

Case Nos. JACC-17413, JACC-17414

**FOREIGN CLAIMS ACT**

IN RE: DIEGO GARCIA ATOLL

REQUEST FOR RECONSIDERATION DE NOVO  
(32 CFR § 536.144)

Bernard Nourrice and Solomon Prosper in their personal capacities and as representatives of the  
Chagossian People

vs.

Naval Support Facility Diego Garcia et al.  
U.S. Naval Computer and Telecommunications Station Far East Detachment (NCTSFE DET)  
Maritime Pre-positioning Ship Squadron (COMPSRON ) TWO  
Military Sealift Command Office (MSCO)  
Naval Media Center Detachment Diego Garcia  
Naval Facilities Engineering Command Far East (NAVFAC FE), Diego Garcia  
Personnel Support Activity Detachment Diego Garcia (PSD)  
U.S. Fleet and Industrial Supply Center (FISC), Diego Garcia Detachment  
Air Mobility Command (AMC) Detachment ONE, 730 AMS  
Automated Remote Tracking Station (ARTS)  
Air Force Space Command (AFSPC) Detachment 2, 22nd Space Operations Squadron  
Ground-based Electro Optical Deep Space Surveillance (GEODSS) US Space Force  
Pacific Air Force (PACAF) Detachment ONE, 36 Mission Support Group (MSG)

This is a Request for Reconsideration for a Foreign Claims Act claim for damages under 10 U.S.C. §§ 2675, 2734, 2736, & Solatia Payment (*US Code of Federal Regulations*, Title 32, Chapter 5, § 536.145) by the following Claimants:

Bernard Nourrice and Solomon Prosper, citizens of the Republic of the Seychelles who were born on Diego Garcia Atoll in the Chagos Archipelago and forcibly deported therefrom in a crime against humanity by the United Kingdom to satisfy the terms of its Lease Agreement (*UK-US Exchange of Notes*) with the United States and constituting an act of military aggression and

occupation against the peaceful Chagossian people. The Claimants and Chagossians are excluded by Apartheid laws of the British Indian Ocean Territory from returning to their homes except for brief visits under military escort at the convenience of the military occupier; while military contractors, yachtsmen, and scientists are permitted unescorted access to the Chagos Archipelago. The Chagossians have never behaved in a hostile fashion to the United States military; their only “crime” is that they are of African descent and are considered by the United States and United Kingdom military to not have basic human rights in regards to their homeland.

The Claimants seek compensation for their emotional and economic damages, and future and past rents and leases as the rightful residents and owners of Diego Garcia Atoll.

The claim is against the U.S. Naval Support Facility at Diego Garcia Atoll and its components listed in the caption *supra*.

On October 28, 2020 the initial claim was denied on the following grounds:

“Payment of claims is not in the interest of the U.S. Government and both claims are denied.”

On December 8, 2020, amended claims including the US Space Force were denied on the following grounds:

“Payment of claims is not in the interest of the U.S. Government and both claims are denied.”

On January 20, 2021, President Joseph Biden was inaugurated President of the United States and Commander and Chief of the US Armed Forces replacing Donald Trump.

President Biden has styled himself as a champion of racial equality and crusader against apartheid in his successful campaign for president. See <https://joebiden.com/fact-joe-biden-was-a-leading-voice-in-the-senate-against-apartheid/> (Last Visited 2/8/2021) It is therefore logical to assume that the interest of the U.S. Government towards the Chagossians has changed.

Foreign Claims Act (10 USCS § 2734) or “FCA” provides ex gratia remedy which does not preclude later judicial relief; by electing to pursue remedy under Foreign Claims Act (10 USCS § 2734) and not those provided for in government contract, contractor did not waive its right to seek relief based on breach of contract claims for unliquidated damages not redressable under contract in Court of Claims [predecessor of United States Court of Federal Claims]. *Bird & Sons, Inc. v. United States*, 420 F.2d 1051, 190 Ct. Cl. 426 (Ct. Cl. 1970). *Doe v. United States*, 95 Fed. Cl. 546, 2010 U.S. Claims, LEXIS 886 (Fed. Cl. Nov. 22, 2010).

The FCA is permissive in that it does not require the Armed Forces to call a Claim Commission. In this case, the claim was summarily dismissed with no reason stated other than payment of claims was not in the interest of the government.

As of January 14, 2020, the Commander and Chief of the US Armed Forces is President Joseph Biden. His position on apartheid is abundantly clear, he does not tolerate it:

FACT: Joe Biden was a leading voice in the Senate against Apartheid

In 1976 Joe Biden traveled to a conference on South Africa near the peak of apartheid. When he arrived in Johannesburg he refused to be separated from his Congressional Black Caucus colleagues.

Joe's proud to have been a leading voice in the U.S. Senate against the white supremacist regime of apartheid. Hate must have no safe harbor—then and now.

Battle for the Soul of America, <https://joe Biden.com/fact-joe-biden-was-a-leading-voice-in-the-senate-against-apartheid/>

President Elect Biden is a staunch foe of Apartheid. The allegations against the Respondents include support for Apartheid. The priorities have the United States government may have shifted and this matter should be reconsidered *de novo*.

The Chagossians including the claimants, Nourrice and Prosper, are a people native the Chagos Archipelago including Diego Garcia Atoll (“Diego Garcia”). On Diego Garcia, some of the Chagossians lived for at least eight (8) generations until forcibly deported and prevented from returning by the British military. The Chagossians were also an oppressed people, descended from plantation workers and formerly indentured and enslaved peoples exploited by the French, British, and Mauritian plantation owners.

The Chagos Archipelago also known as British Indian Ocean Territory or “BIOT” has been the subject of long running sovereignty dispute involving mainly the United Kingdom and the Republic of Mauritius. The United Nations General Assembly has recently found that the United Kingdom is unlawfully occupying the Chagos Archipelago and that the entity known as British Indian Ocean Territory or BIOT is a legal nullity.

The United Kingdom, Mauritius and the United Nations agree that the claimants and the Chagossian people have inalienable rights to property in the Chagos Archipelago. This consists of the “right to resettlement and residence” as advocated by the Chagossians, the United Nations and Mauritius which equates to an allodial or communal title to Diego Garcia and the Chagos Archipelago with a reversion that has come due.

The United Kingdom recognizes at a minimum a “right to return without residence” which is akin to an easement or incorporeal hereditament interest in property although it also recognizes a reversion right after the joint US-UK military mission in the Chagos Archipelago is completed.

The right to resettlement clearly involves ownership of land or land rights while a right to return with an eventual reversion implies at a minimum some sort of communal property interest.

The Respondents therefore must consider their duties and obligations to Claimants pursuant to the *Foreign Claims Act* and related statutes (10 U.S.C. §§ 2675, 2734, 2736, & *US Code of Federal Regulations*, Title 32, Chapter 5, § 536.145).

The following information is taken verbatim from an entry in the United States Central Intelligence Agency *World Fact Book* (*The World Factbook 2020*. Washington, DC: Central Intelligence Agency, 2020) entitled “British Indian Ocean Territory:”

## Background

Formerly administered as part of the British Crown Colony of Mauritius, the British Indian Ocean Territory (BIOT) was established as an overseas territory of the UK in 1965. A number of the islands of the territory were later transferred to the Seychelles when it attained independence in 1976. Subsequently, BIOT has consisted only of the six main island groups comprising the Chagos Archipelago. Only Diego Garcia, the largest and most southerly of the islands, is inhabited. It contains a joint UK-US naval support facility and hosts one of four dedicated ground antennas that assist in the operation of the Global Positioning System (GPS) navigation system (the others are on Kwajalein (Marshall Islands), at Cape Canaveral, Florida (US), and on Ascension Island (Saint Helena, Ascension, and Tristan da Cunha)). The US Space Force and its contractor SERCO GROUP PLC also operates a telescope array on Diego Garcia as part of the Ground-Based Electro-Optical Deep Space Surveillance System (GEODSS) for tracking orbital debris, which can be a hazard to spacecraft and astronauts.

Between 1967 and 1973, former agricultural workers, earlier residents in the islands, were relocated primarily to Mauritius, but also to the Seychelles. Negotiations between 1971 and 1982 resulted in the establishment of a trust fund by the British Government as compensation for the displaced islanders, known as Chagossians. Beginning in 1998, the islanders pursued a series of lawsuits against the British Government seeking further compensation and the right to return to the territory. In 2006 and 2007, British court rulings invalidated the immigration policies contained in the 2004 BIOT Constitution Order that had excluded the islanders from the archipelago but upheld the special military status of Diego Garcia. In 2008, the House of Lords, as the final court of appeal in the UK, ruled in favor of the British Government by overturning the lower court rulings and finding no right of return for the Chagossians. In March 2015, the Permanent Court of Arbitration unanimously held that the marine protected area (MPA) that the UK declared around the Chagos Archipelago in April 2010 was in violation of the UN Convention on the Law of the Sea.

Claimants note the United States admits the Chagossians were “residents” who were “relocated” which is a euphemism for their involuntary removal and permanent deportation by British military occupiers from the Chagos Archipelago. The United States further acknowledges the displaced Chagossians were not satisfied with the subsequent attempts by the British government to extirpate their property rights in the Chagos Archipelago. These uncontroverted facts are a *prima facie* violation of *Geneva Convention IV* (1949) Article 49<sup>1</sup> on the transfer of civilian populations, a grave breach of Article 85(4)(a) of the 1977 *Additional Protocol*, and a war crimes violation of

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<sup>1</sup> The US Field Manual 27-10, *The Law of Land Warfare* (1956) as modified by Change Number One, July 15, 1976 at §382 reproduces Article 49 of the 1949 Geneva Convention IV.

Article 8(2)(b)(viii) of the 1998 ICC Statute (*Rome Statute of the International Criminal Court*), “[t]he transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies” constitutes a war crime.

Crimes Against Humanity are defined by Article 7 the Rome Statute of the International Criminal Court to include as follows :

Article 7-1:

(d) Deportation or forcible transfer of population;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(j) The crime of apartheid;

Article 7-2:

(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(g) "Persecution" means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

The acts of the United Kingdom military towards the Chagossians also violated their own rules; the *UK Law of Armed Conflict Manual* (2004) states:

Unlawful deportation or transfer is a grave breach of the [Fourth Geneva] Convention.

In its chapter on enforcement of the UK law of armed conflict, the manual notes:

Additional Protocol I extends the definition of grave breaches to include the following:

c. the following, when committed wilfully and in violation of the Conventions or the protocol:

(1) the transfer by the occupying power of part of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory.

The Claimants Nourrice and Prosper were among those forcibly “relocated.” The United States also admits that it was aware of and condoned the behavior of the United Kingdom towards the Chagossians and has consistently opposed any permanent Chagossian presence in the Chagos Archipelago even though as a leaseholder it has no claim to sovereignty.

The United Nations General Assembly requested an advisory opinion from the International Court of Justice which was rendered in February 2019 on the matter of the Chagos Archipelago and is incorporated herein by reference. The ruling of the International Court of Justice, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (Request for Advisory Opinion)*, 25, February 2019 (General List No. 169) stated :

The Chagos Archipelago consists of a number of islands and atolls. The largest island is Diego Garcia, located in the south-east of the archipelago. With an area of about 27 sq. km, Diego Garcia accounts for more than half of the archipelago’s total land area. (¶27)

Between 1814 and 1965, the Chagos Archipelago was administered by the United Kingdom as a dependency of the colony of Mauritius. From as early as 1826, the islands of the Chagos Archipelago were listed by Governor Lowry-Cole as dependencies of Mauritius. The islands were also described in several ordinances, including those made by Governors of Mauritius in 1852 and 1872, as dependencies of Mauritius. The Mauritius Constitution Order of 26 February 1964 (hereinafter the “1964 Mauritius Constitution Order”), promulgated by the United Kingdom Government, defined the colony of Mauritius in section 90 (1) as “the island of Mauritius and the Dependencies of Mauritius” (¶28)

On 8 November 1965, by the British Indian Ocean Territory Order 1965, the United Kingdom established a new colony known as the British Indian Ocean Territory (hereinafter the “BIOT”) consisting of the Chagos Archipelago, detached from Mauritius, and the Aldabra, Farquhar and Desroches islands, detached from Seychelles. (¶33)

On 16 December 1965, the General Assembly adopted resolution 2066 (XX) on the “Question of Mauritius”, in which it expressed deep concern about the detachment of certain islands from the territory of Mauritius for the purpose of establishing a military base and invited the “administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity”. (¶34)

Between 1967 and 1973, the entire population of the Chagos Archipelago was either prevented from returning or forcibly removed and prevented from returning by the United Kingdom. The main forcible removal of Diego Garcia's population took place in July and September 1971. (¶43)

In July 1980, the Organisation of African Unity (hereinafter the "OAU") adopted resolution 99 (XVII) (1980) in which it "demands" that Diego Garcia be "unconditionally returned to Mauritius". (45)

In July 2000, the OAU adopted Decision AHG/Dec.159 (XXXVI) (2000) expressing its concern that the Chagos Archipelago was "excised by the colonial power from Mauritius prior to its independence in violation of UN Resolution 1514". (¶47)

On 27 July 2010, the African Union adopted Decision 331 (2010), in which it stated that the Chagos Archipelago, including Diego Garcia, was detached "by the former colonial power from the territory of Mauritius in violation of [General Assembly] Resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965 which prohibit colonial powers from dismembering colonial territories prior to granting independence". (¶49)

In the early nineteenth century, several hundred persons were brought to the Chagos Archipelago from Mozambique and Madagascar and enslaved to work on coconut plantations owned by British nationals who lived on the island of Mauritius. In the 1830s, 60,000 enslaved persons in Mauritius, including those in the Chagos Archipelago, were set free (¶113)

To date, the Chagossians remain dispersed in several countries, including the United Kingdom, Mauritius and Seychelles. By virtue of United Kingdom law and judicial decisions of that country, they are not allowed to return to the Chagos Archipelago. (¶131)

The Court concludes 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. (¶174)

The United Kingdom is under an obligation to bring an end to its administration of the Chagos Archipelago as rapidly as possible, thereby enabling Mauritius to complete the decolonization of its territory in a manner consistent with the right of peoples to self-determination (¶178)

The official position of the US State Department on the British Indian Ocean Territory (BIOT) is:

The United States supports the U.K.'s continued sovereignty over the British Indian Ocean Territory (BIOT) and the April 30 [2019] statement by the U.K. Government...The United States views the BIOT issue as a purely bilateral dispute between the U.K. and Mauritius, which can and should be addressed through efforts by both parties to negotiate a solution. (The United States Recognizes the United Kingdom's Continued Sovereignty Over the British Indian Ocean Territory, Press Statement, Morgan Ortagus, Department Spokesperson, May 6, 2019. [<https://www.state.gov/the-united-states-recognizes-the-united-kingdoms-continued-sovereignty-over-the-british-indian-ocean-territory/>])

The British position of April 30, 2019 adopted by the US government *supra* states:

Further to my Written Statement of 26 June 2017 (HCWS10), on 25 February the International Court of Justice (ICJ) issued an Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965. We were disappointed that this matter was referred to the International Court of Justice, contrary to the principle that the Court should not consider bilateral disputes without the consent of both States concerned. Nevertheless, the United Kingdom respects the ICJ and participated fully in the ICJ process at every stage and in good faith. An Advisory Opinion is advice provided to the United Nations General Assembly at its request; it is not a legally binding judgment. The Government has considered the content of the Opinion carefully, however we do not share the Court's approach.

As outlined in the previous Written Ministerial Statement, we have no doubt about our sovereignty over the Chagos Archipelago, which has been under continuous British sovereignty since 1814. Mauritius has never held sovereignty over the Archipelago and we do not recognise its claim. **We have, however, made a long-standing commitment since 1965 to cede sovereignty of the territory to Mauritius when it is no longer required for defence purposes. We stand by that commitment.** [Emphasis Added]

British Indian Ocean Territory :Written statement - HCWS1528, 30 April 2019 [<https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-04-30/HCWS1528/>]

The United Nations General Assembly on May 22, 2019 declared in Resolution 73/295, *Advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965*:

1. Welcomes the advisory opinion of the International Court of Justice of 25 February 2019 on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965;
2. Affirms, in accordance with the advisory opinion of the Court, that:



(a) Because the detachment of the Chagos Archipelago was not based on the free and genuine expression of the will of the people of Mauritius, the decolonization of Mauritius has not been lawfully completed;

(b) The Chagos Archipelago forms an integral part of the territory of Mauritius;

(c) Since the decolonization of Mauritius was not conducted in a manner consistent with the right of peoples to self-determination, it follows that the continued administration of the Chagos Archipelago by the United Kingdom of Great Britain and Northern Ireland constitutes a wrongful act entailing the international responsibility of that State;

(d) The United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible;

(e) Since respect for the right to self-determination is an obligation *erga omnes*, all States have a legal interest in protecting that right and all Member States are under an obligation to cooperate with the United Nations in order to complete the decolonization of Mauritius;

(f) The resettlement of Mauritian nationals, including those of Chagossian origin, must be addressed as a matter of urgency during the completion of the decolonization process;

3. Demands that the United Kingdom of Great Britain and Northern Ireland withdraw its colonial administration from the Chagos Archipelago unconditionally within a period of no more than six months from the adoption of the present resolution, thereby enabling Mauritius to complete the decolonization of its territory as rapidly as possible;

4. Urges the United Kingdom of Great Britain and Northern Ireland to cooperate with Mauritius in facilitating the resettlement of Mauritian nationals, including those of Chagossian origin, in the Chagos Archipelago, and to pose no impediment or obstacle to such resettlement;

5. Calls upon all Member States to cooperate with the United Nations to ensure the completion of the decolonization of Mauritius as rapidly as possible, and to refrain from any action that will impede or delay the completion of the process of decolonization of Mauritius in accordance with the advisory opinion of the Court and the present resolution;

6. Calls upon the United Nations and all its specialized agencies to recognize that the Chagos Archipelago forms an integral part of the territory of Mauritius, to support the decolonization of Mauritius as rapidly as possible, and to refrain from impeding that process by recognizing, or giving effect to any measure taken by or on behalf of, the "British Indian Ocean Territory";

7. Calls upon all other international, regional and intergovernmental organizations, including those established by treaty, to recognize that the Chagos Archipelago forms an integral part of the territory of Mauritius, to support the decolonization of Mauritius as rapidly as possible, and to refrain from impeding that process by recognizing, or giving effect to any measure taken by or on behalf of, the “British Indian Ocean Territory...”

The UN therefore adopted in full the ICJ ruling on the Chagos Archipelago that the United Kingdom was occupying the territory of Mauritius in violation of international law and was required to vacate and not hinder the resettlement of the Chagossians on their own property. The UN recognized the Chagossians have a property right in the Chagos Archipelago including Diego Garcia Atoll *ergo* the right to resettlement which implies they are the rightful residents and property owners. Finally, the United Nations found that the British Indian Ocean Territory entity was illegitimate *ab initio* and all UN member states and International government organizations advised not to recognize it.<sup>2</sup>

The United Kingdom was provided a hard deadline of November 22, 2019 to withdraw from the Chagos Archipelago. The United Kingdom did not withdraw and continues to bar the Chagossians from their homeland. Any findings by British or BIOT courts regarding the Chagos Archipelago are illegitimate as the United Kingdom’s putative claims of sovereignty ended on or about November 22, 2019.

The United States Navy, Space Force and Airforce continue to operate its joint base on Diego Garcia Atoll which was the original reason for the unlawful removal Chagossians and their continuing exile.

The Claimants on their own behalf and as representatives of the Chagossian people are within the two year statute of limitation imposed by the Foreign Claims Act. Based on the UN General Assembly Resolution 73/295 as of November 22, 2019, the United Kingdom no longer had a colorable claim to the Chagos Archipelago and that it and its leasee the United States had become military occupiers *nunc pro tunc* as of 1965.

Military Occupation is an issue of fact which must be viewed in terms of the following:

1. While there is a civilian Commissioner of the BIOT Administration who sits primarily in London along with a Magistrates Court, A Supreme Court and Court of Appeals and Legal Advisor, the actual military occupation of the Chagos Archipelago is carried out by a Diego Garcia based Royal Navy Commander, who is appointed as the Commissioner’s Representative (known locally as “BritRep”). The “BritRep” also functions as the local Magistrate. The “BritRep” is also the Officer commanding the British Forces in Diego Garcia. The post is currently held by Commander Kay Burbidge.

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<sup>2</sup> See also Geneva Convention IV, art. 47 regarding puppet governments.

2. The United Kingdom's admits that it will cede the Chagos Archipelago to Mauritius once its military objectives there were achieved.
3. Mauritius and not the United Kingdom is recognized by the United Nations as sovereign in the Chagos Archipelago.
4. The United Kingdom admits that its treatment of the Chagossians violated international law and that their resettlement rights remain but cannot be acted upon while the US base at Diego Garcia is active. There is no question the removal and continuing statutory exile of the Chagossians, including Nourrice and Prosper, was forcible and without any justification and was based solely on their ethnicity as Chagossians.
5. In the ICJ oral proceedings, the United Kingdom reiterated that it "fully accepts that the manner in which the Chagossians were removed from the Chagos Archipelago, and the way they were treated thereafter, was shameful and wrong, and it deeply regrets that fact". ( ICJ ¶116)
6. The United Nations General Assembly position is that the Chagos Archipelago be immediately decolonized and the British Indian Ocean Territory is delegitimized and a legal nullity.

Apartheid is a codified form of racial discrimination in which the Chagossians as an African people have had their rights to their homes and property codified in the BIOT Constitution and British Indian Ocean Territory (Immigration) Order 2004 which denies the right of abode or even presence to Chagossians who lack a permit from Military Occupying Authority. Violators are subject to removal and potential criminal sanctions. Currently, Chagossians can book so called "heritage visits" under strict BIOT guidelines and supervised by minders; the costs for such visits being paid by money held by the United Kingdom as supposed restitution for the crimes committed against the Chagossians and to be used in lieu of resettlement. The claimants reject this misuse of supposed restitution funds to pay their oppressors and occupiers.

The British Indian Ocean Territory Constitution Order 2004 states :

No right of abode in the Territory

(1) Whereas the Territory was constituted and is set aside to be available for the defence purposes of the Government of the United Kingdom and the Government of the United States of America, no person has the right of abode in the Territory.

(2) Accordingly, no person is entitled to enter or be present in the Territory except as authorised by or under this Order or any other law for the time being in force in the Territory.

Disposal of land

14. Subject to any law for the time being in force in the Territory and to any instructions given to the Commissioner by Her Majesty through a Secretary of State, the Commissioner, in Her Majesty's name and on Her Majesty's behalf, may make

and execute grants and dispositions of any land or other immovable property within the Territory that may lawfully be granted or disposed of by Her Majesty.

The Occupying Power therefore has not only banned the Chagossians but has confiscated their property for its own use and use by its leasee (the Respondents) and their contractors. The so called restitution is a farce and has been controlled and debited by the United Kingdom and/or BIOT to pay their own expenses in oppressing the Chagossians and preventing them free access to their own property.

### **Claimants:**

The Claimants are Chagossians. The named claimants were born on Diego Garcia and are citizens of the Republic of the Seychelles . The Chagossians had lived on Diego Garcia for up to 8 generations. By 1971 all had been removed from Diego Garcia by the UK military. Many Chagossians including Prosper were concentrated on the outer BIOT island of Peros Banhos where they subsisted under primitive conditions without proper medical or food supplies until evacuated in 1973. Some Chagossians died when they were liquidated from the Chagos Islands and others shortly thereafter when abandoned in the Seychelles or Mauritius. The Chagossians to this day are prevented from returning home by the British military and continue to be excluded from their property on Diego Garcia.

Claimants were provided irregular, token and scant benefits which the United Kingdom has conflated with payment. Likewise, the United Kingdom holds approximately £40 million which it claims is restitution. However, instead of distributing these funds to the Chagossians as such, the United Kingdom and BIOT Administration fund their own program of Chagossian exclusion which serves the purpose solely the designs of the United Kingdom. The United States has made no payments to the Chagossians even though claimants like Prosper were born on Diego Garcia

The five decades of overall misery, separation anxiety, and economic and cultural deprivation suffered by the Chagossians is well documented; the informal testimony this this video is representative of the claims: [https://youtu.be/\\_oDqyjMF5v0](https://youtu.be/_oDqyjMF5v0) (Let Us Return - The Story of the Chagos Islanders – 2015).

Bernard Nourrice was born in 1955 on Diego Garcia Atoll. Nourrice continues to be emotionally affected by the loss of his homeland to this day which is so upsetting to him that he has trouble translating his sorrow into words. Like all Chagossians, he yearns to return home to Diego Garcia.

Solomon Prosper was born in 1970 on Diego Garcia Atoll and he submits the following statement regarding his connection to the land and the effect of its loss:

Life in the Chagos Archipelago from way back to the stories of our ancestors was peaceful, happy, and a big family. The sea and marine life to us were navigable with an instinct or history of where to find different sources of seafood and life and the joy of it is compared to heaven. This I realised when once in the Congo jungle found myself lost but to the locals the best place to be. I concluded the jungle to them is like the sea for me. The Chagossians thus knew how to feed their families

from the sea and from land through farming and breeding of livestock and to enjoy life through our old cultures, dances, music and food. We had all of the basic amenities of life as found generally around the world at the time such as a school and school teachers, clinic and nurses and medical assistant and midwife, churches, prison, administrator's house, every family with their own home, copra house, shops, metal workers, carpenters, labourers and fishermen.

The British and Americans forced us out of our dream life and many described an abrupt deportation as they were not prepared/understand to go. They were forced out where cooking pots were left on the stoves, clothes left on the line outside and were allowed one suitcase and a mattress per family. Most of their belongings were left behind and the homes were locked behind them. The Americans assisted in killing of our pet dogs and kept our livestock and belongings for themselves. We were marched to the boats before nightfall to unknown destinations. Many families were separated for life between Mauritius and Seychelles and were looked upon and treated as illegal immigrants. Most of the Chagossians were made homeless overnight. In Seychelles some slept under coconut trees for months, a lot in prison and others under the protection religious or charitable organisations ( e.g. Bahai Centre). In Mauritius most started their life homeless by the roadside and later in slums. The social hardships and difficulties of the Chagossian communities till today are at a worrying level and requires some sort of therapy and rehab to alleviate. Many Chagossians have been exploited and abused physically, sexually, and have resorted to theft to survive. Others have fallen victim to drugs abuse and there have been many premature deaths and depression. We are still very much lost outside of our Chagos Archipelago and remain in a condition of general poverty.

The value of the Respondent's leasehold on Claimant's property can be valued in terms of comparable properties. A comparable leased property is Camp Lemonier, Djibouti, which costs the United States approximately \$70 million per year to lease according to the New York Times.<sup>3</sup>

### **Jurisdiction:**

The named claimants are citizens of the Republic of the Seychelles and resident there. Other Chagossians are to be found in the Seychelles, Mauritius, Madagascar and the United Kingdom.

On or about November 22, 2019, the United Nations General Assembly time limit for the United Kingdom to withdraw from the Chagos Archipelago expired at which point the British Indian Ocean Territory political entity was rendered void *ab initio* and the military occupation confirmed *nunc pro tunc*.

The Respondents are in possession of various facilities on Diego Garcia Atoll leased from the United Kingdom pursuant to the terms of several agreements termed "Exchange of Notes" in 1966, 1972, 1976, and 1987.

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<sup>3</sup> Eric Schmitt, NY Times, "U.S. Signs New Lease to Keep Strategic Military Installation in the Horn of Africa." May 5, 2014. [<https://www.nytimes.com/2014/05/06/world/africa/us-signs-new-lease-to-keep-strategic-military-installation-in-the-horn-of-africa.html>]

In order to meet the preconditions of the United States, the United Kingdom deported the claimants from the Chagos Archipelago. The Claimants did not accede to be deported from their homes and were provided no due process and scant or nonexistent resettlement funds. Subsequent funding provided to them by the United Kingdom or third parties was inadequate, illusory or nominal. The Chagossians have suffered great privations including lack of jobs, housing, and medical care.

The Chagossians are the descendants of formerly enslaved peoples, plantation workers and indentured workers who were often brought from Africa and elsewhere against their will. Slavery was outlawed in the Chagos Archipelago by 1840 and their status changed to that of “apprentices” but in reality, were treated as indentured workers by the former slaveholders. Former slaves received no grants of property. A single company eventually consolidated ownership over the various islands then passed ownership to a Mauritian company which purportedly sold the entire Archipelago to the British Crown without consulting or obtaining the consent of the inhabitants who were born there as in the case of the claimants or lived there for generations and obtained rights of abode through prescription, family or customary law.

The Chagossians including Claimants are therefore dispossessed property owners. The wrongful acts committed by the United Kingdom has not extinguished their individual and communal property rights. The BIOT’s constitution and laws are not applicable as the Chagossians are not citizens or residents of that entity. The US military base at Diego Garcia has been erected and operated without the consent of the Chagossians who now demand compensation under the Foreign Claims Act based on local law and the many admissions against interest by the British government.

**The applicable local law as to restitution is the law of Mauritius and the Seychelles.**

*US Code of Federal Regulations*, Title 32, Chapter 5, § 536.139(a) states

(a) Venue of incident and domicile of claimant. In determining an appropriate award, apply the law and custom of the country in which the incident occurred to determine which elements of damages are payable and which individuals are entitled to compensation. However, where the claimant is an inhabitant of another foreign country and only temporarily within the country in which the incident occurred, the quantum of certain elements of damages, such as lost wages and future medical care, may be calculated based on the law and economic conditions in the country of the claimant's permanent residence. Where the decedent is the subject of a wrongful death case, the quantum will be determined based on the country of the decedent's permanent residence regardless of the fact that his survivors live in the U.S. or a different foreign country than the decedent.

As noted *supra*, the United Kingdom presence in the Chagos Archipelago has ripened into a military occupation *nunc pro tunc* and its “fig leaf”, the BIOT, has been delegitimized by the United Nations *ab initio*. Under international law and specifically Article 64 of the *Fourth Geneva Convention* and Article 43 of the *Hague Convention IV of 1907*, the United Kingdom occupies the Chagos Archipelago, a territory of the Republic of Mauritius, by military force thus the

applicable law of the UN recognized sovereign Mauritius will apply as well as the domicile of the claimants which is the Republic of the Seychelles, both of which specifically includes The African Charter on Human and Peoples' Rights.

Article 43 of the Hague Convention IV of 1907 states: The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

Article 64 of the Fourth Geneva Convention states: “The penal laws of the occupied territory shall remain in force...” According to the 1958 Commentary on Article 64, “penal laws” actually include all applicable laws:

The idea of the continuity of the legal system applies to the whole of the law (civil law and penal law) in the occupied territory. The reason for the Diplomatic Conference making express reference only to respect for penal law was that it had not been sufficiently observed during past conflicts; there is no reason to infer *a contrario* that the occupation authorities are not also bound to respect the civil law of the country, or even its constitution.

Mauritius and the Seychelles are state parties to the African Charter on Human and Peoples' Rights, the relevant articles of which state:

#### ARTICLE 14

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

#### ARTICLE 19

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

#### ARTICLE 20

1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.

3. All peoples shall have the right to the assistance of the State Parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

#### ARTICLE 21

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it

2. In case of spoliation, the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.

3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.

4. State Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African Unity and solidarity.

5. State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

#### ARTICLE 22

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

The Bogota Declaration, December 3, 1976, proposes that geostationary orbit is a natural resource. To the extent that the US Space Force and its contractor SERCO GROUP PLC plan to exploit that resource, the claimants give notice of their claim to that resource.

The deliberate and calculated actions of the Military Occupier sought to destroy the very identity of the Chagossian people. The Chagossians rights to their own property has been legislated out of existence. They have been given no say in the economic, social, and cultural development of the Chagos Islands. The United Nations and African Union have found the United Kingdom presence in the Chagos Archipelago to be illegitimate. The Chagossians therefore have every intention of enforcing their rights for rents, trespass to property and chattel, restitution, quiet enjoyment, tortious interference with business and emotional distress and outrage.



## **Liability**

The Respondents were aware of the unlawful deportation of the Chagossians and their subsequent claims. The Respondents hold themselves out as having no duty to the Chagossians on the theory that the national security of the United States and the United Kingdom takes precedence over property rights. At no time did Respondents attempt to ameliorate or mitigate the damages to the Claimants and have stood in the way of resettlement. The Respondents did not permit the Chagossians to return to their home as workers or laborers but at all times supported the British Apartheid rules which banned Chagossians and even now assesses Chagossians costs against a purported restitution fund for visits to cultural sites and burial grounds.

The Respondents continue to support the British government even after the military occupation was created *nunc pro tunc* on or about November 22, 2019. The Respondents continue to recognize the illegitimate BIOT entity despite ample notice from the United Nations to cease doing so.

It however is irrelevant as to potential liability whether these actions were justified by military necessary, were intentional or negligent. Neither is this a question of US policy and politics, the Claimants seek only damages and compensation under the Foreign Claims Act and related statutes from Respondents

A Joint Forces Claims Commission (Navy, Air Force, US Space Force) should be convened to decide the various issues and damages under the local law applicable to the Claimants.

## **Damages:**

Damages are calculated under the applicable rule which is *US Code of Federal Regulations*, Title 32, Chapter 5, § 536.139(b):

(b) Other guidance. The guidance set forth in §§ 536.77(b) through (d) as to allowable elements of damages is generally applicable. Where moral damages, as defined in DA Pam 27-162, paragraph 2-53c(4), are permitted, such damages are payable. In some countries it is customary to get a professional appraisal to substantiate certain claims and pass this cost on to the tortfeasor. The Commander USARCS or the chief of a command claims service may, as an exception to policy, permit the reimbursement of such costs in appropriate cases. Where feasible, claimants should be discouraged from incurring such costs.

Taking all these factors into consideration Nourrice and Proper as original inhabitants of Diego Garcia request the statutory maximum of \$100,000 each for emotional distress and property damages.

Further a solatium payment is requested to be made to all Chagossians over age 75.

## **Conclusion**

The Claimants seek a permanent settlement with the US Navy, Space Force and Airforce. Any claims settled under this procedure are considered binding upon Claimants and their successors in interest. Claimants are represented by US counsel who is also a member of the bars of Naval Criminal Appeals Court and US Military Court of Appeals and who has represented claimants in complex restitution matters. Claimants have been advised that if a Claims Commission convened, an award rendered and accepted, this is a final settlement of all claims against the US military regarding Diego Garcia Atoll. Claimants do not waive any remedy against other parties including the United Kingdom.

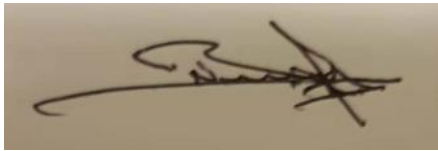
The Claimants request the following:

1. A Military Joint Forces Claims Commission be established for Diego Garcia Atoll related claims.
2. Claimants and other Chagossians similarly situated be permitted to submit their claims to the Claims Commission.
3. Claimants request economic and emotional damages in the amount of \$100,000 each and advance payments of \$10,000 each under 10 U.S. Code § 2736.

Respectfully submitted February 8, 2021,



Dr. Jonathan Levy  
Unit 7810, PO Box 6945, London, W1A 6US  
United Kingdom  
info@jlevy.co  
Tel +44 (0) 20 8144 2479  
Fax +1 202 478 19



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Bernard Nourrice, Claimant and as Class Representative of the Chagossian People



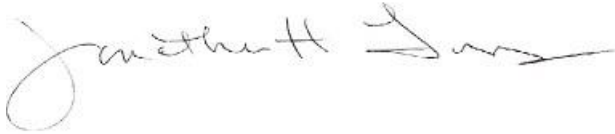
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Solomon Prosper, Claimant and as Class Representative of the Chagossian People

STATEMENT OF SERVICE BY LEGAL REPRESENTATIVE

I certify I am Legal Representative for Claimants and that on February 9, 2021, I served this Claim by prepaid mail US Mail as follows:

AF/JACC  
Attention: Chief, Foreign Torts & Litigation Branch  
1500 West Perimeter Road, Suite 1700  
Joint Base Andrews, MD. 20762

A handwritten signature in cursive script, appearing to read "Jonathan H. Levy". The signature is written in dark ink on a white background.

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Dr. Jonathan Levy