien dated 25 March 1982) (Annex 37) showed that a Mauritian Government representative announced to a mass meeting of Chagossians that the Governmental settlement took place upon the basis *of "Le non-renoncement des Ilois a leurs droits de retour a Diego Garcia"* ("without the Ilois having to renounce their rights of return to Diego Garcia"). Some Chagossian representatives attended the Governmental discussions, but these took place in the English language which none of them spoke or understood. The UK Government representative (a senior FCO official sent from London, Leonard Allinson) opened the discussions by saying that the UK Government would not insist upon individual renunciations. However the final text of the Governmental Agreement included provision for the Mauritius Government to obtain renunciations from individual Chagossians and an indemnity from Mauritius to the UK Government in respect of future claims.

76. All Chagossians stated that they were unaware both of the finality of the settlement and would, if asked, never have agreed to surrender their rights to return to their homeland.

77. The trial Judge concluded that all Ilois were generally aware of the finality of the settlement and that in accepting a small amount of compensation, they accepted the finality of their claims, which were expressed to include renouncing their rights to return to the islands. In dealing with the knowledge of the general body of Chagossians, Ouseley J said a paragraph 528 of Judgment *"there was a mass meeting at which the outcome of the 1982 negotiations were explained and the 1982 agreement received wide spread publicity. It is not easy at this stage, indeed I doubt very much whether it will ever be possible to ensure how well known it was in 1982 that there was a provision in the agreement for some renunciation form, which individuals would have to sign."* However, the Judge insisted that Chagossians knew

"that further actions could not now be brought against the UK, and that there might be some mechanism for preventing that" (Paragraph 529 of the judgment).

78. On receipt of the last tranche of the money, recipients were required to sign or thumb print forms, which were written in English (a language which very few of understood, and almost none of them read). All but 12 of the identified islanders or their descendants thumbed or signed these renunciation forms or had that done on their behalf. The vast majority of these were thumbed rather than signed. The forms of renunciation which all save 12 of the 1344 recipients executed were in legalistic English and are set out at paragraph 647 of annex to the judgment. They required renunciation of *"all claims, present or future in respect of the closure of the plantations, departure or removal from there, loss of employment and preclusion from returning to Chagos"*. Two Chagossians were appointed to obtain signatures and identify those signing. They were illiterate and as found by the Judge (Judgement 538-9) unable to translate or explain. No other explanation was given to Chagossians. The Judge accepted that any individual Chagossian could show that they did not fail to exercise reasonable care in executing the form by attaching a thumb print (Judgment 545). However, he disbelieved all individuals who gave evidence before him and dismissed the claims of 8 witnesses from Mauritius on the basis of their acceptance of the finality of the settlement. This could not apply to Chagossians in the Seychelles who were never offered compensation, knew nothing of the terms of the inter-governmental agreement and signed no forms.

79. Mr Vencatassen's proceedings were stayed by agreement on 8th October 1982.

B8. Judicial Review and its Consequences

80. Proceedings were brought by way of judicial review in the High Court in England in August 1998 by Olivier Bancoult. He had left Peros Banhos in 1968 with his family when his younger sister had required medical treatment. After the sister died, the family sought to return to their home in the islands. However the family was refused a return passage to the island when his mother was told that the islands had been closed, that the United States had taken them over and that there was no shipping back to the islands. The shock of this refusal caused Mrs Bancoult to suffer mental health problems and Mr Bancoult to suffer heart problems from which he died in 1976.

81. In the judicial review proceedings the validity of the 1971 BIOT Immigration Ordinance was challenged. This had the effect of excluding the Chagossians from BIOT. In March 1999 an Order to proceed with the judicial review was granted by Scott-Baker J (Annex 1). On 3rd November 2000 the Divisional Court (Laws L.J., Gibbs J.) held that Section 4 of the Immigration Ordinance was *ultra vires* the BIOT Constitution (Annex 2). The Constitutional power to make legislation for "peace, order and good Government" was held not to permit legislation which excluded the population from the territory. The Court held that the population was to be "governed not removed", and the BIOT Immigration Ordinance 1971 lacked "any shadow of lawful authority" It is notable that the only power available in practical terms to the Divisional Court was the power to grant a declaration that the Immigration Ordinance was invalid. No power to award damages or compensation arose by reason of this unlawful administrative act, and the Divisional Court declined or had no power to award any restitutionary remedy. There was no appeal against this decision.

82. The UK Government's publicly stated position after the judgment was enunciated by Robin Cook, the then Foreign Secretary, who stated on 3 November 2000 (Annex 38) that :

> *"I have decided to accept the Court's ruling and the Government will not be appealing".*
>
> *"The work we are doing on the feasibility of resettlement of Ilois now takes on a new importance. We started feasibility work a year ago and are now well under way with Phase II of the Study".*
>
> *"Furthermore, we will put in place a new immigration ordinance which will allow the Ilois to return to the outer islands while observing our treaty obligations".*
>
> *"The Government has not defended what was done or said 30 years ago. As Lord Justice Laws recognised, we made no attempt to conceal the gravity of what happened".*

In apparent recognition of the Government's obligation to provide for the return of Chagossians to their homeland (as detailed at paras.235 to 236 and 242 to 251 post), the UK Government adopted the position that

(a) Chagossians had the legal right to return to their homeland and, with permission, to Diego Garcia.

At the same time

(b) The Government would pursue its published "Terms of Reference" examining the feasibility, costs and implications of returning the population to the Chagos Archipelago.

83. On 3 November 2000, as a direct consequence of the *Bancoult* judicial review, and in order to give effect to the judgment, a new BIOT Immigration Ordinance 2000 was published. Leading Counsel for the UK government intimated to the Court at the conclusion of the judicial review that a declaration of Mr Bancoult's entitlement to return to and remain in BIOT was unnecessary because "it may be misunderstood as suggesting that no steps may now be taken to amend the law consistently with your Lordship's judgment".

84. The 2000 Ordinance provided for the return of Chagossians to Peros Banhos and Salomon whilst stipulating that Diego Garcia could only be accessed by those holding a permit.

85. It achieved this by retaining the system set up by the Immigration Ordinance 1971 of allowing entry to the Chagos Islands only by permit holders, but at the same time exempting the Chagossians from the permit system. The Chagossians were, for that purpose, those who held BDTC status under the British Nationality Act 1981 and did so by virtue of connection with BIOT, and the definition was extended to include spouses of such persons and their dependent children under the age of 18 years. Those with "a connection with" BIOT were in turn defined as those born in the Chagos Islands, or one of whose parents or grandparents were born there.

86. There were (apparently), therefore, no defence reasons why islanders could not return to those islands. In fact, Chagossians have not subsequently been allowed to land in the islands; and there is, as yet, no infrastructure in place that would make it possible for them to return permanently.

87. At the conclusion of the judicial review case the Court expressly declined to grant any relief other than quashing section 4 of the BIOT Immigration Ordinance 1971. It was not possible for the Chagossians to obtain in those

proceedings the relief sought either in the Chagos Islanders Group Litigation or in the present proceedings.

88. In the course of and after the judicial review case, the UK government commissioned studies to ascertain whether it was feasible for islanders who wished to return to the outer islands to live there. These studies proceeded through 2000 to 2002. In broad outline these preliminary studies (which were unfortunately limited in scope) show that it would be possible for the islands to support a population and a number of viable commercial enterprises as well as subsistence activities were identified. This is unsurprising, given that, historically, the Islands supported a population and provided a viable economy. By July 2002, partial studies then completed showed that:-

i. Water. `Even ignoring the exceptionally heavy natural rainfall as a source of potable water, two small islands, Bodham and Ile du Coin could support populations of between 1,500 and 3000 people. It should be noted that the study had taken two years to establish a fact which was already well known to the Chagos Islanders on the basis of rainfall alone.

ii. It would be possible to develop "agri-forestry, agricultural, horticultural, livestock and forest production to provide for the subsistence needs of the population". It did not refer to the possibilities offered by rehabilitating the coconut plantations in the coconut report which had submitted to the BIOT Commissioner, by a specialist Agronomist

iii. In regard to fisheries and mariculture it stated that "the fisheries resources of the Archipelago are substantial and under-exploited". "A number of fisheries and mariculture development opportunities have been explored but the investment required to support these

options vary from modest to considerable". "These activities would become an important provider of livelihoods and income".

iv. It was considered that the islands might be vulnerable to climate change, to seismic activity and tsunami. Due caution was expressed. However it is to be noted that there was no data on these questions since the explosion of Karakatoa in 1883 and no data on cyclonic damage since 1891. Nor was there any data on the effect of climate change or global warming. There was in fact little scientific evidence for the "General Conclusion" in any part of the consultants' 4 volume study. In fact the Indian Ocean tsunami on 26 December 2004 caused no substantial damage to any of the Chagos Islands. In particular the occupation by 3,000 military personnel and the operation of the airbase on Diego Garcia remains undisturbed. Facilities for a scientific visit to verify such effects by a scientist instructed on behalf of the population have been requested and refused by the Defendant. A subsequent visit by a Dr. Shepherd has confirmed the absence of any serious damage to any part of the Chagos Archipelago.

v. Despite the requirement of the published Terms of Reference, no work had been done on either the costs or the benefits of resettlement, and the consultants who concluded the major Phase II B Study were expressly precluded by their Terms of Reference from considering either costs or benefits (Annex 54).

After July 2002 no further work whatever was done until abandonment of the Feasibility Study process as announced by the Secretary of State on 15 June 2004 (para 95 post).

89. The United Nations Human Rights Committee of 6th December 2001, reviewed the compliance by the UK with is obligations to the population of BIOT under the International Covenant on Civil and Political Rights. Noting that the UK government accepted that its prohibition of the return of the Chagossians who had left or been removed from BIOT was unlawful, the Committee stated that the UK should, to the extent still possible, seek to make exercise of the Chagossians' right to return to BIOT practicable, and should consider compensation for the denial of the right over an extended period (Annex 28).

B9. Chagos Islanders Group Litigation

90. The islanders commenced group litigation against the Attorney General representing the Secretary of State for the Foreign & Commonwealth Office and HM BIOT Commissioner by way of Claim Form and group Particulars of Claim in April 2002. The purpose of these actions was (1) to secure compensation for past and continuing wrongs done to the islanders and (2) to seek a declaration of their right to return to Diego Garcia. Individual islanders and their descendants sued in these actions. English law does not recognise a "representative action". All those still alive were required to join in and assert their individual losses. Some of the deceased claimed through heirs. A total of 4466 claimants thus lodged details of their individual circumstances.

91. The group Particulars of Claim identifies two sub-groups: Claimants resident in Mauritius and Agalega represented by the Chagos Refugees Group, chaired by Olivier Bancoult, and Claimants resident in the Seychelles, represented by the Chagos Social Committee (Seychelles) chaired by Jeanette Alexis. In a judgment dated 9th October 2003 Ouseley J. struck out parts of the Claimants' case and gave summary judgment for the Defendants on the whole of the case.

92. The Claimants applied for permission to appeal to the Court of Appeal (Civil Division). By a judgment dated 22nd July 2004 the Court of Appeal (the President, Sedley L.J., Neuberger L.J.) refused permission to appeal thus bringing "*to an end the quest of the displaced inhabitants of the Chagos Islands and their descendants for legal redress against the State directly responsible for expelling them from their homeland.*" (Paragraph 54 of the Judgment) (Annex 3a). This decision exhausted the remedies potentially available under English Law.

93. The domestic law issues adjudicated upon in this litigation are referred to below.

B10. Developments in 2004

94. On 10th June 2004 the UK government passed into law the British Indian Ocean Territory (Constitution) Order 2004. This is an Order in Council under the Crown's prerogative powers, and has not been subjected to Parliamentary scrutiny. Among other matters, by paragraph 9 this Order declares that no person has the right of abode in the territory, or the right to enter it except as authorised. It thus purports to abrogate existing rights to live in the territory which the Chagossians possess. The Crown retains, pursuant to paragraph 15 or the Order, and the Commissioner of the territory is given, by paragraph 10, the power to make laws for the peace, order and good government of the territory, and, in a statement manifestly designed to overturn the *Bancoult* judicial review judgment (against which the UK government did not appeal) it is declared, in terms of wide application, that no such laws shall be deemed to be invalid (Annex 9).

95. The government also passed into law on the same day, by the same means, the BIOT (Immigration) Order 2004 (Annex 8). This repealed the Immigration Ordinance 2000 which had been passed to give (partial) effect to the

Bancoult judicial review judgment. This prohibited anyone from entering the territory without a permit from the immigration officer. Members of the armed forces and public officers are exempt from this requirement, and listed contractors working on the American base are deemed to possess a permit. These laws were announced by a ministerial statement dated 15th June 2004 (Annex 39). This statement also announced the abandonment of the Feasibility Studies which had provided a favourable report on the feasibility of returning the population but included some general comments about the possibility of difficulties for a resettled population which had not been based on any scientific study (para.88 supra). No attempt had been made to identify costs and benefits of resettlement, and no attempt had been made to identify partnership funding from public or private sources.

96. Thus, no Chagossians are now permitted to enter any of the islands, and none can gain a right of entry unless (against all precedent) they become contractors on the American base. British military personnel are permitted to enter the islands (and there are indeed British as well as American military personnel there). In addition, British policemen are based on Diego Garcia, and civil servants involved in the administration of the islands are also permitted to enter.

C. SUMMARY OF INJURIES AND HARMS SUFFERED BY INDIVIDUAL CHAGOSSIANS AND THE CHAGOSSIAN COMMUNITY

97. The Chagossians have suffered a total, and now if the UK Government has its way, permanent, exclusion from their homeland. Their exclusion is not just from Diego Garcia, where the American base is situated, but also from Peros Banhos and Salomon. This exclusion is not justifiable on any basis. In many parts of the world American and British military bases exist with the local population living, in effect, right up to the outer wire fence. There is no reason why the population should be excluded from the whole of Diego

Garcia in order to accommodate the military base. There is even less reason why the population should be excluded from the outer islands of Peros Banhos and Salomon. American military personnel first arrived on Diego Garcia in 1971. The outer islands have not been required for defence purposes now for the past 34 years since that arrival (and for 40 years since the first agreements between the British and American governments). It has not been suggested that there are plans afoot to use those islands for military purposes. All islands are at least 100 miles distant from Diego Garcia.

98. There has been destruction of homes and villages by the actions of US military personnel in bulldozing the northern part of the island (and eliminating the villages of Laverdan, Trois Piquets, Semen Long, Pointe Marianne, Mini Mini, Langar Madame, and Norwa in the period March to September 1971).

99. After the removals in July 1971, every inhabitant of Diego Garcia lost forever his home, land, pets and animals, and all his immovable possessions. Chagossian culture values highly the land of its heritage, as is witnessed by the custom of burying the umbilical cord of a newborn child in the soil of the place of birth.

100. There are graveyards on all of the main islands containing ancestors of the Chagossians. Their culture places a high value on respect for deceased ancestors. Graveyards have been destroyed without steps taken to exhume bodies or deconsecrate the ground (Annex 49) All Chagossians have been prevented from visiting graves for a period exceeding 30 years.

101. The Chagossians have lost comfortable homes in the islands. Houses in the Chagos Islands were made of concrete or wood, had four bedroooms, a kitchen and a lounge as well as an open veranda. There were large gardens for cultivation of fruit and vegetables, and for raising chickens. Land for housing was allocated freely, and on the basis that it would be used

permanently by the Chagossian owner, who was free to alienate it or to leave it to his heirs.

102. Moreover, the Islanders had free access to the entirety of the islands so that, whilst respecting the agricultural areas of the plantation, they enjoyed unlimited open space and the freedom to extract hardwood and softwood as required. Moreover, they had free access to the beaches and the lagoons, a unique environmental situation where there safe harbouring for boats, and easy fishing amongst abundant fish stocks.

103. Their diet was protein rich with an abundance of fish and coconuts. Only carbohydrates had to be imported, and both rice and wine were distributed free by the plantation company. There was ample meat from chickens, ducks and some pigs kept by the islanders. The plantation administrator had begun raising herds of cattle before the islands were evacuated, and he believed that beef farming was a viable proposition had the islanders been allowed to continue their way of life.

104. A distinctive culture of the Chagossians grew up on the islands involving festivals, dialect, dress and in particular music and dancing undertaken by a population who had freedom, liberty and cultural dominance of the islands. By contrast, studies undertaken amongst the displaced communities in Mauritius and Seychelles (notably by David Vine MA and Laura Jeffrey), attest to the dominant cultural identity of the islanders as being of pain and suffering, as demonstrated in their songs and festivals. Since expulsion they have been a despised minority, discriminated against in employment, and jeered for being *"anara"* – nobodies, without cultural identity (Annex 42).

105. Early studies of the displaced community in Mauritius (e.g. by Francois Botte of the University of Mauritius in 1972) (Annex 40) evidenced:-

i. Chagossians plantation skills were unsuited to work in Mauritius where there were no coconut plantations;

ii. illiteracy made them vulnerable to exploitation;

iii. there was no opportunity for the Chagossians to fish in Mauritius;

iv. high unemployment, whereas they enjoyed 100% employment on Chagos when Mauritius had a 25% unemployment rate on removal;

v. unfamiliarity with money, and the need to pay, for the first time for basics such as housing, food and education;

vi. many of the women were driven to prostitution in order to survive.

106. A report commissioned by the Mauritian Government in 1982 from a sociologist, Herve Sylva makes grim reading. It found that only 65 out of 942 Ilois householders are "owners of land and houses" and "have satisfactorily remunerated jobs" (Annex 41). He found one case of 31 people living in three rooms, another of 21 people in two rooms and one case of 14 people including a lame man, living in one room at Cite la Cure. It described the Ilois living in old and leaking houses with curtains and sheets as a roof over their beds as a protection from the rain. Over 40% of adult males did not have a job. Very few had permanent jobs. It revealed an overwhelming desire among the population to return to the Chagos Islands.

107. A world health organisation study of Chagossians was produced in 1997 (Annex 42). The study found that Chagossians suffer from increased rates of chronic colds, fevers, respiratory diseases, anaemia, and some transmissible diseases like tuberculosis as well as problems with cardiovascular diseases, diabetes, hypertension, work accidents and youth alcohol and tobacco abuse. Children, the elderly and women prove to be the

most vulnerable segments of the population and the most likely to suffer health problems. The study points out that the incidence of chronic disease in Mauritius is one of the highest in the world and that Chagossian health problems are similar to those found in the poorest sectors of Mauritian society where most Chagossians live. Additionally, Chagossians suffer from their unhealthy living conditions including water borne diseases tied to poor hygiene and contaminated water supplies. The illnesses include infant diarrhoea, hepatitis A and intestinal parasites (associated with inadequate access to running water and toilet facilities). The elderly suffered undue rates of diabetes and cardiovascular disease. Large number of Chagossians suffered work accidents (understandably given that Chagossian men who work tend to have the lowest grade employment with fewest protections).

108. The poor health of Chagossians in Mauritius contrasts with official reports of their health on the Chagos Islands, collated since 1877 by visiting Magistrates. Such visits found that "the health of labourers in Chagos was if anything somewhat better than in Mauritius". In March 1949 Magistrate J Desplace described the hospitals in Chagos as clean, well kept and well provided – so far as he could Judge – with medicine and surgical instruments:-*"the inhabitants of these islands are generally healthy but for some occasional epidemics of "whooping cough", "measles" or "influenza" introduced on each visit by the steamer coming from Mauritius……they fortunately do not last long but, I regret to say, they are bad enough to prove fatal in some cases"* (Annex 43).

109. The Governor of Mauritius visited Chagos in September/October 1955 and was able to report that *"health conditions appeared satisfactory, with no epidemics for some years and the records showing no dominant types of ailment",* and *"the hospitals are well maintained and provide sufficient accommodation including ante-natal and midwifery sections, with midwives in charge. The dispensaries are well stocked and the dressers appear to be*

capable of diagnosing and treating the less complicated conditions, more serious cases being sent to Mauritius" (ibid).

D. RELEVANT DOMESTIC LAW

D1. Introduction

110. (a) The claims made by the Chagossians have never been tried. This is because the claims made in Group Particulars of Claim, as re-amended, were struck out by Ouseley J in a judgment delivered on 9th October 2003 on the application of the Respondents. Permission to appeal to the Court of Appeal was then sought from the Court of Appeal. Permission was refused on 22nd July 2004. It follows that not only have the Chagossians' cases not been tried, but the decisions of Ouseley J have not been the subject of an appeal. Thus, contrary to their wishes, the Chagossians have neither had a trial of their actions, nor a full examination on appeal of the reasons why such a trial has been denied to them.

(b) For the remaining paragraphs of Section D, the Respondents will be referred to as the "Defendants", to preserve this description as Defendants to a private law action.

111. A number of claims were made in this litigation, as set out in the Re-Amended Group Particulars of Claim, supplemented, after receipt of the Defendants' Defence, by an Amended Reply on Limitation and Abuse of Process. The legal framework set out in those documents was supplemented by written and oral submissions at trial, and by further written and oral submissions on the application for permission to appeal.

112. The Claimants' cases had to be stated within the existing framework of the law of England and Wales. Essentially that meant that the wrongs done to

the Claimants had to be analysed in terms of existing torts, or at least in terms of torts that the Court might be persuaded to accept as existing torts. The claims were put under six heads, namely:-

i. misfeasance in public office;

ii. unlawful exile;

iii. negligence;

iv. infringement of property rights;

v. infringement of rights under the Mauritian Constitution

vi. deceit.

113. In addition to the issues raised by these claims the Claimants contended, contrary to matters raised by the Defendants in their Defence, that:-

i. none of their causes of action were defeated by statutory limitation, that is that none of them were defeated by the passage of time;

ii. bringing the claims did not represent an abuse of the process of the Court.

114. The Defendants' application to strike out the Chagossians' claims was on various grounds, which may be summarised as a contention by the Defendants that on the law and/or on the facts the Claimants had no reasonable prospects of success.

115. Within that hearing, the Defendants' contentions in relation to limitation and abuse of process plainly had the potential to prevent the whole case

proceeding, regardless of the merits of any of the individual causes of action. These 2 issues are therefore dealt with here first. Next, the Court of Appeal's overriding decision as to the potential tortious liability of the Crown is referred to, before the arguments and decisions on the individual causes of action are set out.

116. Throughout the following account of the legal arguments and decisions the term "Defendants" is used in place of the term "Defendants, their servants or agents" except where otherwise stated.

D2. Limitation

Limitation – parties' cases

117. All of the causes of action were potentially statute barred as a result of the passage of time. That was so even for any torts that might be considered to be continuing right up to the date of the hearing before Ouseley J, at least as regards any injury or loss arising from the tort prior to the limitation period. Thus for a continuing tort with an ordinary limitation period of, say, 3 years, then, unless the limitation defence could be defeated, the Court would only be concerned with any injury or losses in the 3 year period prior to the issue of proceedings. For any tort that was not a continuing tort, the claim would be defeated by any valid limitation defence.

118. There was some dispute between the parties as to which of the causes of action could be regarded as continuing torts; but a clear example, if it existed at all, would be the tort of unlawful exile. In that instance, if the tort existed then, absent a limitation defence, the Defendants' liability would be for the whole period of the exile, but if such a defence was valid, the Defendants' liability would be for the 6 years of exile prior to the issue of proceedings.

119. In summary the Claimants contended that:-

i. The Limitation Act 1980 had no application to the present case because:-

(a) it is a pre-condition of the application of the Act's provisions that the causes of action could have been brought to Court, but by reason of the Defendants' acts the Claimants or the vast majority of them had been denied any real and **substantive** access to justice;

(b) even if (a) is incorrect in that there is no such precondition it would be unconscionable to permit the Defendants to rely on the Act for the same reasons.

ii. The Foreign Limitation Periods Act 1984 operates to exclude and/or modify the Limitation Act 1980, such that the claims made were not statute barred.

iii. Alternatively, if the time limits set out in the Limitation Act 1980 do apply to the present case, then, pursuant to Article 3 of the BIOT Courts Ordinance 1983, the Claimants contended that the time limits must be qualified, adapted, modified and adapted to meet the special and local circumstances of the Claimants.

iv. The Claimants contended that limitation periods are not applicable to continuing torts.

v. Further and in any event the Claimants contended that they were and are disabled within the meaning of the Limitation Act 1980 and time had not therefore begun to run against them.

vi. Alternatively if those time limits did apply to the present case, then, pursuant to Section 32 of the Limitation Act 1980 the Claimants contended that their actions were not statute-barred.

vii. Further, in relation to the actions for personal injury arising from the Defendants' negligence, the Claimants contended that it would be equitable to allow the actions to proceed pursuant to Section 33 of the Limitation Act 1980.

Limitation – decision of Ouseley J

120. The judge held that on the face of it all the claims were statute barred. It was for the Claimants, therefore, to attempt to show that the claims were not statute barred, or why time had stopped running or should be extended. The Claimants had, at this stage, to show that the arguments they would deploy to defeat the limitation defences had reasonable prospects of success.

121. The judge rejected the contention ((i)(a) in the list of Claimants' contentions above) that the Limitation Act 1980 did not apply because the Claimants had effectively been denied access to justice, and also rejected the argument ((i)(b) above) that the Defendants should not be allowed to rely on the Act because it would be unconscionable to allow them to do so.

122. The judge dealt with the possible modification of the Limitation Act 1980 to suit local circumstance, whether pursuant to the provisions of the Foreign Limitation Periods Act 1984 ((ii) above) or pursuant to the BIOT Courts Ordinance 1983 ((iii) above) together. He held that any process of adaptation had to be one to suit all local conditions, not one which is related to the needs of a particular group of claimants. He concluded, in effect, that English law on limitation was capable of dealing with problems of disability, access to

lawyers, and the fact that someone had been disadvantaged in bringing the claim by the very acts complained of. He rejected the Claimants' arguments.

123. In relation to continuing torts ((iv) above) the judge held that the Claimants' arguments under this head might affect only 2 causes of action, namely unlawful exile and the contended continuing breach of a duty of care; and in both cases might allow a claim for the 6 years of injury or loss prior to the issue of proceedings only.

124. In relation to disability ((v) above) the Claimants' case was that the definition of "disability" in section 38(2) of the Limitation Act 1980 was not an exhaustive definition, and that the concept of disability should include not just the concepts of mental disability and minority set out expressly in the Act but also matters relevant to the Claimants' cases, namely that they were outside the jurisdiction, impoverished, illiterate, and physically separated from the Courts as a result of the Defendants' acts.

125. The judge held that this was unarguable. He said that the definition of disability within the Act was not a deeming provision, and that no Claimants were identified as being disabled within the ordinary accepted meaning of that provision.

126. Next the judge dealt with the arguments under section 32 of the Limitation Act 1980 ((vi) above). The relevant provision is Section 32(1)(b) of the Limitation Act 1980. This states that:-

"(1)…where in the case of any action…

(b) any fact relevant to the Plaintiff's right of action has been deliberately concealed from him by the Defendant…

The period of limitation shall not begin to run until the Plaintiff has discovered the….concealment…or could with reasonable diligence have discovered it…

(2)…deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty."

127. The facts relied on were set out in paragraph 20 of the Reply, and in Tab XI, paragraphs 16-17 of the Claimants' written closing submissions in the document headed "Vencatassen: disclosed and redacted documents – what facts are concealed?". Ouseley J. set these out in paragraphs 621 and 622 of his judgment (Annex 3a)

128. The Claimant's case on this issue rested on the fact that in the Vencatassen litigation the UK government had limited its disclosure of documents, either claiming public interest immunity or by disclosing redacted versions of documents only. The topics on which the government chose not to disclose information by adopting these procedures can be readily analysed – see the document "Vencatassen: disclosed and redacted documents – what facts were concealed?" referred to above. It was the Claimants' contention that the facts that were thus deliberately concealed were critical to the formulation of their present causes of action, and that the facts thus concealed were only revealed once documents became publicly available under the 30 year rule (a rule of practice in the UK in which government documents are generally made available to the public 30 years after the events to which they relate).

129. The judge rejected this contention in a series of findings. In essence he held that there had been nothing that amounted to deliberate concealment within the meaning of the statute, and moreover that facts relevant to individual causes of action had not been concealed. He held, moreover, that insofar as there was concealment, the Claimants had to prove, but had failed to prove,

that they could not with reasonable diligence have discovered the concealment earlier.

130. Finally, the judge held that the Claimants had no reasonable prospects of persuading a Court that it would be equitable to allow the Claimants' personal injury actions to proceed notwithstanding that they were statute-barred (vii above).

Limitation – decision of Court of Appeal

131. The Court held that it was very probably right for the judge to reject the argument on unconscionability as a matter of principle. However, it said that it is possible for a Defendant validly to contract not to take a limitation point, or to stop himself from taking such a point. The Court considered, particularly bearing in mind the basis of estoppel, that it is conceivable that a Court might be prepared to hold that, by his conduct, a defendant had rendered it so inequitable for him to take limitation points that the Court would effectively not permit him to do so. In the present case the Claimants would seek to argue, the Court said, that by the very actions complained of in these proceedings, namely removing them to Mauritius, and leaving them in a position where they were poor, ignorant and without recourse to the Courts, the UK government and its representatives should not now be heard to say that the Claimants had lost their right of relief promptly where the delay is due to these very circumstances.

132. The Court also held that the arguments relating to disability might succeed. There seemed to the Court to be a case for contending that, owing to the circumstances described, the Claimants were under a disability so that time was prevented from running by virtue of Section 28 of the 1980 Act. It

considered that there was scope for arguing that the definition in Section 38(2) of the same Act which provided that "a person shall be treated as under a disability whilst he is an infant, or of unsound mind" is not an exhaustive definition.

133. However, the Court held that both of these two arguments, even if they succeeded, would face insuperable difficulties after 1983 at the very latest. It appeared to the Court that the arguments on unconscionability and disability could only operate to prevent time running so long as the effect of the events giving rise to unconscionability or disability continued to operate. Those circumstances, held the Court, cannot have persisted beyond 1983, therefore the Claimant's cases would fail on limitation grounds unless they could succeed on their case on deliberate concealment.

134. The Court therefore held that the case turned on the proper effect of Section 32(1) and (2) of the Limitation Act 1980. The Court agreed with the judge that, since there was no allegation that there was any impropriety by the Defendants in the conduct of the Vencatassen litigation during the process of discovery it was impossible for the Claimants to succeed in any contention that there was deliberate concealment by non-disclosure of documents in those proceedings. They agreed with the judge that the notion of deliberate concealment entails a positive act. Furthermore they agreed with the judge that it was up to the Claimants to prove that they could not, with reasonable diligence, have discovered the concealed facts earlier. Accordingly the Court considered that any valid cause of action against the Defendants would be defeated on grounds of limitation.

D3. Abuse of Process

Abuse of process – parties' cases

135. The Defendants contended that the Claimants' attempts to bring these claims amounted to an abuse of the process of the Court. The Defendants' case on this issue was different when presented orally to the way it had been pleaded. In essence the Defendants eventually contended that acceptance of the 1982 settlement monies by any Claimant who, or on whose behalf, a renunciation form had been signed precluded them from bringing any case in respect of the matters set out in the renunciation form.

136. The Defendants' basic argument was that where a person A agrees with another person B that he will receive payment in settlement of any claim that he may have against a third person C, person A may no longer sue person C, even though person C is not a party to the agreement and the person undertaking to make the payment, person B, is not the third person's agent. In subsequent proceedings that person A brings against person C are an abuse of the process of the Court.

137. Substituting the parties in this case for those letters, the Defendants' argument was that the Chagossians had agreed with the Ilois Trust Fund Board that they would receive payment in settlement of claims that they may have against the United Kingdom government, so that it was no longer open to the Chagossians to sue the United Kingdom government; and that was so even though the United Kingdom government was not a party to the agreement between the Chagossians and the Ilois Trust Fund, nor was the Ilois Trust Fund the United Kingdom's agent. In those circumstances it was said that the actions by the Claimants were an abuse of the process.

138. The Claimants' response was, in effect, that the settlement was an inter-governmental settlement, that it had never been intended by any of those who signed renunciations that accepting monies from the Ilois Trust Fund should abrogate their rights to seek compensation for the wrongs done to them, and that in any event they had not known that they were signing, because the forms were in complex English legalese, and the Chagossians were almost all unable even to speak any English and were illiterate in any event.

139. In addition the Claimants argued that, since the Defendants had failed to raise the abuse argument in the *Bancoult* judicial review it was not now open to them to do so in the present case.

Abuse of process – decision of Ouseley J

140. The judge accepted the Defendants' basic argument. He said that the settlement in 1982 was a settlement of litigation, and that that was what the parties were trying to achieve. He said that the contents of the renunciation form covered the claims in the present case and that in principle the Chagossians who had accepted money from the Ilois Trust Fund and signed the form renouncing claims would be abusing the process of the Court if they carried on with the present proceedings.

141. There were only two routes out for existing Claimants. The first was that it was open to the person who signed the document to show the transaction which it effected was different from which was actually intended, so that he did not consent to it. But he would also have to show, even if he was illiterate or lacking in understanding of the law, that he acted responsibly and carefully according to his circumstances. The judge concluded that it was generally known in Mauritius that the 1982 Agreement was final, though he did not know whether it was well known that there was to be a provision in the

Agreement for some renunciation forms which individuals would have to sign. Nonetheless he could not say, in relation to individual Chagossians, that when the forms were signed that they knew what they were signing was anything more than a receipt. So he could not say that the Claimants generally had no reasonable prospects of showing that they took reasonable care in all the circumstances; however, he did take that view of every single witness that he saw, and of any Claimant who was a member of the 1982 delegation or who served on the Ilois Trust Fund Board in 1983 and signed the forms.

142. The second possible route out was to do with unconscionability. The Claimants argued that the renunciation forms were not binding because there had been an unconscientious use of power by the government in the way in which it had procured signatures, and because it was not possible for the government by financial settlement to provide proper consideration for the forced removal of the fundamental rights of the Claimants and it ought to meet its inalienable governmental responsibilities. The judge stated that his task was to say whether the Claimants had a reasonable prospect of showing that they were in a position in which they could be exploited and if so, whether the Defendants had shown that the Claimants had no reasonable prospects of showing that the Defendants behaved in a morally culpable manner leading to an oppressive transaction from which the Claimants could be relieved. He agreed that the signatory Claimants did have reasonable prospects of showing that they fall into a number of categories of weaker party and that the Defendants knew that. However, the crucial issue, he said, was whether the transaction itself was "clearly…oppressive or shocking to the conscience of the Court."

143. On this issue the judge decided that there had not been an abuse of power by the government and the Claimants could not succeed on that ground. Moreover, governments were entitled to settle cases of this sort. So far as

infants were concerned there was no different conclusion on unconscionability.

144. Finally, the Judge rejected the contention that it was not open to the Defendants to raise the issue of abuse of process having failed to do so in the judicial review.

Abuse of process – decision of Court of Appeal

145. The Appellants argued that it was an abuse for the Defendants to raise the issue in these proceedings, having failed to raise it in the *Bancoult* Judicial Review, and that it was not open to the Defendants to contend that the Chagossians could compromise or renounce fundamental and constitutional rights.

146. The Court did not think that the Defendants could be held to have missed their sole opportunity for relying on the renunciation forms by failing to deploy them in the judicial review proceedings, nor did it think it arguable that the Chagossians could not compromise or renounce "their fundamental and constitutional rights".

147. It followed, the Court of Appeal said, that all other elements of its decision were strictly material only to those Chagossians who signed no renunciation form or who did not appreciate what they were signing. If they are wrong about that then their decision was relevant to all claims.

D4. Tortious liability of the Crown

Tortious liability of the Crown – Court of Appeal's decision

148. In addition to, in effect, preventing the Claimants' cases generally proceeding on grounds of limitation and abuse of process, the Court of Appeal formulated a third general bar, as follows.

149. The Court held that the state has no tortious liability at common law for wrongs done by servants, from ministers downwards. Either the Crown's servants are personally liable or there is no redress. It was to change this anomalous situation that the Crown Proceedings Act 1947 was passed. But the 1947 Act does not work by making the state a potential tortfeasor: it works by making the Crown vicariously liable for the torts of its servants. It has only been with the enactment of the Human Rights Act 1998 that the Crown, in the form of a "public authority", has acquired a primary liability for violating certain rights. The Court of Appeal held, in effect, that the Claimants could not implicate the state directly but had to rely, if they could rely on anything, on the state being vicariously liable for individual wrong doing.

150. The importance of this finding is illustrated by the conclusions on a number of causes of action.

D5. Misfeasance in public office

Misfeasance in public office – parties' cases

151. The essence of this tort, which the Claimants sought to prove, was that there had been a deliberate and/or dishonest abuse of power by the Defendants. Within that formulation the Claimants sought to prove a number of elements.

152. Firstly, the Claimants contended that the Defendants acted illegally in evicting the Chagossians from the Chagos Islands. The Claimants' contention was that the Defendants acted illegally whether they were acting pursuant to the Immigration Ordinance 1971 or otherwise, and whether the eviction was by means of preventing the return of those who had left voluntarily, or by removing those who did not wish to leave.

153. Insofar as the evictions were not pursuant to the Immigration Ordinance 1971 the Claimants contended that they were illegal for the purpose of the tort of misfeasance in public office on a number of grounds, which may be compendiously summarised in this way: the Defendants at all material times knew that the Chagossians were a permanent population of the Chagos Islands, but took decisions and acted as if that were not so, but as if they were a merely transient population of contract workers. The Claimants' contention was that it is not open to any democratic government to act in that way, to govern, as it were, on the basis of a known lie. Doing so was, in the Claimants' submission, an unlawful way for any government to act. This is to be contrasted with the situation in which a government acts on the basis of information that it considers, in good faith, to be true, but which later turns out to be false. In those circumstances acting on false information would not be illegal. But that was not the situation here. The Claimants contend that it is unlawful for a government to act on a fabricated set of facts because that fabricated set of facts allows it to meet a predetermined policy objective. The Claimants contended that the fact that the government had acted on the basis of a knowingly false position as to whether or not the Chagossians were a permanent population was shown in a multitude of ways, but, importantly, was shown by the Prime Ministerial submissions of 1968 and 1969.

154. The United Kingdom government has formally accepted before the United Nations Human Rights Committee "that its prohibition on allowing the return

of the Ilois, who had left or been removed from [the Chagos Archipelago], was unlawful" (see paragraph 38 of the concluding observations of the United Nations Human Rights Committee dated 6 December 2001) (Annex 28).

155. Secondly, for the purposes of the tort of misfeasance in public office the Claimants also had to show that the Defendants, whether by themselves or their servants or agents, acted dishonestly. For the purposes of this tort, acting dishonestly includes acting in bad faith, and would certainly be proved in a situation in which a government deliberately lied, or deliberately acted on an assessment of the facts that it knew to be untrue.

156. Thirdly, the Claimants had to prove that the Defendants knew that they were acting in ways in which they had no power to act and/or that they were recklessly indifferent as to whether or not they were acting within their powers. The Claimants' case was that the government knew at all material times that it was carrying out its policy on a false basis, namely that there was no permanent population of the islands. The Claimants contended that no government could possibly have considered that making up facts to suit its policy objective was a proper and lawful method of government, and accordingly the Defendants knew that they were acting in ways in which they had no power to act or at the very least were recklessly indifferent as to whether or not they were acting within their powers.

157. Fourthly, the Claimants had to prove that the Defendants knew that their illegal actions would probably injure the Claimants and/or they were recklessly indifferent as to the consequences of their illegal actions. As to this there could be no possible difficulty: the Defendants were well aware that there were established communities on the Chagos Islands, and that breaking up those communities and displacing the Claimants would injure them.

158. Finally the Claimants had to prove that they suffered injuries and losses as a result of the acts and omissions of the Defendants, and in this respect too there was no difficulty: the Chagossians were removed from the islands without consultation, without their consent, under duress, and without proper facilities being provided for their reception and maintenance in either Mauritius or Seychelles. They plainly suffered injuries and losses.

159. The Defendants contended that the elements of the tort had to be shown to have existed in an individual for that individual to be fixed with liability; and that there was, in the present case, no basis for any institutional liability on the part of the government.

Misfeasance in public office – decision of Ouseley J

160. The judge held that misfeasance is a tort of personal bad faith: that is, that all the elements of the tort would have to be shown to attach to an individual for there to be liability. Thus the 1968 and 1969 Prime Ministerial submissions were of major importance. In essence the Claimants would have to show that the Prime Minister of the day knew or was recklessly indifferent to the illegality of his policy, or that his Foreign Secretary was or that the Commissioner was.

161. The judge then examined each of the ways in which the Claimants contended the government's illegal actions could be discerned, and rejected them all. He did not separately and critically examine the Prime Ministerial decisions of 1968 and 1969, though he had recounted them in the appendix to his judgment setting out the facts of the case.

Misfeasance in public office – decision of Court of Appeal

162. The Court of Appeal rejected the contention that the state can be institutionally liable for misfeasance in public office. The state, it held, is not a potential tortfeasor. It held that the English case law shows that if the necessary knowledge and motive could be brought home to a Minister, then the Crown in the form of a relevant department would be vicariously liable. In that sense the government, or departments of the government, could be liable for misfeasance in public office.

163. However, the Court did not accept that the evidence showed, as the Claimants contended, that high ministers of state, including the Prime Minister and the Foreign Secretary, were aware that the decisions they were taking and the acts they were ordering were illegal. It rejected, in other words, the Claimants' contention that it was illegal for the government to govern the Chagossians on the basis of a known lie.

164. For these reasons the Court held that there was no viable claim for misfeasance in public office.

D6. Unlawful exile

Unlawful exile – parties' cases

165. The Claimants contended that a tort of unlawful exile exists in the common law of England and Wales and that the conduct of the Defendants' predecessors and of the Defendants constituted or constitutes that tort.

166. One possible basis of the tort is set out in Chapter 29 of Magna Carta (Annex 14) which states that:-

"No freeman shall be…exiled…".

In the alternative it was contended that the Defendants acted contrary to common, constitutional and international law and thereby committed the tort of unlawful exile.

167. The Defendant contended that the alleged tort of unlawful exile did not exist in the law of England and Wales.

Unlawful exile – decision of Ouseley J

168. The judge held that the existence of the tort of exile was unarguable, because of the very nature of the alleged tort. He held that it was simply a particular example of a tort for unlawful administrative acts attempted in the field of immigration. There was no reason, he said, why it should not apply to any judicially reviewable error in a deportation or entry visa decision. He could not see why one group of people should have the benefit of tortious protection from unlawful acts on the basis of citizenship/nationality/belonging, whereas others entitled to enter a country should not. He further held that there was no parallel in any general tort because this alleged tort could only by its very nature be committed by the state. If there were administrative errors then they were appropriately dealt with by way of judicial review, not by the creation of this tort.

Unlawful exile – decision of Court of Appeal

169. The Claimants' attempt to implicate the state directly was seen to be fallacious, according to the Court of Appeal, in particular in relation to the contention that unlawful exile amounted to a tort. The Court of Appeal accepted that exile without legal authority is forbidden by Magna Carta and that it can amount to a wrong in public law, but said that it did not amount to a

tort because the Crown could do no wrong (apart from under the Human Rights Act).

D7. Negligence

Negligence – parties' cases

170. The Claimants contended that, having taken the decision to remove the Chagossians from the islands the Defendants' predecessors owed, and the Defendants now owe, the Chagossians a duty to take reasonable steps to provide for their well-being once removal had taken place, and that they had failed to do so and continue to fail to do so resulting in the Chagossians' suffering.

171. The Defendants contended that no duty of care was owed to the Claimants to, as it were, replace their island lifestyle with a comparable lifestyle elsewhere.

Negligence – decision of Ouseley J

172. The judge held that the asserted duty was too wide to be arguable. Moreover, insofar as the claim was for a breach of duty giving rise to economic loss it was untenable. It would not be fair, just and reasonable to impose any such duty.

173. A duty to avoid reasonably foreseeable personal injury to those removed from the islands was arguable; but the potential case in this respect was defeated by the general arguments on abuse of process and limitation already referred to.

D8. Property rights

Property rights – parties' cases

174. The Claimants contended that the land occupied by them in the Chagos Islands had been acquired by them by prescription and/or by succession, such that by the time of their removal they owned the land they occupied.

175. These consequences arose because at all material times, pursuant to Section 15(1) of the BIOT Order 1965, the laws of Mauritius had applied in BIOT (Annex 16). Mauritian property law is contained in the Civil Code (which came into force in Mauritius in 1805 and was expressly allowed to continue to apply when Britain captured Mauritius in 1810) and in case law decided under the Civil Code. Pursuant to the Civil Code it was contended that the Chagossians acquired property rights by prescription and/or succession in that:-

i. There was an entitlement to prescribe the land and the land occupied on the islands was *prescriptible*, not being Crown lands.

ii. The Chagossians had genuine possession and had enjoyed continuous, uninterrupted, peaceful, public, unequivocal possession of their land as owners, and their possession was apparent to all and manifested by material and exterior actions.

iii. There were acquisitive prescriptions as a result of satisfaction of the necessary conditions for a relevant period of at least 30 years.

iv. As a result the property rights acquired conferred three prerogatives on the owner, namely the right to enjoy the asset, the right to exploit the asset and benefit from the results of such exploitation, and the right to alienate the asset.

v. Having been deprived of their property rights the Claimants were alleged to be entitled to compensation, restitution of the fruits of the assets, and restoration of the property.

176. The Defendants submitted that any property rights that the Claimants may have acquired had been extinguished by the Private Treaty Ordinance 1967 or the Acquisition of Land for Public Purposes (Repeal) Ordinance 1983 (Annexes 11 and 12).

Property rights – decision of Ouseley J

177. The judge agreed with the Defendants' submission.

D9: Rights under the Mauritian Constitution

Rights under the Mauritian Constitution – parties' cases

178. The pre-independence Mauritian Constitution, which came into force on 11th March 1964 (Annex 16) applied to the Chagossian islands that later came to be part of BIOT by virtue of Section 15 of the BIOT Order 1965. It provided for the protection of the fundamental rights and freedoms of individuals. In particular:-

i. Section 1 provided among other things, for the right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation.

ii. Section 5 provided for the protection of the individual from inhuman treatment.

iii. Section 6 provided for the protection from deprivation of property against compulsory acquisition.

iv. Section 7 provided an individual with protection against entry by others onto his premises.

179. The Claimants contended that these rights have been breached by the actions of the Defendants.

180. The Defendants contended that the BIOT Order 1965 operated so as to redefine Mauritius as excluding the Chagos Islands, and that it followed that the fundamental rights and freedoms set out in the pre-independence Mauritius Constitution were therefore not extended to the Chagos Islands on the creation of BIOT.

Rights under the Mauritian Constitution – decision of Ouseley J

181. The judge agreed with the Defendants' submission that Mauritius was geographically redefined by the BIOT Order 1965 so as to exclude BIOT from the Mauritius Constitution. He did not agree that the BIOT Order 1965 could be construed as importing fundamental rights derived from the Mauritius Constitution into (the previously Mauritian) part of BIOT only. Whilst he recognised that it was hard for fundamental rights to be abrogated except by express words he said that the BIOT Order did not have as one of its legislative objects the preservation of fundamental rights.

182. Insofar as the Mauritius Constitution was relied upon by the Claimants to preserve property rights he said that the language of the Property Ordinances was clear enough to enable them to override the constitutional provisions. There was no entrenching mechanism for the Mauritius Constitution provisions in the BIOT Order, even assuming that they had become part of BIOT law in the first place.

Rights under the Mauritian Constitution – decision of Court of Appeal

183. The Court of Appeal was not sure that the judge's conclusion was correct. It accepted that the government may not have wanted to grant the people of BIOT any of the fundamental rights conferred by the Mauritius Constitution, but that did not mean that the BIOT Order 1965 had that effect. The Court's duty was to give meaning and effect to the words on the page, it said, not to the agenda of those who wrote them. Standing by itself, therefore, the Court considered this point to be arguable.

D10. Deceit

Deceit – Parties Cases

184. The Claimants contended that the actions and statements of the Defendants' predecessors constituted the tort of deceit.

185. It was contended in this regard that the Defendants had made a series of false representations, that is false statements of existing fact, to the cumulative effect that the Chagossians were not permanent residents or belongers of the Chagos Islands, had no right to remain there, were not British citizens, and had no rights under the United Nations Charter.

186. These representations were made both to the Chagossians, and also to third parties, including the United Nations. The intention of the Defendants their servants or agents in making these false representations was that the Chagossians themselves would comply with the steps taken to remove them from the Chagos Islands and not assert their rights, and that other agencies, in particular the United Nations, would also be deceived and would not take steps to assert the right to the Chagossians.

187. The Defendants contended that the tort of deceit based on allegedly false representations to a third party did not exist; and that there was no false representation to the Chagossians themselves.

Deceit – decision of Ouseley J

188. As regards the case in deceit based on false representations made to third parties the judge accepted that it was arguable that false statements were knowingly made to third parties about the status of the permanent residents on Chagos, with the intention that those third parties should act on them, and that they may have been intended to persuade those third parties to do nothing to investigate or assist the Claimants or to reduce opposition to the Defendants' defence policies. However, the judge said that this variant of the conventional tort of deceit simply did not exist, stating that he regarded that as obvious, and incontrovertible. He dismissed the argument that the existence of this variant was consistent with principle.

189. As regards representations to the Claimants themselves the judge correctly concluded that the essential representation relied on was a representation to the Claimants by words and deeds that "they had to go". The judge agreed that there was some prospect of mounting a case to that effect, but nonetheless dismissed the claim. He did so by saying that the representation was alleged to be false because the islanders were a permanent population of a non self-governing territory and thereby entitled to the protection of the United Nations under Article 73. He did not think that a case of deceit based on that representation that could be arguable, since the Article confers no individual rights and is not justiciable in the law of England and Wales, nor did he think that any representations about such obligations were capable of founding any arguable deceit claim. He further decided that there was no evidence that anyone who might have made any such representations really knew or was reckless as to the falsity in that statement.

Deceit – decision of the Court of Appeal

190. As to representations to the Chagossians themselves the Court considered that the judge was right in holding that this aspect of the claim was unarguable. They also agreed that there was no evidence that anyone who might have made any such representations knew of or was reckless as to the falsity of the relevant statement. They also agreed that the fact that at least some of the Claimants could be described as a permanent population did not mean, as a matter of domestic law, that they had a right to be consulted about their removal, in effect, therefore, preventing the Claimants from relying on Article 73 of the UN Charter.

191. As regards the representations by the government to third parties the Court held, contrary to the position adopted by the judge, that it was conceivable that in certain exceptional circumstances such a cause of action could exist. If there had been no other conclusive answer to the claim in the present proceedings it would have been prepared to give permission to appeal on this issue.

D11. Injury and loss

192. As a result of these various wrongs the Chagossians claimed damages. Their case was that they had lost the right to reside in the islands to which they belonged, and had lost their distinctive community life, as well as their individual property, use and enjoyment of the land, security, dignity and sense of identity, income and opportunity to earn an income, and movable property. The health of many in the Chagossian community has suffered greatly as a result of their poverty, unhygienic and/or unsanitary living conditions and malnutrition and restricted access to healthcare and education, and as a result of discrimination against them.

D12. Remedies

193. As well as damages, including aggravated and/or exemplary damages both individually and on behalf of the Chagossians as a community, the Claimants sought a declaration that the continued refusal to allow the return of the Chagossians to Diego Garcia was unlawful (and it should be recalled that at the time of the institution of the claim the Chagossians appeared to have the right to return to the other islands of the archipelago), a declaration of the nature of their property rights, a declaration of the steps necessary to make practicable their return to the Chagos archipelago, restitution of their property and any other remedies that the Court thought fit.

194. Mr Justice Ouseley did not regard these claims as arguable, and the Court of Appeal regarded the pleaded causes of action as geared to the recovery of damages not to the declarations sought.

D13: Overall Conclusion

195. The Court of Appeal concluded (Annex 4) as follows:-

"This judgment brings to an end the quest of the displaced inhabitants of the Chagos Islands and their descendants for legal redress against the state directly responsible for expelling them from their homeland. They have not gone without compensation, but what they have received has done little to repair the wrecking of their families and communities, to restore their self-respect or to make amends for the under-hand official conduct now publicly revealed by the documentary record. Their claim in this action has been not only for damages but for declarations securing their right to return. The causes of action, however, are geared to the recovery of damages and no separate claims to declaratory relief have been developed before us. It may

not be too late to make return possible, but such an outcome is a function of economic resources and political will, not of adjudication."

E. ALLEGED VIOLATIONS OF ARTICLES OF THE CONVENTION

E1. The Applicant's Complaints

196. The applicants allege that their treatment by the British Government constituted, and continues to constitute, violations of their rights under the Convention as set out below and in their letter of 9 December 2004

197. Most of the impugned actions and decisions for which the UK is accountable in Strasbourg consist of decisions of the British Government and of the English Courts which took place *within* the territory of Great Britain and Northern Ireland although they produced an effect outside that territory.

198. Some of the actions took place outside the territory of Great Britain and Northern Ireland.

199. In order to assist the Court, the applicants first set out (a) facts of their claims which took place at a time when the Convention applied to them as victims and (b) the legal analysis for asserting that the Claimants were at all times within the jurisdiction of the United Kingdom for the purposes of Article 1 ECHR in relation to all these events.

200. As is set out at paras 2 to 4 above , from the early 19th Century until 8th November 1965, the Chagos Archipelago formed part of the Colony of Mauritius. On that date the British Indian Ocean Territory (BIOT) was created by the BIOT Order 1965. This Order brought the territory under the direct rule of the Westminster Government. The territory was comprised of the Chagos Archipelago, which was detached from the colony of Mauritius and three further islands which were detached from the colony the Seychelles.

Mauritius became independent from the United Kingdom on 12th March 1968. The Seychelles became independent in 1976 and the three islands which had been detached were returned to the newly independent Seychelles in 1976. This did not include any of the islands which are the subject matter of this application and which at all times since 1965 have been part of BIOT, and directly administered from London. At no time were there established in BIOT any of the representative or consultative arrangements, that existed in Mauritius and the Seychelles, even prior to independence of those Colonies.

201. The applicant Chagossians were neither consulted nor informed about their change of status in from being part of the colonies of Mauritius and/or the Seychelles to becoming a territory under direct rule from the UK

E2. Jurisdiction

202. In an official "White Paper" on the policy of the United Kingdom in relation to its Overseas Territories, including the British Indian Ocean Territory, presented to Parliament in March 1999 *(Partnership for Progress and Prosperity. Britain and the Overseas Territories*. Cm. 4264) the Fourth Chapter, "Encouraging Good Government - human rights" (Annex 29) opens with the following statement:

> "*We regard the establishment and maintenance of high standards of observance of human rights as an important aspect of our partnership with the Overseas Territories. Our objective is that those territories which choose to remain British should abide by the same basic standards of human rights, openness and good government that British people expect of their Government..."* (para 4.1).

Although the British Indian Ocean Territory has not in any realistic sense chosen to remain British, since its government does not possess such

autonomy as would enable it to exercise such a choice, the policy adopted by the United Kingdom would seem to apply to it as to all other British Overseas Territories.

203. The European Convention, but not its First Protocol, nor the then optional right of individual petition and submission to the jurisdiction of the Court, was extended to the Chagos Islands on 23 October 1953 by a declaration under Article 63 (1) (now 56) of the Convention (see para. 4 above). On the same date the United Kingdom similarly extended the Convention to forty one other territories, including the Crown Colony of the Seychelles, which included amongst its dependencies certain islands which were, when the British Indian Ocean Territory was first established in November 1965, detached from the Seychelles and embodied in the new territory. These islands were however returned to the Seychelles when they became independent in 1976 (see para. 200 above).

204. At the time of the extension in 1953 both Mauritius and the Seychelles enjoyed a considerable measure of domestic autonomy. There existed in each Colony an Executive Council or Council of Ministers, and a Legislative Assembly. The democratic institutions were considerably further advanced in Mauritius than in the Seychelles.

205. The excision of the Chagos Islands from Mauritius on 8 November 1965, and the fact that Mauritius became independent from the United Kingdom in March 1968, did not deprive the Chagos Islanders of the protection which had been extended to them in 1953. For that to have happened it would have been necessary for the United Kingdom to have denounced the application of the Convention to the Chagos Islands under Article 65 (4) (now 58)), which Article requires the denouncing party to give notice to the Secretary General

under Article 65 (1) (now 58). No such notice of denunciation has ever been communicated to the Secretary General.

206. Subsequently, on 30 June 1969 and 3 April 1984, the United Kingdom submitted to the Secretary General lists of territories to which the Convention has been extended. These did not include he British Indian Ocean Territory. But the submission of such lists cannot be construed as operating, covertly as it were, as notices of denunciation (see para 4 above). Given the very serious adverse consequences for the protection of human rights which might follow from denunciation, a High Contracting Party should be held to strict conformity with the requirements of Article 65 (now 56), and required to make its intention to denounce clear both to the Secretary General and through him to other Contracting Parties. The Court will recall the scrupulous formality with which Greece, the only High Contracting Part ever to denounce the Convention, communicated its intention to denounce to the Secretary General by a *note verbale* of 12 December 1969 (see *Yearbook of the European Convention* Vol XII pp. 78-84, Vol. XIII pp.4-5) (Annex 31).

207. The creation of the British Indian Ocean Territory in November 1965, so far from bringing to an end such protection as has been accorded to the Chagos Islanders by the voluntary extension of the Convention in 1953, brought about a new situation under which the applicability of the Convention to the islands, as part of the new territory, no longer depended upon voluntary extension. The Convention itself, and its First Protocol, thereafter applied to the British Indian Ocean Territory under Article 1, and its inhabitants were thereafter entitled to the right of individual petition and the protection of the Court just as if they were persons within the United Kingdom itself.

208. This conclusion follows from an analysis of the function of Article 63, which is clear from the *Travaux Préparatoires*. The provision for voluntary extension

embodied in the Convention as signed in 1950 was intended to regulate the relationship between the government of a Contracting Party and the government of an overseas dependency when that government possessed a substantial degree of domestic autonomy. Where this was the case it was appropriate under British constitutional practice for it be consulted before the Convention was applied to the territory under its control, and appropriate that it should enjoy a choice as to whether or not extension should occur. The British Indian Ocean Territory does not possess a government which possesses any significant measure of autonomy.

209. Such provision for voluntary extension, under Article 63 (1), (3), and (4), (now Article 56) was included in the text largely at the instance of the United Kingdom, whose relationship with its overseas dependencies differed from the relationship between other Contracting Parties, such as Denmark, the Netherlands and France with their dependencies. Its purpose was clearly explained by the British Minister in the course of the negotiations:

> *"They [i.e. the United Kingdom] were not constitutionally able to accept international commitments on behalf of many of the British Colonies without first consulting and obtaining the agreement of the Colonial Governments. Therefore they preferred a text which would permit the United Kingdom to ratify the agreement at once and to deposit subsequent ratifications on behalf of the Colonies when their agreement had been obtained (See Travaux Préparatoires Vol. V 118-119)".*

210. The constitutional convention which required consultation before extension, and which preserved the opportunity for the colonial government to decline to accept extension, was more fully explained in a circular of 17 October 1950 issued by the United Kingdom to members of the United Nations, where there

existed opposition to the inclusion of what were then called Colonial Extension Clauses (Annex A to Foreign Office Circular 0119, 17 October 1950, copy in United Kingdom National Archives FO 371/88657):

> *"1. A Colonial Application Article in an international convention or agreement is an Article permitting the power responsible for the international relations of colonies, protectorates or other territories to apply that agreement individually or separately to these territories. The general purpose of such a procedure is to enable each of the territorial Governments to decide for itself whether to accede to the agreement in question and, in the case of an affirmative decision, to enable any necessary legislative changes, required to adapt local law to the terms of the agreement, to be made before accession is formally made on its behalf.*
>
> *3. ..it is frequently necessary to enact legislation to give effect locally to obligations embodied in an international agreement.....it would be undesirable for the metropolitan Government to force such legislation on them. It is, therefore, the constitutional practice of the United Kingdom, as part of the general United Kingdom policy of developing self-government in the territories for which it is responsible, not to accede to international agreements on behalf of colonies or other dependent territories without consulting and securing the agreement of their respective governments"..*

This memorandum conceded that the metropolitan government could usually impose required legislation as a matter of law. It went on to argue that the fact that other colonial powers did not press for such clauses might be explained by differences in the relations between such powers and their

dependencies. It argued that in the absence of such a clause a dissent from a single dependency would prevent United Kingdom accession completely

211. It is clear that the government of the British Indian Ocean Territory, under the arrangements established in 1965, and as subsequently modified, enjoys no autonomy, and is wholly under the control of the metropolitan government of the United Kingdom (see paras. 2-4). Its Commissioner, who possesses extensive legislative powers, is an official of the Foreign and Commonwealth Office in London, where policy in relation to the Islands is determined. Before the independence of the Seychelles in 1976 the Governor of the Seychelles acted as Commissioner, but did so merely as agent for the United Kingdom Government, and not as the head of a colonial government enjoying any measure of domestic autonomy (as existed at this time in the Seychelles, where there was an Executive Council, on whose advice the Governor was bound to act, and a Legislative Council with elected members) . In the British Indian Ocean Territory there do not exist today, and never have existed, any representative or democratic institutions, or even consultative arrangements, whatsoever, and it will be noted that at no point were the Chagos Islanders consulted over the decision to remove them (see para. 37, 52 and 54 above). Consultation between the United Kingdom Government and the government of the British Indian Ocean Territory, of the type envisaged by Article 63 (now 56), would require the United Kingdom to consult with itself. There never has been, and there is not today, a colonial government of the British Indian Ocean Territory in the sense in which the British Minister used that term in explaining his government's wish to have a Colonial Clause embodied in the text of the Convention.

212. Since the relationship between the United Kingdom Government and the British Indian Ocean Territory is not and never has been of such a character as to require the voluntary extension of the Convention under Article 63 (now

56) to the territory for it to apply, the responsibility of the United Kingdom is engaged under Article 1 of the Convention, both in relation to any violations of the Convention itself and in relation to any violations of its First Protocol. Furthermore, and for the same reason, the right of individual petition under Article 34 (formerly 25) is available to the Chagos Islanders without the need for any declaration of extension, as is the protection of the Court.

213. There are a number of British Overseas Territories, for example Bermuda and the Turks and Caicos Islands, which enjoy an extensive measure of domestic autonomy and have their own Cabinet or Executive Council, Parliament or Legislative Council, and other institutions of representative government. It is to such territories alone that the Convention must be voluntarily extended if it is to be applicable (in the sense that the UK Government thereafter becomes answerable for the actions taken by the Colonial Government and its agents in the exercise of its legal antonomy)

214. It is unnecessary for the purposes of this application to do more than draw attention to the fact that there are other British Overseas Territories which may be in like case with the British Indian Ocean Territory in lacking any measure of domestic autonomy, and to the fact that some other High Contracting Parties, such as Finland, France, Spain and Portugal, exercise jurisdiction over overseas territories which enjoy a high degree of domestic autonomy and to which the Convention is thought to apply without there having been any declarations of extension. It may also be noted that the fact that declarations of extension have been made to particular territories by the United Kingdom government, though no doubt relevant to the establishment of practice in relation to the Convention, does not of itself establish that such declarations have been legally necessary for the Convention to apply.

215. Under Article 1 the United Kingdom is under an obligation to "secure to everyone within their jurisdiction" the rights and freedoms defined in the Convention and its First Protocol. The Chagos Islanders were and are at all relevant times persons within the jurisdiction of the United Kingdom. They were until 1983 citizens of the United Kingdom and Colonies under the British Nationality Act of 1948. They are today British citizens under the British Overseas Territory Act 2002 (see above paras 17-21). They are and at all relevant times were within the jurisdiction *ratione personae*. They were directly affected by the decision of the United Kingdom Government to permit the establishment of a United States military base on the islands (see in particular para 22), to remove them from the islands (see in particular paras 31-67), and to prevent their return (see in particular paras 94-5), both through decisions of the United Kingdom Government taken in London, and implemented, or taking effect, in London (as for example by the passage of Orders in Council), or implemented or taking effect in the British Indian Ocean Territory, or elsewhere, as for example at sea (see para 59), or in Mauritius or the Seychelles (see for example paras 68-71). They are and were at all relevant times within the jurisdiction *ratione loci* either because they were at the relevant times present within the British Indian Ocean Territory, to which the Convention and its First Protocol applied, and continues to apply, or because they were directly affected whilst outside such territory, but nevertheless subject to the administrative, legislative and judicial control of the United Kingdom government, exercised in relation to the British Indian Ocean Territory. Their rights are subject to adjudication in courts situated in the United Kingdom (see paras. 73-93 above), nothing turning on declarations of extension under the Convention.

216. Furthermore in furtherance of the protection of human rights under the Convention it is appropriate that accountability under the Convention should be related to the ability to exercise governmental powers to secure such

protection. Insofar as the United Kingdom government alone possesses the legal power to ensure, either by legislative or administrative action, that the Chagos Islanders are accorded an effective remedy for any violations of their human rights and fundamental freedoms which have occurred, including violation of any positive obligations arising under the Convention and its First Protocol, its responsibility is engaged under Article 1 of the Convention.

E3. Violations of Article 3

217. The applicants allege that:

i. the decision making process leading to the removal;

ii. the removal itself;

iii. the manner in which it was carried out ;

iv. the reception conditions on their arrival in Seychelles and Mauritius

v. the prohibition on their return;

vi. the refusal to facilitate return once the removal had been declared unlawful; and

viii. the subsequent enactment of fresh prohibitions on return separately and cumulatively constitute inhuman and degrading treatment contrary to Article 3.

E4. Article 3 - the decision making process leading to the removal

218. Article 73 of the UN Charter imposes a "sacred trust" to promote the economic, social and educational advancement of the inhabitants of a non-self governing territory and to develop self-government. The Government were aware that the removal of the islanders would violate this provision and resolved to lie to the United Nations and, in their own words, "maintain the fiction" that there was "only a floating population", which they expressly knew to be untrue. (see paras. 34 and 46 to 50 above)

219. The UK Government knowingly and deliberately violated the "sacred trust" imposed on the them under Article 73 of the Charter, by totally disregarding the rights - to have their economic social and educational advancement promoted and to develop self government - to which the applicants were entitled under that provision. The applicants allege that the UK Government's decision making process leading to their expulsion from their homeland was inherently demeaning to them. The Government consciously misrepresented their position to the United Nations in order to deprive them of the enjoyment of their rights under the Charter. The Government denied their long established links to a territory they had enjoyed as their only home for several generations thereby denying their status as person protected by the Charter (see paras 33 to 47 above). Such duplicitous denial of their status as protected persons was calculated to arouse in the applicants the "feelings of inferiority capable of debasing them" that were noted by the Court as being in violation of Article 3 in the case of *Ireland v UK*[1]

220. The language used by the UK Government to describe the applicants was offensive and demeaning: in terms redolent with racism, they were described

[1]Ireland v. UK; Judgment of 18.01.1978 Appl. No. 5310/71

as *"a few tarzans and man Fridays"*. They were simply dismissed as *"unsophisticated, illiterate, untrainable and unsuitable for any work other than the simplest labour tasks on the copra plantation."* (see para. 50 above). The Commission considered the attitude of the UK Government towards another group of Citizens of the United Kingdom and Colonies, the East African Asians. Like the applicants in the present case they were denied the possibility of entry into the UK and expected to establish themselves elsewhere. In the East African Asians case the Commission held that that grossly racist remarks, analogous to those made about the applicants in the present case and quoted above, were capable of amounting to degrading treatment (paras. 207-208)

E5. Article 3 - the removal from the Islands

221. The applicants allege that removal in itself constituted inhuman and degrading treatment**.** The United Nations were told by the UK Government (see para. 34 above) that the re-organisation of the administrative arrangements for the islands was "freely worked out with the Governments and elected representatives of *the people concerned*." (emphasis added) Since no consultation of any kind was held with the applicants, and they had no votes and thus no elected representatives, these assertions made in the UN make it clear that that the Government did not consider the Chagossians themselves as even coming within the category of "the people concerned". The applicants were treated as though they were simply chattels to be moved by the UK Government at will. Their views were not canvassed nor were they consulted in any way, or involved in the decision-making process in relation either to their detachment from Mauritius or the Seychelles or to their impending expulsion from the archipelago. They were not even informed about these measures until the whole operation was underway. They were not consulted as to the timing and manner of their removal. The Court has

frequently emphasised the need for affected individuals to be involved in the decision making process in relation to measures affecting family life which may remove children even temporarily from their parents and their homes (see e,g. *mutatis mutandis*, *W. v. UK*[2], *P., C. and S v UK*[3] amongst many others). The applicants allege that, in relation to the more far-reaching decision to remove them from the territory they had occupied for generations and deport them to lands over a thousand miles away, the total failure to involve them in any way in the decision making process constituted separately and cumulatively a violation of Article 3.

222. The applicants invite the Court to recall that the deportation or forced transfer of civilian populations is considered a 'crime against humanity'. 'Deportation or forcible transfer' in itself was considered a crime against humanity under Art. 6(c), Charter of Nuremburg IMT 1945. None of the elements additional to the simple fact of deportation which are specified in the later instruments was required. However, the applicants recognise that the historical context of the mass deportations and the purpose of that tribunal must be taken into account when referring to the Nuremburg Charter. More recently mass deportation of the forced transfer of civilian populations has been deemed a crime against humanity 'when carried out in the context of armed conflict' (Art. 5, Statute of ICTY 1993); 'when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds' (Art. 3, Statute of ICTR 1994); and when committed as part of a 'widespread or systematic attack' (Art. 7, Statute of ICC 1998) (Annexes 19 and 20).

223. The specific reference in all these instruments to the deportation of civilian populations as a separate and distinct "crime against humanity", (in the

[2] W v. UK ; Judgment of 08.07.1987, Appl. No. 9749/82
3 P.,C. and S v. UK; Judgment of 16.07.2002, Appl. No. 56547/00

relevant contexts) is indicative of the seriousness with which the international community views such action. Even without some of the factors which would make their expulsion a "crime against humanity" *strictu sensu*, the applicants submit that the wholesale expulsion of the entire civilian population of the archipelago in order to offer a military base on half of one of the islands to a foreign power, in the cumulative circumstances set out in this application, meets the "threshold of severity" necessary for Article 3 to be engaged.

224. Even according to the Government's own records, several of the applicants had never previously left the islands. (see paras 29, 46 and 50 above). No respect was accorded to the links which the applicants had had with the islands throughout their lifetimes and for many generations before. Indeed every attempt was made to conceal this from the UN. There appeared to be either complete unawareness of or indifference to the anguish and distress the applicants would feel at being removed from their homes, their livelihoods and - perhaps most importantly for them - the graves of their ancestors.

225. Although, unlike some of the Turkish cases to which reference will later be made, the expulsion of the islanders was not carried out in the context of an actual emergency, or even a state of emergency, there was no proper planning to minimise the indignity and inhumanity of their removal. The applicants recall the importance that the court has attached, in other contexts to the inadequacy of the planning involved in state action (see e,g. *McCann and Others* v. *Turkey*[4]). Some of the applicants who left the islands with members of their immediate family to go to Mauritius for a brief visit for medical treatment were simply and abruptly told, when they sought to return home that they could not (see para. 36 above). They were left stranded in

4 McCann and others v. UK, Judgment of 27.09.1995 , Appl. No. 18984/91

Mauritius in penury, with their extended families and all their possessions left behind on the islands.

226. The decision to move the applicants off the islands was taken as though they were no more entitled to consultation or information or to dignity and respect than the horses that were evacuated with them. The applicants submit that the total failure to treat them as human beings who were entitled to be involved in the calculated decision making process surrounding their forced expulsion was demeaning and in the context of the other violations, separately and cumulatively constituted a violation of Article 3.

E6. The manner in which the removal was carried out

227. The same demeaning treatment as had characterised the decision making process also characterised the manner of the removal.

228. A meeting was held on 23 January 1971 at which they were told by the BIOT Administrator that they were to be removed. It was implicit that if they did not leave voluntarily force would be used against them or they would be starved into leaving. Immediately afterwards the bulldozing began on the land, churning up their houses and vegetable gardens and, for them most distressing of all, their graveyards . Most of the applicants had never seen heavy equipment of this kind at work before the military had brought it to the islands and found it terrifying. Their dogs (more than 800 dogs) were placed in incinerators, gassed and burned, or burned alive. One applicant Chagossian of standing (the deputy administrator) testified that they were threatened that they might "go the same way as they dogs " if they resisted removal (see paras 49 and 54(vi) above). (See also witness statement of S S Mandary (Annex 50). The whole manner in which a climate of fear was thus created aroused in the applicants the kind of "feelings of fear and anguish and inferiority capable of debasing them" condemned by the Court in *Ireland*

v UK[5] as a violation of Article 3 (see also *Ilhan v Turkey*[6]).

229. The Court will recall that in the case of *Mentes v Turkey*[7], the Commission, which had conducted a fact finding investigation, declared the complaint under Article 3 admissible and found a violation of that Article on the merits. This was a case where the Turkish security forces had burned the applicants' houses to the ground before their eyes. The Court eventually found that it was not necessary to examine the issues under Article 3 and preferred to deal with the matter under Article 8 where it found a "particularly grave interference" which was "devoid of justification" (see also *Akdivar v. Turkey*[8]). The applicants submit that all the circumstances in the present case require the Court to examine the destruction of their homes, gardens and graveyards before their eyes as a violation of Article 3, both on its own and cumulatively with the other events, notwithstanding any violation of Article 8 or Article 1 of Protocol 1 which may additionally have occurred.

230. The applicants were taken from their homes, with only a few of their possessions and packed onto boats, together with horses, to Mauritius and the Seychelles, distances of 1,335 and 1,179 miles respectively. (see paras. 57 to 60 above) The conditions on the voyages were appalling. They were either crowded above deck in bad weather without cooking facilities or proper sanitary arrangements with the horses below deck, or the humans were below deck with urine and manure from the horses above deck seeping through. No food was provided for the humans, though the horses were fed. Many passengers were seasick and the boats were awash with vomit and

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[5] Ireland v. UK , footnote 1;
6 Ilhan v. Turkey, Judgment of 27/06/2000, Appl. No. 22277/93;
[7] Mentes v. Turkey , Judgment of 28.11.1997 Appl. No. 23186/94;
8 Akdivar v. Turkey, Judgment of 16.09.1996, Appl. No. 21893/93

human and animal waste. The journey to Mauritius took five days, to the Seychelles three. The Court has had the opportunity to consider the comparable, though (infinitely) less severe conditions, in which the applicants were forced to remain in the cases of *Peers v Greece*[9], *Dougoz v Greece*[10] and *Kalashnikov v Russia*[11]. In all those cases the Court found a violation of Article 3. The applicants submit that the overcrowded and degrading conditions into which they were forced and in which they were held on their voyages from the Chagos islands to the Seychelles and Mauritius were worse than those experienced by the applicant prisoners in the aforementioned cases. They submit that those conditions of their forced expulsion violated Article 3.

E7. Article 3 - their arrival in the Seychelles and Mauritius and the conditions in which they were forced to live there

231. Despite the total absence of an emergency and the several months and years of planning the evacuation which had preceded the operation (see above paras 42 to 49), no preparations were made to receive the applicants, all Citizens of the United Kingdom and Colonies, in Mauritius or the Seychelles (much less to receive them at all in the UK) in conditions that would respect their dignity or their moral and physical integrity.

232. Although the numbers were small, nothing in the records suggests that any thought was given to offering these Citizens of the UK and Colonies the possibility of coming to the UK where they might, at the time, have been properly provided for. No provision whatever had been made by the Government to ensure that on their arrival in the Seychelles or Mauritius the

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[9] Peers v. Greece, Judgment of 19.04.2001, Appl. No. 28524/9
10 Dougoz v. Greece, Judgment of 6.03.2001, Appl. No. 40907/98

applicants would be accommodated in dignity, or provided with any means of subsistence until they were able to establish their own means of survival. From having had regular employment, their own homes and possessions, vegetable gardens which provided a good varied diet and a simple but adequate standard of living they were thrown into abject poverty and degradation. They found accommodation variously in buildings such as a condemned prison, in a cowshed and in a tin shack. One family comprised of nineteen persons (three adults and sixteen children) lived in four small rooms. Most had no or only rudimentary sanitation (see paras 68 to 72 above). Only a handful had access to any kind of social assistance and even the lowliest employment was difficult to come by. Twenty six families died of malnutrition, nine people committed suicide. Several of the young girls were forced into prostitution. They were despised and jeered at by the locals because they were living like animals (see para. 104 above)

233. The Court will recall that it has long held that not only does inhuman and degrading treatment inflicted directly by a state violate Article 3, but expulsion to face treatment or a situation which is inhuman or degrading violates Article 3 (*Soering v UK*[12], *HLR v France*[13], *Ahmed v Austria*)[14]. The applicants invite the Court to recall the judgment in *D v UK*[15] ,where it found that the expulsion of a sick man to a situation where he would have neither shelter nor means of subsistence violated Article 3. Although the applicant in D was terminally ill, it was clear that, absent his condition, he would have had no claim to remain in the UK and his expulsion followed his conviction for a serious criminal offence. The applicants in the present case, in contrast, were unlawfully removed, (as was eventually recognised by the UK courts), by a

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[11] Kalashnikov v. Russia, Judgment of 5.07.2002, Appl. No. 47095/99
[12] Soering v. UK, Judgment of 07.07.1989, Appl. No. 14038/88
13 HLR v. France, Judgment of 29.04.1999 Appl. No. 24573/94
14 Ahmed v. Austria, Judgment of 17.12.1996, Appl. No. 25964/94
15 D v. UK, Judgment of 02.05.1997 , Appl. No. 30240/96

process which involved deceiving the United Nations, and, having been removed, were simply dumped in Mauritius and the Seychelles. Although some arrangement had been made by the UK Government with Mauritius, the applicants did not receive any financial assistance on arrival. No arrangement at all had been made for those who were taken to the Seychelles.

234. Many of those expelled were vulnerable young children, many were elderly, some were pregnant and suffered miscarriages as a result of the events. The Court will recall its constant jurisprudence to the effect that that whether or not treatment reaches the threshold of severity to fall within Article 3 depends on all the circumstances of the case: the duration of the treatment, its physical and /or mental effects and the age, sex and state of health of the victims (see amongst many other judgments *Tekin v Turkey*[16], 9 June 1998 at para 52). The records show no evidence that any appropriate consideration was given to the needs of even the most vulnerable groups amongst those being expelled. The conditions of poverty and degradation in which they were knowingly placed, and left, by the UK Government were shocking .The Court will recall in this context the case of *Z v UK*[17] where the conditions of neglect and degradation in which five young children were knowingly left by the local authority were found to violate the UK's responsibilities under Article 3. Several of those on whose behalf this application is brought committed suicide as a result of the inhuman and degrading treatment and conditions which they had suffered. Suicide was hitherto unknown amongst the Chagossians. In *Keenan v UK*[18] (judgment 3 April 2001), the Court recalled particular duty owed by the state to those derived of their liberty (see paras 108 to 115). The applicants invite the Court to find that their forced the

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16 Tekin v. Turkey , Judgment of 09.06.1998, Appl. No. 22496/93 at para 52

17 Z and Others v. UK, Judgment of 10.05.2001 Appl. No. 29392/95

expulsion from their homes, their forced removal to Mauritius and the Seychelles and their subsequent unsupported abandonment on those islands placed them in a situation of inferiority and powerlessness comparable to that of prisoners and mental health detainees and that the Government owed them a positive duty corresponding to their total responsibility for their fate. This duty they conspicuously failed to meet.

E8. Article 3 - the refusal to permit or facilitate their return

235. The applicants further allege that the refusal to facilitate their return once their original removal had been declared unlawful, and the measures that have since been taken to prohibit their return, not only violate the other Articles of the convention as set out below, but also add to the cumulative violation of Article 3.

236. They consider that to refuse them – the indigenous or native people of the islands - to return there to live and work; to refuse them as the traditional fishers of the archipelago the right to fish their in ancestral waters, when foreigners of all kinds are permitted to enjoy the land that was once theirs and to fish the waters that were once theirs (see paras7 to 12 above), compounds the other violations of Article 3 of which they complain.

E9. Summary of Violations of Article 3

237. The applicants submit that for the reasons set out at paragraphs 217 to 236 above the treatment meted out to them by the UK Government both separately and cumulatively violated and violates Article 3.

[18] Keenan v. UK, Judgment of 03.04.2001 Appl. No. 27229/95

238. The applicants further submit that in no response to any of the ongoing complaints, requests, petitions or litigation, which have been continuing over the years since these events took place, has the Government ever acknowledged, either expressly or in substance that the ill-treatment outlined above violated or continues to violate Article 3 of the Convention, much less has it afforded any redress for the separate and cumulative breaches of this Article. The applicants thus submit that they continue to be victims of violations of that Article (cf. *Amuur v. France*[19], judgment of 25 June 1996, Reports of Judgments and Decisions 1996-III, p. 846, § 36, and *Dalban v. Romania* [GC],[20] no. 28114/95, § 44, ECHR 1999-VI). The Court will note in this context that none of the applicants who were sent to the Seychelles, have received any compensation whatever for any of their other losses, much less any acknowledgment of or redress for the violations of Article 3 which were, and continue to be inflicted on them. They invite the Court to find a violation of Article 3.

E10. Violations of Article 8

239. The applicants have set out in detail at para 218 to 238 the circumstances which they allege separately and cumulatively constituted a violation of Article 3. In the event of the Court considering that any one of those instances did not in itself meet the threshold of severity required to engage Article 3, the applicants invite the Court to consider that same treatment as a violation of the right to moral and physical integrity protected under the private life rubric of Article 8 (see, *inter alia*, *Bensaid v U*[21]). The Court will recall in this context that, under para 2 of Article 8, an interference which is not "in accordance with the law" will automatically violate the Convention and that the English Courts have already ruled that the removal of the applicants from their homes

[19] Amuur v. France Judgment of 25.06.1996 Appl. No. 19776/92
[20] Dalban v. Romania Judgment of 28.09.1999, Appl. No. 28114/95

as unlawful. The Court is not therefore required to consider whether any aim, legitimate or otherwise, was pursued, or whether the actions were proportionate to any such aim.

E11. Violation of Article 8 – Interference with Private Life

240. The applicants also submit that the acts and omissions set out above constituted interferences with their private life protected under Article 8. They invite the Court to recall the cases of *Gaskin v UK*[21] (7 July 1989) and *MG v UK*[22] (24 September 2002) in which it recognised the importance to individuals in maintaining their links with their earlier lives. In particular they draw the attention of the Court to the enhanced importance of the visiting of and maintaining links with ancestral graves which is a feature of the peoples of the Indian Ocean (see para. 100 above). Since the English Courts have already ruled that their removal was unlawful, the applicants submit that the Court is not required to consider whether any aim legitimate or otherwise was pursued or whether the actions were proportionate to any such aim.

E12. Interference with right to respect for home

241. The applicants submit that the acts and omissions complained of constituted interferences with their right to respect for their homes, a right also protected under Article 8. They invite the Court to recall its consideration in this context the cases of *Akdivar v Turkey*[23], *Mentes v Turkey*[24] and *Selcuk v Turkey*[25] where the Court found violations of Article 8 when the Turkish security forces drove the applicants from their villages and destroyed their homes and crops. The applicants submit that their removal and the destruction of their homes was even less excusable than the removal of the applicants in the Turkish

[21] Gaskin v. UK Judgment of 07.07.1989, Appl. No. 10454/83
[22] MG v. UK Judgment of 24.09.2002, Appl. No. 39393/98
[23] See footnote 8
[24] See foot note7
[25] Selçuk and Asker v. Turkey Judgment of 24.04.1998, Appl. No. 23184/94 and 23185/95

cases cited above. There was no state of emergency, no presence of hostile insurgents and no suggestion that the applicants presented a threat to anyone. The English court has already ruled that the removal of the applicants from their homes was unlawful and the applicants therefore submit that the Court is not required to consider whether any aim legitimate or otherwise was pursued or whether the actions were proportionate to any aim. Should the court wish to explore this aspect of their complaint the applicants will be happy to provide detailed arguments as to proportionality.

E13. Article 8 - The duty to facilitate return of those unlawfully expelled

242. The Applicants complain that the UK Government has totally failed to observe its positive obligation to facilitate the return of all Chagossians who left the Chagos Archipelago and were thereafter prevented from returning. The Court will recall that in its Judgment in *Dogan v. Turkey* [26] there were two aspects to the Boydas villagers' complaint: (a) the action of removal and displacement; and (b) the action in not facilitating resettlement and return.

243. The Court held that the action of the Turkish authorities, in not facilitating resettlement and return, was a violation of the villagers' Convention rights. The "denial of access to Boydas village" was a violation of the applicants' Article 1P rights to the peaceful enjoyment of possessions (see *Dogan*[27] at [143]) which the state had failed to justify (see [156]). Likewise, "the refusal of access to the applicants' homes and livelihood" were "a serious and unjustified" violation of their Article 8 rights to respect for family life and home (see [159]-[160]).

[26] Dogan v. Turkey, Judgment of 29.06.2004 Appl. No. 8803-8811/02 and 8815-8819/02
[27] ibid;

244. The Strasbourg Court's broad approach to the ECHR (property/home) is especially important in the context of, not merely former inhabitants of a particular village, but an indigenous people displaced from their homeland. In the *Awas Tingni*[28] *Community* case (31st August 2001) the Inter-American Court of Human Rights, reflecting the broad approach, said this (at [149]):

Among indigenous peoples there is a communitarian tradition regarding a communal form of collective property of the land, in the sense that ownership of the land is not centred on an individual but rather on the group and its community. Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.

245. That approach was itself supported by treating the American Convention on Human Rights as a "living instrument" (see *Tingni*[29] at [146]), an insight which is of course familiar in relation to the European Convention.

246. The Court in *Dogan*[30] adopted a rigorous and exacting scrutiny of the suggested justification for the failure to secure resettlement and return by the claimants to their village. There, the Turkish authorities were able to point to: (a) serious security problems (a terrorism threat); (b) the devising of a

[28] [2001] IACHR 9
[29] ibid
[30] see footnote 27

resettlement programme; and (c) the expenditure of large amounts of money for reintegrating the villagers. See *Dogan*[31] at [151].

247. None of this sufficed. The Court emphasised that: (a) the displaced villagers had been forced to ensure serious and harmful effects for an extended period (almost ten years); (b) they had been forced to live in other areas, in conditions of extreme poverty, with inadequate heating sanitation and infrastructure; (c) matters had been compounded by a lack of financial assets (with no compensation); and (d) they had struggled to find employment opportunities. See *Dogan*[32] at [153]. Such concerns are directly referable to the Ilois, except that the extended period has been even longer and there was the 1982 compensation, which has proved hopelessly inadequate.

248. The Court then considered what steps the Turkish authorities had made, with a view to resettlement of the Boydas villagers, but found them to have been "inadequate and ineffective". See *Dogan*[33] at [154]. The Court there explained that (a) there were real efforts being taken to remedy the situation; (b) there was the resettlement/ rehabilitation project; (c) but it had not yet been converted into practical steps to facilitate return to the village (which lay in ruins); (d) no substitute housing or employment had been provided; (e) social aid funding did not secure an adequate standard of living or a sustainable return to Boydas; and (f) there was a draft compensation scheme, not yet in force. The nub of the Court's reasoning was this conclusion:

> *… the [Turkish] authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow the applicants to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country …*

[31] ibid, at para 151
[32] ibid at para 153
[33] ibid at para 154

Again, these considerations are directly referable to the predicament of the Chagossians except that the United Kingdom authorities are not even attempting practical steps to facilitate resettlement, which they have purported to rule out on grounds of non-"feasibility" (see below).

249. The Court's analysis of the Boydas villagers' position was informed by relevant international law standards and materials. In describing the "primary duty and responsibility" of the Turkish authorities (above), the Court referred to the United Nations Guiding Principles on Internal Displacement (see *Dogan*[34] at [154]). It is common for the content of the ECHR rights to be informed by international instruments. For example, the operation of ECHR Article 3 has been informed by the Torture Convention and the Refugee Convention; and the content of the adjectival duty to investigate deaths at the hands of the state (ECHR Article 2) has been informed by the relevant United Nations Manual on autopsies (see *Salman v Turkey* [35]22.6.00 at [73] and *Gül v Turkey*[36] 14.12.00 at [89]). As the Court explained in *Al-Adsani v United Kingdom* (2002) 34 EHRR 11 at para 55: "The Convention should so far as possible be interpreted in harmony with other rules of international law of which it forms part". In *Dogan*[37], the Court took account not only of the UN Guiding Principles (at [154]) but also reports of international agencies into the position of the displaced Kurdish population (see [55] et seq).

250. In the present context, and in addition to the UN Guidelines described in *Dogan* (above), the international materials include the following:

(1) As to the return and resettlement of the Ilios people to the Chagos Islands, there is the report of the United Nations Human Rights Committee (6th December 2001) (Annex 28), in which the Committee:

[34] ibid
[35] Salman v. Turkey Judgment of 27.06.2000, Appl. No. 21986/93
[36] Gül v. Turkey Judgment of 114.12.2000, Appl no. 22676/93,
[37] see footnote 27

Takes note of the State party's acceptance that its prohibition of the return of Ilois who had left or been removed from the territory was unlawful.

The State party should, to the extent still possible, seek to make exercise of the Ilois' right to return to their territory practicable. Iot should consider compensation for the denial of this right over an extended period…

(2) In relation to forced evictions generally, there are the "Comprehensive Human Rights Guidelines on Development-Based Displacement" (Expert Seminar, Geneva June 1997) (Annex 26). Those Guidelines call for States to secure: "the maximum degree of effective protection", "not qualified by resource-based considerations" (Article 9); "the right of full participation and consultation throughout the entire process" (Article 16); and, for all those who have been subjected to forced evictions, "the right to … return to their homes, lands or places of origin" (Article 25).

(3) In relation to the Chagossians as an indigenous people (see *Bancoult* at [1]) there is the International Labour Organisation (ILO) Indigenous and Tribal Peoples Convention 1989 (Annex 27). That Convention calls for governments to secure consultation of the peoples concerned before any measures which affect them directly (Article 6(1)(a)); safeguarding of lands traditionally occupied or accessed (Article 14(1)); "Wherever possible, … the right to return to their traditional lands, as soon as the grounds for relocation cease to exist" (Article 16(3)); and when such return is "not possible" the provision of lands of at least equal quality and status suitable for present needs and future development or compensation if the peoples so wish (Article 16(4)).

251. The FCO's purported reasoned justification for the decisions not to proceed further with the envisaged resettlement of the Chagossians to the Chagos Islands, and to exclude their return, are documented. They can be found in the Written Statement of Mr Rammell (see para.95) (Annex 39) and the Parliamentary debate (which he treated as "a welcome opportunity to put on the record our position … and the reasoning behind our recent decisions")

E14. Alleged Violations of Article 1, Protocol 1

252. The applicants further allege that the acts and omission set out above violated their rights under Article 1 of Protocol 1 to the Convention.

253. They invite the Court, in this context, to note the similarities which exist between their situation and the facts in the case of *Dogan*, cited above and set out at paras 136 to 139 of that judgment. In particular, at para. 139 the Court found that although they did not have registered property, they either had their own houses constructed on the lands of their ascendants or lived in the houses owned by their fathers and cultivated the land belonging to the latter. The Court further notes that the applicants had unchallenged rights over the common lands in the village, such as the pasture, grazing and the forest land, and that they earned their living from stockbreeding and tree-felling. Accordingly, in the Court's opinion, all these economic resources and the revenue that the applicants derived from them may qualify as "possessions" for the purposes of Article 1.

254. They further invite the court to apply *mutatis mutandis* the reasoning it adopted in *Dogan* at paras 140 to 144 in relation to the existence of an interference. The only significant difference between the two cases in this context is that in the present case, unlike *Dogan*, there is no question of the Court being unable to determine the exact cause of the displacement of the

applicants. It is undisputed that it was the result of forced expulsion by the British authorities.

255. The applicants allege that for the reasons set out above in relation to their complaints under Article 3 and Article 8, the interferences with their rights under Article 1 of Protocol 1 as relates to their original removal have already been found to be unlawful under English law by the English courts. The applicants note that the phrase "the general principles of international law" is normally, in the context of this provision, taken to refer to the requirement that aliens must be compensated for the confiscation of their property. However the applicants submit that in the present case this rubric is equally applicable to the violation of Article 73 of the United National Charter which the applicants allege occurred (see paras 33 to 34 above) as a result of these measures and of the UK Government's efforts to deceive the UN in this respect.

256. For the reasons set out above the applicants allege that, since the interferences with the peaceful enjoyment of their possessions was unlawful both as a matter of English law and of international law, it is unnecessary to determine whether the other elements of Article 1 Protocol 1 were in place.

E15. Violations of Article 6.1 of the Covention

257. The applicants complain that their right to a fair trial was breached by the following –

(a) the administrative authorities' unilateral and extrajudicial annulment of the effect of the *Bancoult* judgment which has frustrated their right to a final judgment.

(b) the courts' refusal to grant the applicants a hearing on their civil right to damages in their only cause of action deemed to be arguable under English law which has denied the Applicant a 'right' of access to the Courts.

E16. Violation of Article 6.1 - the right to enforcement of a final judgment

258. This Court has held that the right envisaged in Article 6 includes the right to enforcement of a final judgment. In judicial review proceedings, this involves not only annulment of the impugned decision but also and above all the removal of its effects (*Hornsby v. Greece*, 19 March 1997, RJD 1997-II, §§ 40, 41):

259. The High Court in *Bancoult* did not quash s.4 of the Immigration Ordinance 1971 merely because the government had erred in drafting inconsistent primary and secondary legislation. The unequivocal purpose of the judgment was to ensure the applicants could return to and to remain in the British Indian Ocean Territory. This is evident from:

(a) the reasons given for the judgment itself;
(b) the reasons given for the chosen order for relief; and
(c) the actions of the UK government following the judgment
(d) the State's unilateral reversal of the effect of the judgment

(a) The reasons given for judgment.

260. The reasons given by Laws LJ clearly demonstrate that the court recognised the applicants had a constitutional right to return to and to remain in the British Indian Ocean Territory:

> *… For my part I would certainly accept that a British subject enjoys a constitutional right to reside in or return to that part of the Queen's*

dominions of which he is a citizen, Blackstone says this (Commentaries, vol. 1 (15th edn) p. 137):

"But no power on earth, except the authority of Parliament, can send any subject of England out of the land against his will, no, not even a criminal." (Annex 2 para 2 to 39).

"In light of the conclusions I have reached, the question whether and how the result sought to be achieved by s.4 of the [Immigration] Ordinance [1971] might lawfully have been arrived at is perhaps moot… I entertain considerable doubt whether the prerogative power extends so far as to permit the Queen in Council to exile her subjects from the territory where they belong". (Ibid para 61)

(b) The reasons given for the chosen order for relief.

261. It was evident to all the parties to the proceedings in *Bancoult* that the purpose of the quashing order was to give effect to the applicants' constitutional right to return to and remain in BIOT:

"SIR SYDNEY: [39]My Lord, in the first place I ask for a declaration in these terms: "It is declared that section 4 of the Immigration Ordinance, 1971, of the British Indian Ocean Territory is invalid and void." And an addition following your Lordships' draft judgment: "And the said section 4 is hereby quashed." I would ask also for a second declaration in a positive form: "It is declared that the Applicant, as a British Dependent Territory Citizen, connected to the British Indian Ocean Territory, is entitled to return to and to remain in the British Indian Ocean Territory." …

[39] Counsel for the Applicant

MR PANNICK: [40]Thank you, my Lord. Subject to a stay, on which I want to address your Lordships in a moment, I have no objection to a quashing order. I would submit that declaratory relief is unnecessary because your Lordships' judgment does speak for itself.

LORD JUSTICE LAWS: I am inclined to agree with that.

MR PANNICK. I would also be concerned, with respect, about declaration number 2 because it may be misleading because it may be misunderstood as suggesting that no steps may now be taken to amend the law consistently with your Lordships' judgment. …

(c) The actions of the Government following judgment.

262. On 3 November 2000 – the very same day the High Court issued its judgment – the UK Government did in fact did 'take steps to amend the law consistently with the High Court's judgment'. It issued the BIOT Immigration Ordinance 2000, (Annex 7) which repealed the BIOT Immigration Ordinance 1971. Section 4 of the BIOT Immigration Ordinance 2000 provided that::

4. No person shall enter the Territory, or, being present in the Territory, shall remain there, unless he is in possession of a permit …

(3) Except in respect of his entry into, or his remaining in, Diego Garcia, this section does not apply to any person who –

(a) is, under the British Nationality Act 1981 ("the 1981 Act"), a British Dependent Territories citizen; and

(b) is such a citizen by virtue of his connection with the Territory;

[40] Counsel for the government

and it also does not apply to the spouse or to the dependent child, under the age of 18 years, of such a person.

(4) For the purposes of subsection (3), a British Dependent Territories citizen shall be regarded as such a citizen by virtue of his connection with the Territory if (and only if) either of the following conditions is satisfied, that is to say:

(a) he or one of his parents or one of his grandparents was born in the Chagos Archipelago… ; or

(b) the Commissioner, on application made to him in that behalf, determines, and so certifies, that he is such a citizen by virtue of his connection with the Territory.

263. Accordingly the new BIOT Ordinance 2000 expressly acknowledged the rights for which declaratory relief was sought in *Bancoult*, i.e. that the applicants "*as… British Dependent Territory Citizen[s], connected to the British Indian Ocean Territory, [are] entitled to return to and to remain in the British Indian Ocean Territory*".

264. The Government did not appeal the judgment. Also on 3 November 2000, the then Foreign Secretary Robin Cook, whose ministry maintains authority over the BIOT Commissioner, announced the following:

"I have decided to accept the Court's ruling and the Government will not be appealing.

The work we are doing on the feasibility of resettlement of Ilois now takes on new importance. We started feasibility work a year ago and are now well under way with phase two of the study.

Furthermore, we will put in place a new immigration ordinance which allows Ilois to return to the outer islands while observing our treaty obligations.

The Government has not defended what was done or said 30 years ago. As Lord Justice Laws recognised, we made no attempt to conceal the gravity of what happened". (Annex 38)

265. Accordingly the judgment became final and entered into legal force.

(d) The State's unilateral reversal of the effect of judgment

266. Nevertheless, when it came to giving effect to words on paper, the UK government responded only with delay and obstruction. Measures for resettlement were first delayed with reference to the 'feasibility study' and then to 'await the outcome of applicants' civil claim' (see the Statement of Richard Gifford of 31 March 2004, § 16.1 – 17.6, Annex----). By June 2004, the applicants were still unable to exercise their constitutional rights recognised in the *Bancoult* judgment.

267. On 10 June 2004, the UK Government issued two new Orders in Council for BIOT –

(a) the BIOT (Constitution) Order 2004; and
(b) the BIOT (Immigration) Order 2004.

(Annexes 8 and 9)

268. Section 3(1) of the BIOT (Immigration) Order 2004 expressly repealed the Immigration Ordinance 2000.

269. Section 9 of the BIOT (Constitution) Order 2004 abolished the right of abode in BIOT. The sole practical effect of this section was to strip the applicants of their constitutional rights that had been recognised in the *Bancoult* judgment and notionally restored by the Immigration Ordinance 2000. It had no practical effect with respect to anyone else, since no-one else enjoyed the right of abode in BIOT. By contrast, members or Her Majesty's armed forces, public officers and other officers in the public service of the Government of the United Kingdom retained their right to permit-free access to BIOT under section 5 of the BIOT (Immigration) Order 2004.

270. Moreover, the permit procedure under the BIOT (Immigration) Order 2004 conferred no rights of any substance 'consistent with the High Court's judgment' in *Bancoult.* Section 7 of the BIOT (Immigration) Order 2004 states that the immigration officer may issue or cancel a permit before its expiration "*in his entire discretion*". Whilst there is a right of appeal from this decision to the BIOT Commissioner, no criteria are given for determining the appeal. Section 10 states that the decision of the Commissioner is final and conclusive.

271. In stripping the applicants of their constitutional rights, the Queen in Council had not acted by "*authority of Parliament*". The 2004 Orders were not subject to any legislative approval or review.

272. Moreover, the Queen in Council had acted in direct defiance of the judgment in *Bancoult*; as cited paragraph 260.

273. This unilateral and extrajudicial act of the Queen in Council rendered a final, binding judicial decision inoperative to the detriment of the applicants. In

doing so, the State violated its fundamental obligation to respect the rule of law.

274. The 2004 Orders were not publicised. Moreover, the UK government made no attempt to consult or even warn the applicants in advance of the 2004 Orders. The applicants' legal representative was first notified of the existence of the 2004 Orders by a Minister of the Foreign and Commonwealth Office only 4 days after they had already been enacted (see statement of Richard Gifford of 31 March 2004, § 18.1, Annex 54).

275. Whilst the applicants have lodged an application for judicial review of the 2004 Orders in the UK High Court to preserve their rights, they submit that on this issue they have already satisfied the requirement of exhaustion of domestic remedies contained in Article 35 § 1 of the Convention. The applicants should not be subjected to the Sisyphean task of indefinitely challenging new orders designed to prevent them from exercising their constitutional rights, only to have any resultant judgment rendered "*devoid of any purpose*" as occurred with *Bancoult*.

276. Accordingly, there has been a violation of Article 6 § 1.

E17. Violation of the right of access to court

277. In the case of *McGinley and Egan v. United Kingdom* (9 June 1998, RJD 1998-III, § 86) this Court held that:

> *… if it were the case that the respondent State had, without good cause, prevented the applicants from gaining access to, or falsely denied the existence of, documents in its possession which would*

have assisted them in establishing [their claim], this would have been to deny them of a fair hearing in violation of Article 6 § 1.

278. The applicants maintain that they were denied access to court to obtain a determination on their civil right to damages in domestic law. This was achieved by the following cumulative factors –

(a) the UK government's concealment for over 30 years of facts essential to make out the applicants' only civil claim for damages held to be arguable under domestic law;

(b) the UK government's subsequent reliance on the defence of limitation to defeat the applicants' civil claim;

(c) the domestic courts' allowance of the defence of limitation in the above circumstances.

(a) The applicants' claim for damages

279. Since the European Convention was incorporated into domestic law only in October 2000 by passage of the Human Rights Act 1998, it was never open to the applicants to bring a civil claim in damages in the domestic courts for the breach of rights arising under the European Convention with respect to events occurring in the 1960's and 1970's.

280. Moreover, unlike many continental civil law systems, the law of tort in England and Wales provides no general right to compensation for damages arising from harm unlawfully caused by the fault of another. As a general rule, the right to claim compensation for loss or damage arises only in specific

situations provided for in statute or where the facts of a claim correspond to the elements of a cause of action or 'tort' recognised at common law.

281. As a result, despite the obvious harm inflicted upon the applicants by the State's unlawful acts as recognised in the *Bancoult* judgment, no civil claim for damages could succeed until and unless such facts became known that would comprise the elements of a specific tort.

282. The considerable obstacles posed by this peculiarity of domestic law are evident from the Court of Appeal's judgment refusing permission to appeal. Perhaps the most obvious legal basis for the applicants' complaint was their deliberate, unlawful and unconstitutional exile by the State. Yet the breach of one's right not to be exiled from his homeland – a right that is enshrined in the Magna Carta and has existed in English law for over 700 years – was held to not amount to a 'tort' and therefore to give rise to no arguable claim for damages.

283. Another seemingly obvious cause of action was the tort of misfeasance in public office. However, this too was held to be unavailable to the applicants because it required proof of a mental element, i.e. that the Crown's officers were aware that enactment and implementation of the Immigration Ordinance 1971 was illegal. Such "guilty knowledge", according to the Court of Appeal, could not be imputed to the Crown's officers from objective factors since the limitations on their powers were only clarified with the *Bancoult* judgment. Since the court concluded there was no evidence to show the Crown's officers *knew* they were acting outside their authority under domestic law, the applicants were held to have no arguable claim under this heading either.

284. The only remaining cause of action available to the applicants was the tort of deceit. In order to establish this tort, the applicants had to adduce facts

demonstrating that their plight was attributable to fraudulent representations made by officers of the Crown concerning the State's obligations with respect to them under international law, [41]in particular Article 73 of the United Nations Charter.

285. The Court of Appeal held that this claim was unarguable with respect to representations made to the applicants, since the UN Charter only concerned the UK's obligations before an international body and therefore "*confer[red] no individual rights*" upon the applicants. In the opinion of the Court of Appeal, therefore, there was no arguable case that officers of the Crown had deceived the applicants as to their rights under international law either.

286. With respect to representations made to the United Nations, however, the Court of Appeal held that:

> *"Had there been no other conclusive answer to the claim in the present proceedings, we would have been prepared to give permission to appeal on this issue…"*

287. That 'conclusive answer' was the defence of limitation raised by the UK government. Accordingly, the only arguable civil remedy ever available to the applicants in domestic law was rendered ineffective by a procedural formality. Yet the applicants' 'failure' to bring their claim within the limitation period was attributable entirely to the State's concealment of the facts necessary to make out the claim.

(b) The State's concealment

[41] The applicants also argue that they had been deceived by the State as to their rights under domestic law. However, the Court of Appeal held that the position here was the same as with respect to the tort

288. The applicants' claim in the tort of deceit required that they establish, *inter alia*, the following facts:

a. that false representations had been made to the UN regarding the applicants' status for purposes of Article 73 of the UN Charter;
b. that the representations were *known* to be false; and
c. that the false representations were *intended* to influence the addressee.

289. It would have been impossible for the applicants to successfully pursue such a claim prior to the *Bancoult* litigation. It was only in the context of the *Bancoult* litigation, when new documents were disclosed for the first time under the 30-year rule, that the applicants were made aware that representations to the UN had even been contemplated. Most importantly, however, it was only then that documents arose clearly demonstrating the required mental element, i.e. that the Crown's officers *knew* their actions were contrary to the UN Charter and that they *intended* to deceive the UN as to the facts so as to avoid an undesirable intervention (see Note on Documents Retrieved from the Public Records Office, Annex 44).

290. These facts concerning the *knowledge* and *intent* of the Crown's officers were absolutely essential to found a successful claim in deceit, which is evident from the Court of Appeal's conclusion on the applicants' parallel claim in deceit with respect to rights in domestic law (at § 32): the judge's finding… that there was *"no evidence that anyone who might have made such [false] representations [as to rights arising under domestic law] knew of or was reckless as to the falsity of [the relevant] statement"* is fatal to any such case on deceit.

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of misfeasance in public office, i.e. the official could not have known their actions were unlawful before the *Bancoult* Judgment (see 27, ante)

291. Consequently, without such facts the applicants' claim would have been bound to fail for lack of an identifiable cause of action, regardless of when it might have been brought.

(c) The UK government's recourse to the limitation defence

292. This Court has held that time-limits imposed on the introduction of claims are in principle compatible with Article 6, given that they pursue the legitimate aim of preventing stale claims and the possible injustice to defendants faced with evidential difficulties in contesting allegations relating to distant events and of promoting legal certainty (*Dobbie v. United Kingdom* (dec.), no. 28477/95, 16 October 1996; *Stubbings v. United Kingdom*, 22 October 1996, RJD 1996-IV). The need for legal certainty may also justify the imposition of time-limits which cannot be waived even when new facts arise after the expiry of the relevant time-limit.

293. However, a limitation period must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired; such limitations will not be compatible with Article 6 § 1 if they do not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (*Perez de Rada Cavanilles v. Spain*, 28 October 1998, RJD 1998-VIII, § 44).

294. In this case, the applicants' claim to damages had not been extinguished by the passage of time. The six-year limitation period on tort claims in English law is available only as a procedural defence against stale claims. If a defendant fails to raise the defence or simply chooses not to do so, the court will not raise it of its own motion and will decide the claim on its merits. Moreover, if a defendant fails to raise a limitation defence in a timely fashion,

for example by first referring to it [43]only in his closing speech at trial, he may be estopped from relying upon it.

295. In this case, the UK government invoked the limitation defence despite the fact that it had only a few years earlier released the documents disclosing the facts necessary for the applicants to bring an arguable claim in the tort of deceit.

296. Consequently, the applicants' 'failure' to bring their claim within the limitation period was not attributable to any delay on their part, or their lack of specialist knowledge as in *Dobbie*, or the appearance of new facts previously unknown to the defendant UK government. It was attributable entirely to the conduct of the UK government.

297. The passage of time created no injustice with respect to the government. The government was not suddenly exposed to stale demands of which it had been ignorant. It was clear throughout the entire period from the applicants' removal until the *Bancoult* litigation that the applicants maintained a grievance against the UK government and sought compensation for the wrongs wrought upon them. Moreover, the relevant facts giving rise to the applicants' claim were contained in official records that had at all times been in the exclusive control of the State. As noted by Sedley LJ in the Court of Appeal's judgment:

> *"The deliberate misrepresentation of Ilois history and status, designed to deflect any investigation by the United Nations… is now part of the historical record"*

298. Most importantly, the UK government never sought to defend these deliberate misrepresentations. On 3rd November 2000 the Foreign Secretary stated:

[43] *Ketteman and others v Hansel Properties Ltd* [1988] 1 AII ER 38, HL.

"The Government has not defended what was done or said 30 years ago. As Lord Justice Laws [in the Bancoult judgment] recognised, we made no attempt to conceal the gravity of what happened".

299. In this context, the limitation defence did not serve to protect the UK government from any injustice. Rather, it was exploited by the UK consequences of its actions.

300. Accordingly, the UK government's concealment of facts essential to establishing the applicants' claim for over 30 years and its subsequent reliance on the defence of limitation denied the applicants a fair hearing in violation of Article 6 § 1.

E18. Violation of Article 13 of the Convention

301. Article 13 of the Convention provides a right to an to an effective remedy

302. Further and in the alternative, the applicants submit that the above complaints under Article 6 disclose a violation of Article 13.

303. If this Court finds, notwithstanding the applicants' arguments above, that the Queen in Council is able to unilaterally and extrajudicially annul the effect of a final judgment as in *Bancoult* without breaching Article 6, then the applicants submit that they have no effective remedy in English law to enforce their constitutional and Convention rights to return to their homeland.

304. Further, if this Court finds, notwithstanding the applicants' arguments above, that the State's reliance on the limitation defence – after concealing facts necessary for the applicants' claim for 30 years – is compatible with the

requirements of Article 6, then the applicants submit that they have never had any effective remedy in English law for violations of their Convention rights arising from their forced removal from their homeland. Moreover, the unavailability of an effective remedy only became certain following the Court of Appeal's judgment of 22 July 2004.

E19. CONCLUSION

305. The Applicants submit that the facts and matters set out above give rise to very grave breaches of their rights under the Convention – particularly bearing in mind the period of 30 years or more during which the entire population has been exiled from the whole of its homeland, the large numbers of individuals involved, and the severity of the harms and injuries suffered by them. Their suffering has been aggravated by the disregard of international and domestic law involved in achieving the clearance of the population from its homeland, and the ruthlessness with which the policy of the ethnic cleansing of the Chagos Archipelago has been maintained. The Applicants therefore urge the Commission to find that this application raises serious issues under Article 3, Article 6.1, Article 8 and Article 13 and Article 3 of the first Protocol of the Convention which are well founded on the facts.

Dated this day of 2005

IN THE EUROPEAN COMMISSION OF HUMAN RIGHTS

B E T W E E N :

THE CHAGOS ISLANDERS

Applicants

-and-

THE UNITED KINGDOM

Respondent

GROUNDS OF ALLEGED VIOLATION OF THE CONVENTION
