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RESEARCH ARTICLE / ARAŞTIRMA MAKALESİ

# The Process of Decolonization of Mauritius and the Right to External Self-Determination of Colonial Peoples

## Mauritius'un Depolitizasyon Süreci ve Sömürge Altındaki Halkların Self Determinasyon Hakkı

**Ayşe Yıldız Demir***

**Abstract**
The right to self-determination is a collective right and one of the most significant human rights. In accordance with the right to self-determination, peoples can choose their destiny in terms of political, economic, or cultural development without any external interference. However, the scope and content of the right to self-determination have remained controversial since the emergence of this right. In particular, the legal nature of the right to self-determination has been argued; while some posit that it is a legal norm, others hold that it is merely a political status in the international arena that came to light throughout the decolonization process during 1960s and still is nowadays. In spite of the codifications of the United Nations (UN), this matter is still discussed in the international arena. Relatedly, this dispute has more recently affected the process of decolonization of Mauritius. In this case, the Chagos Archipelago was separated from Mauritius by the British Government while Mauritius was in the process of gaining its independence based on the right to self-determination. This research would first like to focus on the scope and content of the right to external self-determination of colonial peoples according to the UN resolutions and scholars' opinions as well as states' practices. Second, this paper will examine the legality of the process of decolonization of Mauritius in light of the International Court of Justice's (ICJ) advisory opinions and scholarly work.

**Keywords**
The Chagos Archipelago, Mauritius, The Right to External Self-Determination, Colonial Peoples, Decolonization

**Öz**
Kolektif bir hak olan self determinasyon (kendi kaderini tayin) hakkı aynı zamanda en önemli temel insan haklarından biridir. Self determinasyon hakkına göre uluslar herhangi bir dış etki olmaksızın politik, ekonomik veya kültürel açıdan kendi kaderlerini kendileri belirlerler. Lakin bu hakkın ortaya çıkışından bu yana söz konusu hakkın kapsamı ve içeriği tartışma konusu olmaya devam etmektedir. Özellikle kendi kaderini tayin etme hakkının hukuki niteliği tartışılmaya devam edilmektedir; kimi kesimlerce bir hukuki norm olarak kabul görmüşken, bir kısım ise bağımsızlaşma sürecinin başladığı 1960'lardan bu yana ve hatta günümüzde sadece politik bir statü olduğu görüşündedir. Birleşmiş Milletlerin tüm kodifikasyon çabalarına rağmen uluslararası arenada bu konu tartışılmaya devam edilmektedir. Bağlantılı olarak, ilgili tartışma Mauritius'un bağımsızlık ve dekolonizasyon sürecinde de etkili olmaktadır. Bu süreçte, Mauritius self determinasyon hakkı doğrultusunda bağımsızlığını kazanma aşamasındayken Chagos adalar topluluğu Britanya tarafından Mauritius Cumhuriyeti'ne dahil edilmemiş ve ayrı bir statüde tutulmuştur. Bu çalışma ilk olarak Birleşmiş Milletler kararları, akademik görüşler ve aynı zamanda devlet uygulamalarına göre dışsal self determinasyon (dış ilişkilerde kendi kaderini tayin) hakkının içeriği ve kapsamına odaklanacaktır. İkinci bölümde ise, Uluslararası Adalet Mahkemesinin tavsiye niteliğindeki kararları ve konuya ilişkin akademik çalışmalar doğrultusunda Mauritius'un dekolonizasyon sürecinin hukukiliği değerlendirilecektir.

**Anahtar Kelimeler**
Chagos adalar topluluğu, Mauritius, Self determinasyon hakkı, Sömürge Halkları, Dekolonizasyon

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## I. Introduction

The right to self-determination being at the foundation of the process of decolonization is a collective human right enshrined in Article 1(2) and 55 of the United Nations (UN) Charter in 1945. Although Woodrow Wilson had previously supported the inclusion of this right in the Covenant of the League of Nations after World War I,[1] the right to self-determination was not codified in international law until the Charter of the United Nations. In effect, this codification of the right in the Charter was truly a milestone for colonized peoples to have their rights recognized by colonist states. Further, both International Covenants[2] as well as the Final Act of the Conference on Security and Cooperation in Europe of 1975 in Helsinki are three important resolutions that codified the right to self-determination after World War II and during the process of decolonization. Despite these resolutions, not only the legal nature of the right to self-determination but also its scope and content have yet to be completely ascertained. Hence, the International Court of Justice (ICJ) has been confronted by a number of cases where it has had to elaborate on the scope and content of the right to self-determination. Such cases include Western Sahara,[3] Namibia,[4] and Mauritius.[5] Likewise, several authors have referred to the concept of the right to self-determination in numerous books, articles, and various academic materials. An overview of this academic literature falls under two essential headings: the external and the internal right to self-determination. This paper focuses strictly on the external right to self-determination. On this matter, scholars have generally come to agree that external self-determination can be defined as '*a people has the right to determine freely its own political status and to pursue its own economic, social, and cultural development.*'[6] Notably, during the decolonization of Asia and Africa in the 1950s and 1960s, this definition was used to qualify external self-determination as colonial peoples were endeavouring to attain their independence from colonialist states. Therefore, the colonial rules began to change with resolutions 1514(XV) and 1541 (XV) of the UN, in part due to the support of the Soviet Union and developing countries.[7]

In addition to the codification of the right to self-determination under the authorization of the UN, the process of independence continued increasingly among

1 Rhona K M Smith, *International Human Rights* (6th edn, Oxford University Press 2014) 337.

2 The International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), The International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 23 March 1976) 993 UNTS 3 (ICESC) art 1 (1-3).

3 *Western Sahara* (Advisory Opinion,1975) ICJ Rep 12.

4 *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276* (Advisory Opinion,1971), ICJ Rep 16.

5 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion, 2019) < https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf> Erişim Tarihi 7 June 2019.

6 Arjen B Van Rijn, 'Dimensions under International Law Linked to the Dissolution of the Netherlands Antilles' (2009) 40 Netherlands Yearbook of International Law 75, 86 paras 10-12.

7 Antonio Casese, *Self-Determination of Peoples* (1st edn, Cambridge University Press 1995) 71 paras 1-3.

colonial territories, including Mauritius. Nevertheless, the legality of the process of the decolonization of Mauritius has remained a contested issue according to assertions of the government of Mauritius in terms of the separation of the Chagos Archipelago as well as the displacement of the inhabitants of the islands by the British Government. While the government of Mauritius has insisted that the process of Mauritius' decolonization has not yet completed in conformity with the UN resolutions and customary law, the dispute over the legality of Mauritius' decolonization progress has been the subject of a number of cases addressed by British courts and the ICJ. The most recent and considerable verdict to understand claims of Mauritius and counter parties over decolonization can be found in the ICJ advisory opinion on 29 February 2019.[8] Furthermore, this opinion is not only important to determine over Mauritius' decolonization, but it is also crucial to comprehend the scope and content of the right to self-determination. Therefore, this controversy needs to be ascertained from different perspectives for the sake of clarity of both the scope and content of the right to self-determination and the legality of the Mauritius' decolonization process. For the purpose of addressing the controversial issues mentioned above, this study will first discuss the current framework of the right to self-determination of colonized peoples in accordance with the UN resolutions and scholars' opinions as well as the ICJ reports, and subsequently this paper will focus on the process of decolonization of Mauritius with regard to the detachment of the Chagos Archipelago.

## II. The Scope and Content of the Right to External Self-Determination of Colonial Peoples

Various colonial territories gained independence from metropoles in the 1960s by virtue of recognition of their right to self-determination. To better comprehend this period of decolonization, the meaning of the right to self-determination and its history and the duration of recognition as well as its scope and content need to be handled cautiously within a wider perspective. Furthermore, discussing these aspects of self-determination will facilitate understanding the ICJ's advisory opinion on the matter of Mauritius' decolonization process. This chapter will first focus on the history and development progress of the right to self-determination in light of UN resolutions and states' executions. Secondly, this section of the paper will examine the scope and content of the right to self-determination in light of case studies, scholarly literature, and UN resolutions. Following subchapters will include doctrine about the meaning of '*peoples*,' '*suppression, oppression, or subjugation*,' and '*the relationship between these terms with territory*,' as well as the principle of '*last resort*' in the view of the ICJ in the cases of Western Sahara and Namibia.

8 *Mauritius* (n 5).

### A. The History and Development of the Right to Self-Determination

The Covenant of the League of Nations did not include the right to self-determination, thus several conflicts were experienced, particularly in Europe, because sufficient importance was not yet allocated to the right to self-determination when drawing the map of Europe after World War I (WWI). However, when the idea that '*a nation-state is a one nationality state*'[9] spread around Europe, this concept served as a source of inspiration for colonial peoples. Moreover, initially, the Charter of the United Nations (1945) included the right to self-determination under Articles 1(2) and 55. The Soviet Union had strongly supported these inclusions at the San Francisco Conference in order to enshrine the right to self-determination in the Charter.[10] Specifically, Article 1(2) is undoubtedly prominent since it describes the purpose of the UN and recognises and implements the right to self-determination in the colonial territories under the auspices of the UN. In effect, Article 1(2) asserts '*the purposes of the UN are to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples and to take other appropriate measures to strengthen universal peace.*'[11] Also, Article 55 makes reference to the UN's role in promoting the right to self-determination of peoples. In line with these articles, the UN has supported the progress of decolonization as well as the development of colonial peoples with regard to political and economic as well as social and cultural development. Likewise, the Charter of the UN (1945) guarantees the right to self-determination of colonial peoples based on chapters XI and XII incorporating '*declaration regarding non-self-governing territories*' and '*international trusteeship system*,' respectively. Further, aforementioned chapters exhibit that the UN should encourage the trust territories and their inhabitants to develop in accordance with political, education, social, and cultural advancements until peoples of colonial territories can reach the right to self-determination. Therefore, after World War II (WWII), self-determination became one of the most significant principles of international law as a '*political concept*.'[12] Though the UN Charter (1945) is the first codification to assure and recognise self-determination, the UN has issued a number of resolutions to identify this collective human right.

The common Articles 1(1) and (3) of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which were adopted by the UN, acknowledge the right to self-determination. Since self-determination is qualified as a collective human right in those covenants and can be defined that '*by virtue of that right, peoples freely determine their political status and freely pursue their economic, social, and cultural development,*' [13] the UN

9 Smith (n 1) 336 para 6.

10 Thomas D Musgrave, *Self-Determination and National Minorities* (1st edn, Oxford University Press 1997) 62.

11 Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI art 1(2).

12 Musgrave (n 10) 91.

13 ICCPR, ICESC (n 2) art 1(1).

has interpreted this right in terms of civil, political, economic, social, and cultural rights. Nevertheless, before these two international covenants, UN Resolution 1514 (XV) of 14 December 1960 enshrined the right to self-determination of colonial peoples with respect to the fact that the UN should assist dependent states to gain their independence unconditionally. In addition, this resolution recognised that the self-determination of trust territories should be applied completely,[14] as in the case of Mauritius' government, since self-determination is an inalienable, unassignable, and fundamental human right. Ultimately, Resolution 1514 (XV) assured the right of self-determination of peoples living under subjugation, domination, and suffering from human right violations.[15] Likewise, the codification and recognition of the right to self-determination continued throughout the 1970s so that both colonized peoples could pursue their political, economic, or cultural development and international security and peace could be sustained by the means of the reduction of conflicts based on ethnicity and independence. For instance, Resolution 2526 (XXV) presented the right to self-determination as one of the most substantial principles of contemporary international law to carry out the purposes of the UN Charter.[16] The other important and latest codification over self-determination legislated by the UN can be found in Resolution 71/292, publicized on 22 June 2017. This Resolution emphasised the responsibilities of the UN related to the external self-determination of colonized peoples and stated that the progress of decolonization had not yet completed in accordance with Resolutions 65/118 (2010).[17]

In addition to codifications of the UN relating to the self-determination of colonized peoples, a series of enactments emerged in regional areas such as Africa and Europe. For instance, Article 20 of the African (Banjul) Charter on Human and Peoples' Rights includes the right to self-determination of peoples suffering from colonization and domination. The Article further promotes the parties to the charter to encourage and assist colonial territories under oppression to obtain their external self-determination. Hence, this Article is similar to those in the UN Charter in terms of assistance for trust territories and non-self-governing regions. Likewise, European states, which are parties to the Conference of Helsinki, enshrined the right to self-determination of peoples via signing the Final Act of the Conference on Security and Cooperation in Europe in Helsinki (1975).[18] Particularly, principle VIII of the Act focuses on the duty of all participating states to respect and promote that peoples freely decide their political, economic, social, and cultural development without external interventions. Additionally, in 1971, a case of great importance contributed

14 UNGA 'Declaration on the Granting of Independence to Colonial Countries and Peoples by UNGA Res 1514(XV)' (1960) UN Doc A/RES/1514(XV) paras 11-12.

15 ibid para 13.

16 UNGA 'Declaration on Principles of International Law Concerning Friendly Relations and Cooperating Among States in accordance with the Charter of the United Nations by UNGA Res 2625(XXV)' (1970) UN Doc A/RES/2625(XXV) para 14.

17 UNGA 'Supporting Efforts to End Obstetric Fistula by UNGA Res 65/118' (2010) UN Doc A/RES/65/118.

18 Conference on Security and Co-operation in Europe Final Act, 1975, art 10 <https://www.osce.org/helsinki-final-act?download=true> Erişim Tarihi 4 August 2019.

to the progress of decolonization, which was the ICJ advisory opinion about Namibia (South West Africa).[19] The ICJ had the opportunity to determine the general principles of the external self-determination of colonized peoples thanks to the Namibia case. Further, the ICJ developed considerable principles and key points on the right to external self-determination of colonized peoples living under the Mandates system in light of Resolution 1514 (XV) and the purposes and principles of the UN Charter.[20] Consequently, colonial countries have had various options to pursue their status in the international area such as; '*(i) ending up as a sovereign independent State, or (ii) associating with an independent State, or instead (iii) integrating into an independent State.*'[21] In accordance with these resolutions and the ICJ's advisory opinion, the process of decolonization has not been limited to the 1960s and 70s because this process has continued pertinaciously as seen in the Mauritius case until all colonial territories are able to complete their process of independence in compliance with the purposes of the UN and customary law rules.

### B. The Meaning of *'People'* and *'Domination'*

For as long as the process of development for the right to self-determination has been brought to the agenda in the international arena, the question of who has the right to self-determination has been one of the most essential troubles among states, institutions, and scholars. All the codifications concerning self-determination, notably the Charter of the UN and Resolution 1514 (XV), have accepted that '*colonized peoples*' have the right to determine their international status and retain their own political, social, and cultural development without external intervention. There is no dispute about '*colonized peoples*' having a right to external self-determination; however, the definition of '*people*' has been a problematic issue. Specifically, the meaning of '*people*' gained importance while examining the manner in which inhabitants of the Chagos Archipelago were displaced. Thus, which factors are necessary to qualify as a '*people*' need to be explained to comprehend the claim of Mauritius. Also, the '*colonized people*' had experienced '*oppression*' till acquiring their independence; thus, '*subjugation*' is still used to advocate external self-determination. As a result, this subchapter will focus on the meaning of '*people*' and '*subjugation*' according to scholarly work and will examine the meaning and scope of '*oppression*'.

There are various points of view regarding the meaning of 'people' in the field of law. One of the most significant is the approach to ethnicity that emerged in the 19th century to define a 'nation.'[22] Therefore, advocates of this position have supported that a nation is a people. However, the definition of 'people' based on '*ethnicity*'

19 *South West Africa* (n 4) 16.

20 Casese (n 7) 72.

21 ibid 73.

22 Musgrave (n 10) 148-167.

remains a matter of debate in modern international law when one observes that the UN has not promoted this approach, excluding the case of Bangladesh[23] or that the League of Nations blatantly stated that the inhabitants of Aaland Islands are Finish, leading the court to address ethnicity while discussing the right to self-determination of Aaland Islanders.[24] Additionally, academics are not unified on their approach to ethnicity as several scholars support that ethnicity is a changeable term and can be misused.[25] Contrary to this view, Hans Kelsen advocated a distinct idea named '*the state as people*' in the Law of the United Nations (1951) because Kelsen claimed that the UN Charter's Article 1(2) intended to imply '*states*' by expressing '*peoples*.'[26] Notwithstanding, the UN revealed the difference between the terms 'people' and 'state' in Resolution 2625 (XXV).[27] Another important argument was presented by Rigo Suredo, who considers that the term '*peoples*' is a product of '*the decolonization definition*.'[28] The writer has essentially grounded his claims in UN Chapters XI, XII, and XIII that address the rights of non-self-governing and trust territories. However, Resolution 1514 (XV) confuted this approach by propounding that not only colonized people have the right to self-determination.[29] In a similar context with these theories and approaches, elements to describe the term 'people' have become a matter of discussion. After all, two essential ideas have come into view to clarify the elements of what makes up a '*people*'

The first allegation is '*the characteristic approach*,'[30] which ascertains that a '*people*' has '*linguistic, religious, cultural, racial, or ethnic unified as well as shared values;*' on the other hand, '*the territorial approach*,'[31] the second argument over the term of people, gives more importance to habitat where peoples live in order to qualify the features creating peoples. For instance, the ICJ voted in the favour of the '*territorial approach*' in the case of the Israeli Wall, in which it was found that Israel violated the Palestinians' right to self-determination by building a wall into Palestine territory.[32] On the other hand, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) advocated '*the characteristic approach*' in one of its meetings in 1989. In effect, UNESCO manifested that '*a people as a group*

23 Musgrave (n 10) 148-167.

24 ibid 148.

25 Kathleen McVay, 'Self-determination in New Contexts: The Self-determination of Refugees and Forced Migrants in International Law' (2012) 28 (75) Merkourious Utrecht Journal of International and European Law 36, 39.

26 Hans Kelsen, *The Law of the United Nations. A Critical Analysis of Its Fundamental Problems* (7th edn, The Lawbook Exchange 2008) 51.

27 Musgrave (n 10) 155.

28 ibid 163.

29 ibid 165.

30 Sofia Cavandoli, 'The Unresolved Dilemma of Self-determination: Crimea, Donetsk and Luhansk' (2016) The International Journal of Human Rights 875, 877 para 6.

31 ibid 877 para 7.

32 *Legal Consequences of the Construction of a Wall in the Occupies Palestinian Territory* (Advisory Opinion, 2004) ICJ Rep 3, 201 para 2.

*of individual human beings who enjoy some or all of following common features: a common historical tradition, a racial or ethnic identity, cultural homogeneity, linguistic unity, religious and ideological affinity, territorial connection, and a common economic life.*'[33] Conversely, the territorial approach claims that a people is an ensemble of human beings having common aspirations and requests as well as desiring to live together peacefully. Ultimately in contemporary international law, the characteristic criterions are used to identify minorities rather than the territorial approach because human beings cannot be restricted only by criterions such as language, race, or religion. Thus, the aspiration to live together and common values should be considered in order to determine whether a people would enjoy the right to self-determination.

Apart from the term 'people,' the concept of subjugation is another substantive term to understand decolonisation and external self-determination inasmuch as colonialism includes concepts such as oppression and exploitation by its very nature. Especially since the right to self-determination is a human right based on democracy, a people should be free of all sorts of oppression and subjugation while making a decision about its political, social, and cultural development. Woodrow Wilson, who was an advocate of the concept of self-determination, stated: '*peoples should be dominated and governed only by their own consent.*'[34] Therefore, the term of subjugation needs to be explained further in this part to internalise the importance of external self-determination. Subjugation is essentially an action by which a group of people conquers another group of people and the conqueror decides over all kinds of aspects relating to the conquered. Yet, another important term is oppression, including human rights violations and the exploitation of underground and aboveground natural resources belonging to colonized peoples. In the resolutions adopted by the first ordinary session of the assembly of heads of state and government held in Cairo, UAR, from 17 to 21 July 1964, the commission concluded that Portugal must immediately cede territories under its domination. Following the declaration of Cairo, the UN censured the domination of colonist powers in both Namibia and Rhodesia. In this regard, when Ian Smith, the prime minister of the white-dominated regime at the time, announced the independence of Southern Rhodesia on 11 November 1965, the UN declared that the reign of white Rhodesians, composing only six percent of the total population of Rhodesia, did not comply with the peace and security principles of the UN.[35] Another relevant example is the ICJ Advisory Opinion on Namibia concluded in 1971. The ICJ rendered a verdict that South Africa was under the control of the white minority population.[36] As a consequence, these occurrences reiterated the

33 Cavandoli (n 30) 878 paras 6-10.

34 Henry J Steiner and Philip Alston, *International Human Rights in Context* (New York, New York University Press, 2nd edn, 2000) 1252 para 3.

35 Myres S McDougal and W Michael Reisman, 'Rhodesia and the United Nations: The Lawfulness of International Concern' (1968) 62 The American Journal of International Law 1, 4-6.

36 *South West Africa* (n 4) 62-64.

importance of peoples living under subjugation when striving to gain the right to self-determination. Also, these terms are not only indicative to recognize the right to self-determination of colonized peoples but also crucial for minorities who are not able to attend the administration process of states. To illustrate, the Katanga Case[37] heard by the African Commission indicated the significance of the free decisions of peoples. While examining the right to self-determination of inhabitants in Katanga, the Commission preferred to focus on whether the people of Katanga enjoyed participating in government rather than whether inhabitants of Katanga were a genuine people apart from the people of the DRC.[38] It is a notable case in which there is a strong relationship between self-determination and participation in government since there are human rights violations, oppression, and subjugation in territories where the people are not able to participate in the process of administration.

### C. The Principles of '*Relationship with Territory*' and '*Last Resort*'

When a group of people invokes their right to external self-determination, first of all, determining whether this group meets the criteria that define a people and subsequently examining whether there exist oppressive circumstances are essential issues according to the given information above. After ascertaining these preconditions, states' practices and judicial opinions put forth another two vital criterions to benefit from external self-determination. The first condition is that there should be a relationship between territory and the inhabitants living there. The regions where ancestors lived has been recognised as sacred territories throughout history, hence, a people's desire to have a control over territory possessed for generations in conformity with the principle of *uti possidetis*. The ICJ's Western Sahara Advisory Opinion is one of the most remarkable cases addressing the existence of a legal tie between people and territories because the ICJ concluded that there were legal ties between Morocco and Western Sahara owing to the fact that tribes had been living in Western Sahara prior to Spanish colonialism and had a strict relationship with the Kingdom of Morocco in terms of taxes, migration, and law rules.[39] Even though the integration with territory is of great importance so that minorities can gain their right to self-determination and the right to remedial secession at the present time, this relationship is a necessary criterion to admit or deny the right to self-determination of the people of the Chagos Archipelago. Therefore, the relationship with territory is at the foundation of the discussion of the process of decolonization of Mauritius and necessary to understand Mauritius' assertions over the inhabitants of the Chagos Archipelago.

37 *Katangese Peoples' Congress v Zaire,* ACHPR/RPT/ 8th Annex VI (1995).

38 Mtendeweka Mhango, 'Governance, Peace and Human Rights Violations in Africa: Addressing the Application of the Right to Self-determination in Post-Independence Africa' (2012) 5 Africa Journal of Legal Studies 199, 207.

39 *Western Sahara* (n 3) 12.

The second requirement in claiming the right to self-determination is '*the last resort.*' In particular, the criterion of the last resort relates to human rights violations and the right to internal self-determination. When peoples have struggled with grave human right violations, such as non-participation in government, exploitation of natural resources, or lawless detention and arrest under the domination of colonial administrators, these colonized peoples have a more passionate plea to demand independence. One such example is the case of South Africa during the colonial period and its decolonisation process. While blacks made up the majority of the population, they were dominated by a government formed by the white minority.[40] However, this condition is beyond the scope of this paper since it solely focuses on the right to external self-determination. Consequently, the rest of this article will be dedicated to the development of decolonization of the Republic of Mauritius and will posit the existence of the right to external self-determination of the people of the Chagos Archipelago.

## III. The Legality of the Process of Decolonization of Mauritius

Decolonization is a process by which peoples exercise their right to external self-determination. It has historically played a significant role in shaping modern day Africa. The process took place throughout the golden age of the 1960s and 70s, during which peoples campaigned to acquire their independence from colonialist powers. Nevertheless, this decolonization period remains a subject of debate in the international arena, as shown by the case of the status of Mauritius. In this regard, the main claim of Mauritius is that its process of decolonization has not yet been completed in conformity with Resolutions 1514(XV) of 14 December 1960, Resolution 2066(XX) of 16 December 1965, Resolution 23(XXII) of 19 December 1967, and Resolution 2232(XXI) of 20 December 1966 since the Chagos Archipelago was detached from Mauritius by the British before Mauritius gained its independence from the United Kingdom (UK).[41] Furthermore, inhabitants of the Chagos Archipelago have maintained their allegations to achieve the right to repatriation in the international arena and courts. Therefore, this paper will assess all assertions made by Mauritius as well as counter claims in order to determine whether the progress of decolonization of Mauritius has been completed in conformity with the provisions of the resolutions of the UN and subsequently reach a decision on how the separation of the Chagos Archipelago has affected the peoples of these islands in light of the right to external self-determination.

40 *South West Africa* (n 4) 16.

41 Written Statement of the Republic of Mauritius at ICJ Proceedings (01.03.2018), *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion, 2019) <https://www.icj-cij.org/public/files/case-related/169/169-20180301-WRI-05-00-EN.pdf> Erişim Tarihi 25 June 2019.

### A. The Period of the Independence of Mauritius

Mauritius is a small island country adjacent to Eastern Africa and located in the middle of the India Ocean.[42] Firstly, this region was discovered by Portuguese sailors and then used as a stopover between India and the Cape of Good Hope in the 1500s until the Dutch East India Company occupied the islands in 1598.[43] Following the reign of the Dutch, the French invaded the islands to set up systematic colonization, including the transfer of slaves from other parts of Africa to Mauritius to forcefully work in coconut plantations between 1721 and 1814.[44] However, the destiny of the islands changed with the Treaty of Paris in 1814 as France relinquished its right over Mauritius and its dependent islands such as the Chagos Archipelago in favour of the British Empire. Moreover, in the 1835, the UK abolished slavery so as to establish apprenticeship and hired labour systems in Mauritius and other islands until 1968 when Mauritius gained its independence.[45] Impacted over the period of decolonization in Africa, Mauritius commenced negotiations with the UK in the 1960s to attain its independence. Nevertheless, the UK was reluctant to cede Mauritius and the dependent islands of Mauritius, which were defined as the colony of Mauritius in the Mauritius Constitution (1964)[46] because these territories had a strategic location in the middle of India Ocean and were relatively close to the Middle East. As a result of these factors, the United State of America (USA) requested a number of islands from the UK in February 1964 to construct a military base for defensive purposes during the Cold War. The British Government ultimately founded the British India Ocean Territory (BIOT) as a new colonial territory, on 8 November 1965 due to Lancaster House Agreement between the UK and Mauritius, which began to be discussed on 29 June 1964 and concluded on 23 September 1965.[47] The detachment of the Chagos Archipelago from Mauritius is still the most crucial consequence on the account of Mauritius because the BIOT is composed of the Chagos Archipelago, the Aldabra, Farquhar, and Desroches islands, separated from Mauritius and Seychelles.[48] Another significant result is that Diego Garcia, the largest island in the Archipelago, was handed over to the USA in 1971 to build a military base, resulting in the displacement of the island's inhabitants, between in 1968-1971.[49] The Republic of Mauritius has propounded its allegations over '*violation of territory integrity and the right to self-determination*' in the international arena and courts such as the United Nations Human Rights Committee (HRC) and the European

42 ibid Appendices: Figure 1,2,3.

43 Laura Jeffy, *Chagos Islanders in Mauritius and UK: Forced Displacement and Onward Migration* (Manchester University Press, 2011) 18 para 1.

44 ibid 18.

45 Mauritius (n 5) 109, 124.

46 ibid 107 para 28.

47 ibid 108 paras 31-32.

48 ibid para 33.

49 Jeffy (n 43) 2 paras 1-3.

Court of Human Rights (ECHR) as well as UK Courts to obtain compensation and the right to return to their ancestor territories.

### 1. The Statements of Parties on the Detachment of the Archipelago

The main claim of Mauritius is that the UK has invaded the territorial integrity of Mauritius via the detachment of the Archipelago which was dependent on Mauritius in accordance with the UN resolutions and customary law.[50] The fundamental regulation over colonial territories and peoples as well as assertion of Mauritius is Resolution 1514 (XV), adopted by the UN General Assembly in 1960, since Resolution 1514 (1960) paragraph 6 states that '*any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the UN.*' When the UK and USA created a new colony named the BIOT, Mauritius was still an overseas colony territory of the UK; hence, all regions of the Mauritius colony defined in the Mauritius Constitution (1964) could not achieve their right to external self-determination.[51] As a result, Mauritius advocates that this excision is an illegitimate situation according to the Resolution 1514 (XV) paragraph 6 because those islands were disrupted from Mauritius without free consent and lacking a referendum such as the one the Cayman and Turks and Caicos Islands applied for when detaching from Jamaica.[52] On the contrary, the UK government has rejected the claims of Mauritius about the violation of territorial integrity; that is to say, the UK Ambassador stated that Lancaster House Agreement causing the detachment of the Chagos Archipelago was a bilateral agreement signed by the elected Mauritius government. Therefore, Mauritius could not repudiate the agreement. Likewise, the UK will return islands to Mauritius when these islands were not in need of defending, as was done previously in the case of the Seychelles islands.[53] Another important plea made by the UK is that paragraph 6 of Resolution 1514 (XV) is not part of a legal right to self-determination in the events of 1965/1968 since the separation of the Chagos Archipelago happened when Mauritius was still a colonial territory of the UK.[54] Moreover, the description of principles of the right to self-determination is not clear and detailed in terms of regions where self-determination could be applied because 1514(XV) does not state anything over '*the partial or total*

50 UNGA 'Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965 Statement of financial implications by UNGA Res 71/292' (2017) UN Doc A/RES/71/292.

51 Written Statement of the Republic of Mauritius (n 41) 34-43.

52 Victor Kattan, *'The Partition of the Chagos Archipelago and the Haunting Spectre of the South West Africa Cases'* (2018) Ejil Talk! <https://www.ejiltalk.org/part-i-the-partition-of-the-chagos-archipelago-and-the-haunting-spectre-of-the-south-west-africa-cases/#more-16494> last accessed 16.7.2019.

53 The UK Government, 'UK: Statement by Ambassador Matthew Rycroft, Permanent Representative to the UN, at the GA Meeting to Discuss Request for Advisory Opinion of the ICJ on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965' (2017) Asia News Monitor, Bangkok.

54 Written Statement of the United Kingdom at ICJ Proceedings (15.02.2018), *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion, 2019), 128-129 https://www.icj-cij.org/public/files/case-related/169/169-20180215-WRI-01-00-EN.pdf Erişim Tarihi 1 July 2019.

*disruption of the national unity and the territorial integrity of a country,*' excluding paragraph 6.[55] Notwithstanding, Resolution 1514, adopted by General Assembly in 1960, blazingly declares that all attendees eagerly would like to eradicate colonialism all over the world. Despite the explicit statement of the UN, the UK had excised the islands from Mauritius in 1965 by concealing progress from the UN and other international actors in order not to provoke any reactions because the decision to separate islands was made by order-in-council without approval of the parliament of the UK.[56] Therefore, the General Assembly of the United Nations (UNGA) announced a new resolution, Resolution 2066 (XX), over the question of Mauritius on 16 December 1965 so that the UN invited '*the Government of the UK of Great Britain and Northern Ireland to take effective measures with a view to the immediate and full implementation of resolution 1514 (XV).*'[57] Likewise, other resolutions of the UN, 2232 (XXI) and 2357 (XXII), underline the indispensable right to self-determination of people in Mauritius and the independence of colonial territories in accordance with the purposes and principles of the UN. The most recent resolutions over the decolonization system are 65/118 and 65/119, which both reiterate that the process of decolonization is not completed yet and that the UN has still been holding a crucial role to end colonization. As a consequence, the UK might not be able to avoid responsibilities in completing the period of the decolonization of Mauritius by denying the power of Resolution 1514 (XV) and by claiming that the UK and USA have established the BIOT to be used for defensive purposes while all the world, under the leadership by the UN, was trying to eliminate the colonization. However, not only have the resolutions of the UN been used to support statements and comments of parties but these positions are also grounded in customary law which will be further discussed below.

## 2. The Statements of Parties on the Legal Nature of the Right to External Self-Determination

Customary international law is one of the sources of international law and comprises of two components: state practice and *opinio juris.* Excluding persistent objector states which raise their objection before the emergence of customary law rules, all states are bound to customary law, including even newly founded countries with no chance of prior objection to customary law rules. Hence, while the UK has repeatedly expressed its objection to Resolution 1514, it nonetheless has consistently supported the right to self-determination identified in Chapters XI, XII, and XIII of the Charter of the UN.[58] Also, in the written comments of the UK in the ICJ Advisory Opinion about Mauritius,

55 ibid section 8. 28.

56 Victor Kattan, 'Self-determination during the Cold War: UN General Assembly Resolution 1514(1960), the Prohibition of Partition, and the Establishment of the British Indian Ocean Territory (1965)' (2016) Koninklijke Brill NV, Leiden 419, 458.

57 Question of Mauritius (1965) Resolution 2066(XX) para 3.

58 Kattan (n 56) 460.

the UK explained that the territorial integrity of non-self-governing countries was not supported by numerous states' practices in the time of decolonization and that paragraph 6 of Resolution 1514 did not correspond to the customary international law binding the UK in the process of 1965/1968.[59] As a result of these enunciations, Resolution 2066 (1965), adopted by the UNGA, could not be considered binding on the UK; even if it had been accepted as a customary rule, the UK would have been a persistent objector.[60] When examining state practice on decolonization, the first process of decolonization actually began with the independence of the Thirteen American Colonies, followed by several South American countries achieving their freedom from Spain; nonetheless, it peaked in the African Continent in the period of the 1960s and 1970s.[61] Naturally, these territories were non-self-governing regions, but territorial integrity was not discussed when these first colonial territories gained their freedom and independence. The term of territorial integrity of the non-self-governing was coined in the international arena by Resolution 1514(1960). Thus, the claim defended by Sir Michael Wood, who stated that the right to self-determination had not been developed as an international customary rule until Resolution 2625 (XXV) of 24 October 1970, could be considered plausible.[62] However, the Charter of the UN came into force on 24 October 1945, and Article 73 of the Charter declared that members of the UN had duties to support inhabitants of non-self-governing territories to attain self-determination in accordance with their aspirations. As noted by Victor Kattan, the UK infringed the above-mentioned Article since as a party of the UN, the UK partitioned its colonies under UK national law. [63]

In addition, the UK has alleged that this excision was a natural right of the UK and supported in national legislation. Another argument brought forth by the UK is that the right to self-determination turned into an international customary rule owing to inurement of the ICCPR and ICESCR.[64] However, the UK signed the ICCPR and ICESCR on 16 September 1968 after the Parliament of the UK had approved the bill drafting in which Mauritius gained its independence. [65] Conversely, Mauritius has advocated that the right to self-determination emerged as customary law by virtue of the paragraph 6 of Resolution 1514 (1960) since that regulation disaffirmed detachments of colonial territories like the Chagos Archipelago.[66] When considering the legal nature of the right to self-determination independent of claims from both parties, it

59 Written Statement of the United Kingdom (n 54) 130 section 8.31.

60 Written Statement of the United Kingdom (n 54) 130 section 8.32.

61 Kattan (n 56) 419.

62 ibid 420.

63 ibid 422 para 4.

64 Written Statement of the United Kingdom (n 54) 135-149.

65 ibid 142.

66 *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)* (2010) Hearing Transcript (Day 8), 956-985 < https://pca-cpa.org/en/cases/11> Erişim Tarihi 10 July 2018.

involves peoples' right to decide over their political, social, and cultural development, and claims of this right are not restricted with this UN Resolution or the Human Rights Covenants. All people have aspired to live independently, avoided any kind of subjugation, and made decisions with free will over their destiny throughout history. Therefore, some scholars uphold that the right to self-determination is a peremptory norm and as such it prevails customary law and written rules of law.[67] Nevertheless, there is no consensus over the legal nature of the right to self-determination related to the territorial integrity of colonial regions, in spite of Article 73 and Resolution 1514 (1960). On the contrary, there are unfavourable practices of the UN about the separation of colonial territories. Especially, after 1960s, the UN renounced any plans upon the partition of regions, so not only the United Nations Security Council (UNSC) approved any detachments but also the UNGA upheld plans that involved the separation of territories in order to prevent ethnic conflicts or ease administration.[68] To exemplify, France prepared a draft to excise in Algeria; however, this plan was not supported by the UN or any other forum in the international area.[69] Similarly, although the UK had used the system of detachment in its colonial territories as a method to administer the region easily before 1958, the purpose of separating Chagos Islands from Mauritius was totally different, which implies a military and political strategy. Thus, the UK somehow coerced Mauritius during its independence progress to keep the islands for itself in exchange for the independence of Mauritius.[70] These terms reflect the UK's use of its colonial power against Mauritius and the violation of Mauritius' consent because Mauritius was still a non-self-governing territory under the administration of the UK when the bilateral agreement leading to the detachment of the islands from Mauritius was signed between the UK and Mauritius.

### a. The Displacement of the Inhabitants of the Chagos Archipelago

The consequence of the Chagos Archipelago's detachment from Mauritius by the British has caused a debate not only about violations of territorial integrity but also about violations of the rights of the people of the island who had been displaced. The right to return and to compensation of the inhabitants of the Chagos Archipelago have been an ongoing subject in UK courts and international courts, such as the ICJ and the EHRC. The Chagos Archipelago was a series of uninhabited islands before France had begun to bring slaves from Africa and India to work in its coconut plantations during the 1700s.[71] Following the prohibition of slavery by the British, these people carried

67 Craig Eggett and Sarah Thin, 'Clarification and Conflation: Obligations Erga Omnes in Chagos Opinion' (2019) Ejil Talk! <https://www.ejiltalk.org/clarification-and-conflation-obligations-erga-omnes-in-the-chagos-opinion/#more-17212> Erişim Tarihi 16 July 2019.

68 Kattan (n 52).

69 Kattan (n 56) 434.

70 UN Conference on International Organization, Vol 3, Document 2, G/26(F), 11 May 1945, 618.

71 Jeffy (n 43) 19 para 2.

on living in the Chagos Islands, specifically on the island of Diego Garcia, and worked on plantations of coconut and sugar cane thanks to labour contracts. Nevertheless, the British and USA governments agreed on a compromise to evacuate islands, including Diego Garcia, Peros Banhos, Salomon, Eagle, Danger, and Egmont, in order to use them for security purposes by entering into a secret agreement in 1961.[72] In February 1964, the UK and USA concluded a memorandum to collaborate over establishing a military base on these islands, therefore making the UK responsible for displacing the people of the islands and consequently also responsible for compensating them with the USA being in charge of building the military base.[73] As a result of this agreement, approximately 2000 Chagossians, mostly from Diego Garcia, were forcibly removed from the island by the British between 1967 and 1971.[74] Furthermore, nearly 1500 islanders were removed to Mauritius, and roughly 500 individuals were displaced to Seychelles.[75] As a result, Chagossians around different African countries and the UK have been requesting the right to repatriation and compensation in light of international human rights covenants and the provisions of the Charter of the UN. This following section will address the claims of the islanders displaced from their territories in accordance with the principle of *uti possidetis* and, as a result, establish the actions of the UK as grave human right violations of Chagossians' right to self-determination as indigenous people.

### i. The Principle of '*Uti Possidetis*'

As the relationship between territory and people is explained briefly in previous sections, the regions hosting the ancestors of people is accepted as sacred and indispensable territories, so peoples are not willing to relinquish territories where they were born and raised. Under this concept, the principle of *uti possidetis* gains importance in explaining a people's sense of belonging to a territory. The relevant principle has even been thought to be derived from Roman Law, being reraised in the decolonialization process of Spanish America (19th century) and Africa (20th century) for the purpose of protecting independence and stabilizing anew state against the threatening and dangerousness residual elements emerging after the withdrawal of the colonialist state.[76] Hence, the principle of *uti possidetis* can in short be defined as "*when a colony gains independence, the colonial boundaries are accepted as the boundaries of the newly independent state.*"[77]

72 Caecilia Alexandra and Konstantia Koutouki, 'No Way Home for Chagossians: Law and Power Politics' (2018) International Journal on Minority and Group Rights 396, 373-374.

73 ibid 373.

74 Mauritius (n 5) 127 para 128.

75 Jeffy (n 43) 2 para 4.

76 *Case Concerning The Frontier Dispute (Burkina Faso/Republic of Mali)* (Judgment, 1986) ICJ Reports rep 554, 15-16.

77 'uti possidetis' Oxford Dictionary of Law (8th edn, Oxford University Press 2015).

Yet, the British have rejected the claim that the islanders of the Chagos Archipelago were either permanent or semi-permanent residents on these islands and instead advocated that the Chagossians were '*a floating population*' or '*transient contract workers*' without any tie to the islands.[78] Likewise, the Colonial Secretary announced that these islanders were neither permanent residents nor indigenous people because they were brought from other regions to the islands in order to provide a workforce.[79] The main purpose of these statements is to have world public opinion accept that Chagossians do not have the right to self-determination and that the islanders were just migrant workers as well. Therefore, they are striving to ensure that the inhabitants of these islands do not possess the right to repatriate and redress, which is recognized by all international courts and states. Otherwise, the very first residents, 22 slaves, arrived on the islands through a French company in order to be employed in plantation areas in 1783.[80] Furthermore, the population of the islands had continued to rise with more slaves brought in 1808 and 1813.[81] Although the conditions of the employment of these slaves had changed through the abolition of slavery by the British, the transportation of employees persisted for the coconut oil industry. Therefore, these workers adopted the territories as a place to live and work and established a continual presence there for approximately 200 years. When analysing the surnames of the uprooted people of the Chagos Archipelago, it is apparent that most of the peoples living in the diaspora have taken names in the first slave list as surnames.[82] Another valid expression propounded by Chagossians during protests and hunger strikes was that '*our ancestors were slaves on those islands but we know that we are the heirs of those islands.*'[83] Denying that the inhabitants of those islands were permanent or indigenous people is a terrible injustice since those people were brought to deserted islands to work as slaves, yet they embraced these previously foreign areas as home. The most supportive evidence in this case is that uprooted peoples experienced '*traumatic experiences*' such as loneliness, desolateness and distrustfulness in other countries.[84] Those islanders had developed a new kind of culture and social environment while living in the non-self-governing territories for two centuries. Particularly, this culture was named *culture desiles* by the islanders, so they still have their unique customs and traditions carried on places where the Chagossians were moved.[85] As a consequence, the first slaves who reached the islands and their descendants indeed have become the indigenous people of those

78 Kattan (n 56) 459 para 3.

79 Alexandra and Koutouki (n 72) 376 paras 11-14.

80 Robers Scott, *Limuria: The Lesser Dependencies of Mauritius* (Westport, CT: Greenwood Press, 1976) 20.

81 Iain Walker, *The Complete Guide to the Southwest Indian Ocean: Comores, Madagascar, Mauritius, Réunion, Seychelles* (1993) 563.

82 David Vine, *'Taking on Empires: Reparations, the Right of Return, and the People of Diego Garcia'* (2008) 329. <https://doi.org/10.1080/10999940802523869 > Erişim Tarihi 1 June 2019.

83 Vytautas Bandjunis, *Diego Garcia: Creation of the Indian Ocean Base* (iUniverse Inc,2001) 127 para 2.

84 Jeffy (n 43) 4-5.

85 Vine (n 82) 330.

islands. When the Chagos Archipelago was separated and islanders were displaced, the principle of the *uti possidetis* of the inhabitants of these islands was neglected because no one, neither the British nor Mauritius governments, asked or informed these people of whether they supported this detachment. Consequently, this situation has provoked grave human rights violations, such as living under poor conditions, homelessness, and struggling with unemployment.

Chagossians have pursued several legal proceedings to deal with difficulties and retrieve their legal rights. After beginning the depopulation of the islands in 1967, their inhabitants were exiled to Mauritius on 28 September 1971, when the USA occupied Diego Garcia, without any negotiation with the Mauritius government.[86] Hence, these people had to tackle very harsh circumstances. There was no work, sanctuary, food or money for displaced individuals. Owing to protestations in Mauritius, in particular the capital city, Port Louis, the UK agreed to give limited recompense of 600 GBP per uprooted adult in March 1978.[87] However, these symbolic payments could not halt the protests; subsequently, in 1982, the British paid an indemnity worth 1,250,000 GBP to families displaced from their homeland.[88] Conversley, the displaced people settled in Seychelles have not acquired any redress as of yet.[89] As a result of these inadequate governmental acts, Chagossians have endeavoured to organize in Mauritius, Great Britain, and other international areas to gain financial rights and their right to return to the islands.

### ii. The Process of Demanding Justice

Firstly, these refugees have claimed their rights in the national courts of Mauritius, the UK, and the USA. The displaced inhabitants of the islands, where the USA founded a military base, established the Chagos Refugees Groups (CRG) in Mauritius to seek their rights. A group of Chagossians that filed a lawsuit, which was dismissed by a high court, in an attempt to gain their financial rights to compensation was led by the CRG in 2003; furthermore, the Court of Appeal refused the Chagossians' request to appeal in 2004.[90] Therefore, the endeavour of seeking rights failed in Mauritius courts. Meanwhile, the islanders have gone on struggling to attain their rights in the UK, owing to the British National Act 1981 identifying the Chagossians as '*living people*' in the British regions in 1997.[91] The first result of this recognition was when Olivier Bancoult, who was from Peros Banhos and was removed from the island in 1968,

86 Alexandra and Koutouki (n 72) 396.

87 David Vine, Philip Harvey and S Wojciech Sokolowski, 'Compensating a People for the Loss of Their Homeland: Diego Garcia, the Chagossians, and Human Rights Standards Damages Models' (2012) Northwesten Journal of International Human Rights 156.

88 ibid 156-157.

89 Jeffy (n 43) 2-3.

90 ibid 2 para 3.

91 The British National Act (1981) Schedule 6.

filed a suit in the Divisional Court in 1998 for the Court to render a verdict that the 1971 Immigration Ordinance was against the Magna Carta (1215).[92] The complainant propounded that the Magna Carta states that '*no free man shall be seized, imprisoned, dispossessed, outlawed, exiled, or ruined in any way, nor in any way proceeded against, except by the lawful judgment of his peers and the law of the land*'[93] to prove that the Chagossians were displaced and to attain their right to return to their homeland. The court rendered a verdict that the matter in dispute ordinance was illegal because '*colonial measures were intended for peace, order, and government and not to use this authority to disenfranchise the Chagossians.*'[94] Also, in conformity with the court's decision, a British ordinance, which is BIOT Ordinance No. 4 (2000), determined that the Chagossians and their descendants could return to the islands, excluding Diego Garcia.[95] This decision was the first and most considerable verdict to recognize the rights of the inhabitants of the Chagos Archipelago. By virtue of this court's verdict and British ordinance, these people could file cases in other regional and international courts since those decisions had established a baseline and jurisprudence precedent for other courts. Nevertheless, the UK Foreign Office did not comply with the ordinance as the office alleged that the return of the Chagossians was not feasible in accordance with the defence system of the Archipelago in 2002.[96] It seems obvious that political purposes have hindered the protection of one of the most significant human rights: That people can live in their ancestral lands because human rights are ultimately extensive over covenants or delegations. A verdict that has supported this idea was decided by the High Court of Justice in London, which rejected the return requests of Chagossians and approved their right for compensation in April 2002.[97] Likewise, the Appeal Court abided by the verdict of the first instance court and declared that the compensation paid to the inhabitants displaced was insufficient whereas it announced that making a decision to return is a political issue, thus the court could not render a verdict over this complaint.[98] Another negative decision for the Chagossians was concluded by the District Court of Columbia in 2004 since the Court decided that it was not a justiciable question to render a verdict about the complaint of the Chagossians.[99] Ultimately, the islanders filed complaints in the international arenas such as the HRC and EHRC after this verdict was approved by the Court of Appeal.

92 Sienho Yee, 'The Upcoming Separation of the Chagos Archipelago Advisory Opinion: Between the Court's Participation in the UN's Work on Decolonization and the Consent Principle in International Dispute Settlement' (2017) Chinese Journal of International Law 623, 634.

93 H. Summerson et al, '*The Magna Carta Project'* (trs) The Articles of the Barons` art 29.

94 *Regina v Secretary of State for Foreign and Commonwealth Office and another* (2000) EWHC Admin 413 para 55.

95 The BIOT Immigration Ordinance (2000) art 4.

96 Alexandra and Koutouki (n 72) 381.

97 *Chagos Islanders v Attorney General and Her Majesty's British Indian Ocean Territory Commissioner* (2003) EWHC 2222 para 80.

98 *Chagos Islanders v Attorney General and Her Majesty's British Indian Ocean Territory Commissioner* (2004) EWCA Civ 997 paras 10-19.

99 *Bancoult et al v McNamara et al* (2004) United States Court of Appeal Case number: 05-5049.

Secondly, in 2008, the HRC published a report including the call of parties to the Committee to the British Government for taking measures to ensure the right of Chagossians. The Committee states that '*the state party should ensure that Chagos Islanders can exercise their right to return to their territory and should indicate what measures have been taken in this regard.*'[100] However, the UK has not done its part; instead, it claims various pretexts such as economic, environmental, or defensive issues. For instance, on 16 November 2016, Baroness Joyce Anelay, who was the Foreign Office Minister of the UK, declared before Parliament: '*The government has decided against resettlement of the Chagossian people to the BIOT on the grounds of feasibility, defence, and security interest and cost to the British taxpayer.*'[101] The British Government alleged that the repatriation of islanders and establishing settlements on the islands would cost 40 million GBP, according to analysis report run by the UK.[102] Nevertheless, this allegation cannot be an impediment to exercise the right of return of the displaced islanders because the UK has one of the strongest economy and the displaced islanders cannot be expected to be responsible for such a burden. Another significant court verdict was concluded by the ECHR on 20 December 2012 after Oliver Bancoult brought a lawsuit to the ECHR in 2004 after the Chagossians attained a negative verdict from the High Court of the UK about the right to return. The ECHR decided that it does not have jurisdiction over this subject matter as domestic courts had already rendered verdicts about this case, and the plaintiffs had gained their right to compensation for the displacement.[103] Before the verdict of the ECHR was delivered, the UK asserted a new sort of excuse, which is that the BIOT was recognized as a Marine Park on 1 April 2010 to restrain the commercial fishing activities around these islands.[104] However, the Mauritius Government did not accept this decision of the UK since Mauritius claimed that the UK violated the international maritime laws. Thus, The Republic of Mauritius filed a lawsuit in the Permanent Court of Arbitration (PCA) to attain a verdict stating that the UK has violated the international maritime law and that Mauritius has sovereignty over the Chagos Archipelago. On 18 March 2015, the Court's concluded that Mauritius is sovereign in the Chagos Archipelago and, therefore, the displaced inhabitants of these islands have the right to return.[105] Despite the verdict of the Court, the UK has yet to act on executing the court order, instead deciding to extend the USA's lease duration.

100 HRC, UN Human Rights Committee (HRC), Consideration of reports submitted by States parties under article 40 of the Covenant: International Covenant on Civil and Political Rights: concluding observations of the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland, (2008), UN CCPR/C/GBR/CO/6, 6 para 22. <https://www.refworld.org/docid/48a9411a2.html> Erişim Tarihi 1 August 2019.

101 Owen Bowcott, 'Chagos Islanders cannot Return Home, UK Foreign Office Confirms' (16 November 2016) The Guardian <https://www.theguardian.com/world/2016/nov/16/chagos-islanders-cannot-return-home-uk-foreign-office-confirms> Erişim Tarihi 4 August 2019.

102 Alexandra and Koutouki (n 72) 389.

103 *Chagos Islanders v The United Kingdom* (2012) ECHR 2094, 35622/04 para 83.

104 Alexandra and Koutouki (n 72) 396.

105 *Chagos Marine Protected Area Arbitration* (*Mauritius v UK)* (2015) Permanent Court of Arbitration Rep 23.

Finally, the UNGA requested an advisory opinion from the ICJ in 2017 via Resolution 71/292, which inquired whether the decolonization process of Mauritius was lawfully completed according to UN resolutions and whether new consequences would emerge under UK's administration of the Chagos Archipelago within the context of international law.[106] This advisory opinion is the latest significant verdict over the process of decolonization of Mauritius in terms of the separation of the Chagos Archipelago and the displacement of its inhabitants. Numerous pages of written comments and oral statements were presented by several states, including the UK, Mauritius, the USA, and Seychelles, during the ICJ advisory opinion process. The UK, in particular, advocated that Mauritius had relinquished the islands of its own free consent during discussions over the decolonization of Mauritius.[107] On the contrary, Mauritius alleged that it did not have free consent during the process of the detachment of the islands and, thus, the process of decolonization has not been lawfully completed, further stating that the islanders displaced by the British have been continuing to experience human rights violations and should be permitted to return to the territories.[108] Ultimately, the ICJ rendered an advisory opinion on 25 February 2019 on the above-mentioned two questions forwarded by the UNGA. The Court stated that (i) 'the court concluded that as a result of the Chagos Archipelago's unlawful detachment and its incorporation into a new colony, known as the BIOT, the process of decolonization of Mauritius was not lawfully completed when Mauritius acceded to independence in 1968'[109] and (ii)'The Court concluded that the UK had an obligation to bring its administration of the Chagos Archipelago to an end as rapidly as possible and that all Member States must co-operate with the UN to complete the decolonization of Mauritius.'[110] Along with the advisory opinion, judges have stated their separate opinions over the issue with a supportive stance to this opinion, and even more, Judge Cançado Trindade has taken one step further by criticising the ICJ for not considering *'the fundamental right to self-determination in the domain of jus cogens -the primacy of conscience above the "will" and the rights of peoples beyond the strict inter-State outlook'*[111] beforehand and subsequently coming to a more precedent and judicious conclusion. As a result of the predominant stance of the ICJ, not only has the UK become liable to meet the recommendations of the Court but also the USA is now under legal pressure to renounce the occupation of the Chagos Archipelago in order to return the islanders in their homelands.

106 UNGA (n 50).

107 Written Statement of the United Kingdom (n 54) 84-88.

108 Written Statement of the Republic of Mauritius (n 41) 163-165, 212-218.

109 Mauritius (n 5) para 174.

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111 Separate Opinion of Judge Cançado Trindade (25.02.2019), *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion, 2019) 68 para 4. < https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-04-EN.pdf > Erişim Tarihi 19 May 2021.

## IV. Conclusions

The right to external self-determination, which has especially given rise to African countries achieving their independence and freedom, has continued to impact other cases in the international arena, including the process of the decolonization of Mauritius. This research has focused on the scope and content of the right to external self-determination of colonized peoples in light of the UN Charter and of UN resolutions, including Resolution 1514 (XV) and 2625 (XXV), as well as advisory opinions of the ICJ. Further, this paper has addressed whether the process of the decolonization of Mauritius was lawfully completed in conformity with international law with respect to the separation of the Chagos Archipelago and revealed what consequences were experienced by the displaced islanders in terms of the right to return and human right violations, including violation of the principle of *uti possidetis*.

As provided in all subsections of Chapter 2, individuals who can be qualified as '*people*' share various values, including cultural, social, historical, linguistic, religious, or ethnic characteristics, could claim the right to external self-determination. However, this definition alone is not adequate to attain independence in regards to external self-determination. In addition to this first criterion, this group of individuals has to be categorized as a colonized people living in non-self-governing territories as per Chapter XI and XII of the UN Charter. Thus, these non-self-governing regions must be under the domination of a colonialist state. In other words, the territories cannot utilize their resources at will and hold any power over itself or get in touch with international arenas. Additionally, the prerequisite for people suffering from under exploitation in a non-self-governing territory indicates that there is a strong legal tie between the people and those lands which could be defined as '*indigenousness*,' implying that the right to external self-determination is applicable to them. As a result, the peoples living in the territories with legal strong territorial relationship under the subjugation of other states have the right to request their independence and freedom according to the UN Charter (1945) and Resolutions 1514 (XV) and 2625 (XXV).

In addition to Chapter 2, the first subchapter of section 3 demonstrates that there were troubles over the period of Mauritius' decolonization by virtue of the partition of the Chagos Archipelago, which was renamed the BIOT and where the USA established a military base. Firstly, the BIOT, founded by the British, has violated of international law due to the fact the UNGA had adopted Resolution 1514 (XV) on 14 December 1960 so as to eradicate the colonialism system and forbid the detachment of partial or total territories from national integrity. Moreover, establishing a new colony for the purpose of fulfilling military objectives is certainly against international law with regard to the UN Charter and resolutions since the peoples who are miles away do not have to suffer from any burden for other states' interests. Secondly, the right to self-determination had been accepted as a customary international law during the

separation of the Chagos Archipelago and the decolonization of Mauritius, despite all statements of denial brought forth by the UK. The allegations of the UK, including that self-determination had not been accepted as customary law until 1970 via Resolution 2625 (XXV), are without merit. Therefore, the UK violated international customary law concerning the right to external self-determination during the period of Mauritius' decolonization, including the separation of the Chagos Archipelago. Thirdly, there was not any free consent or will of Mauritius when the agreements were concluded. The UK proposed strict articles for agreement with the freedom of Mauritius being dependent on the acceptance of the offer which excluded the Chagos Archipelago and included a grant of 3 million pounds. Although Mauritius came up with a proposal aiming to gain independence with the involvement of Chagos Archipelago and allowing the UK to lease those islands, these suggestions were not taken into account by the UK. There were no other opportunities presented to Mauritius for decolonization without the surrender of the Chagos Archipelago. As a consequence, agreements over the detachment of the mentioned islands and the decolonization of Mauritius were not bilateral or signed with the free consent of Mauritius' people.

In the last chapter, the research discusses what consequences were confronted by the people on Chagos Archipelago islands after the separation from the Mauritius administration. The violation of the principle of *uti possidetis* is one of the most substantial results of the depopulation of these islands. Even if the UK, for example in the discussion in the UNGA, claimed that only seagulls are indigenous to the islands whereas the islanders were just workers brought to the islands by colonists, Chagossians have provided evidence that they are, in fact, the people of the islands. The displaced inhabitants had been there over 200 years ago, when these first slaves established a new society with unique religious, linguistic, and cultural aspects. Moreover, subsequent generations have continued to contribute to this cultural and traditional evolution and to the bringing about of a distinctive culture. Therefore, the first slaves brought by French and British companies and other labourers brought from India and various parts of Africa formed a new type of group of people indigenous to the Chagos Archipelago within 200 years. This paper also argues another consequence about the islanders of that Archipelago, which is their right to repatriation. The exile of Chagossians has caused several serious human rights violations through means of statelessness, financial difficulties, and emotional trauma due to the fact that the Chagossians could not acquire compensation from the governments of Mauritius or the UK. As a result, the islanders have been facing a lot of problems in different countries as the uprooted indigenous people of the islands. Although the inhabitants of those islands attained their right to compensation thanks to the British courts, both national and international courts have tried to avoid rendering a verdict about the right to return, excluding the PCA's verdict (2015) and the ICJ Advisory Opinion (2019). The right to repatriation is among the most essential rights for these people to redress for their

suffering; therefore, all international actors should take affective measures in providing the indigenous people of these islands the ability to return to their ancestral territories.

This study has firstly posited that the decolonization of Mauritius has not been lawfully completed due to the separation of the Chagos Archipelago because there is a strong legal and cultural connection between Mauritius and the Chagos Archipelago. Additionally, there was no free consent on Mauritius' part while concluding the agreements over the detachment of the islands. Secondly, this paper has upheld that Chagossians are indigenous people of those islands, meaning they have the right to return to their homelands via support from the international community. Moreover, the study has supported the Chagossians having the right to self-determination; therefore, they should be able to hold a referendum to decide between reunification with Mauritius and independence as they are the indigenous people of these islands. Ultimately, the founding the new colony the BIOT as a non-self-governing territory was a violation of the territorial integrity of Mauritius and conflicted with international resolutions.

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## Appendices


Figure 1: Mauritius and Chagos Archipelagos Location in Indian Ocean[112]


Figure 2: Mauritius Map[113]

112 *Mauritius and Chagos Archipelagos Location in Indian Ocean*, <https://www.bbc.com/news/uk-47358602> last accessed 01.08.2019.

113 *Mauritius Map*, <https://www.google.co.uk/maps/> last accessed 01.08.2019.

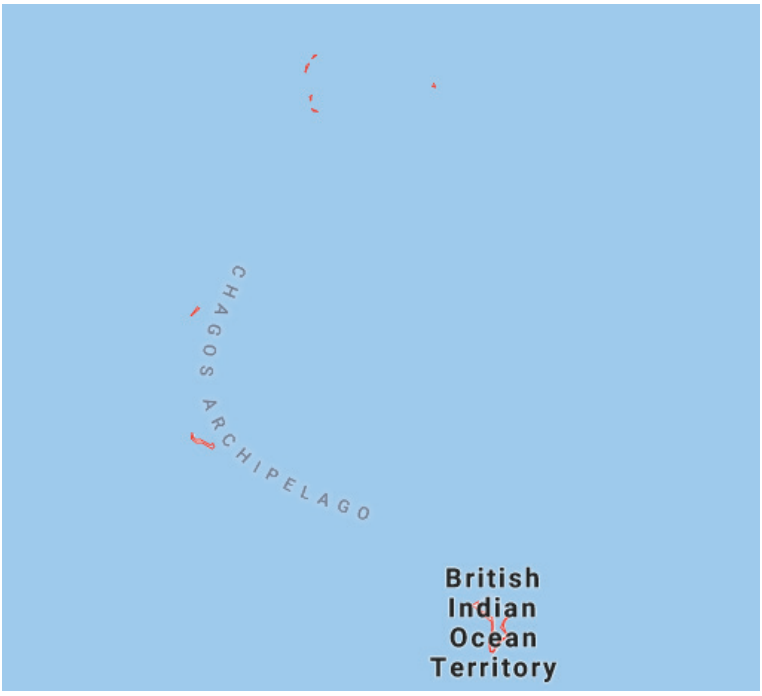


Figure 3: Chagos Archipelagos Map[114]

114 *Chagos Archipelagos Map*, <https://www.google.co.uk/maps/> accessed 01.08.2019.