



Claim Form

IN THE SUPREME COURT OF THE
BRITISH INDIAN OCEAN TERRITORY

	for court use only
Claim no.	BIOT SC 2021-1
Issue date	27 th April 2021

Claimant(s)

BERNARD NOURRICE
SOLOMON PROSPER

In their individual capacities and as class representatives of the Chagossian and Ilois people.



Defendant(s)

HER MAJESTY, THE QUEEN

Name and address of Defendant receiving this claim form

Commissioner
BIOT Administration
Overseas Territories Directorate
Foreign, Commonwealth & Development Office
King Charles Street
SW1A 2AH

	£
Amount claimed	1,000,000,000 BIOT
Court fee	--
Legal representative's costs	tba
Total amount	1,000,000,000 BIOT

Claim no.

BIOT SC 2021 - 1

Brief details of claim

Claimants seek damages in the amount of £1,000,000,000 BIOT.

In compensation for loss of indigenous fishing rights as specified in the Particulars of the Claim.

The Claimants seek:

1. Damages in the amount of £1,000,000,000 BIOT payable by currency or license
2. Costs and Legal Fees
3. Further or other relief as necessary to be made whole.



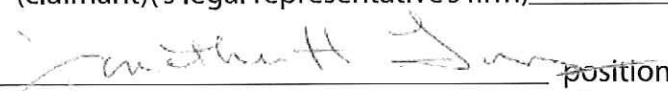
Statement of Truth

*(I believe)(The Claimant believes) that the facts stated in this claim form *(and the particulars of the claim attached to this claim form) are true.

* I am duly authorised by the claimant to sign this statement

Full name JONATHAN H LEVY

Name of *(claimant)(('s legal representative's firm) JONATHAN H LEVY, SOLICITOR & ATTORNEY

signed  position or office held SOLICITOR AGENT

*(Claimant)(('s legal representative)

(if signing on behalf of firm, company or corporation)

**delete as appropriate*

Dr. Jonathan Levy
Attorney & Solicitor
Unit 7810, PO Box 6945, London, W1A 6US
United Kingdom
info@jlevy.co
Tel +44 (0) 20 8144 2479
Fax +1 202 478 1970

Claimant's or legal representative's address
to which documents or payments should be
sent if different from overleaf including (if
appropriate) details of DX, fax or e-mail.



Claim No. BIOT SC 2021-1

IN THE SUPREME COURT OF THE BRITISH INDIAN OCEAN TERRITORY

BETWEEN:

BERNARD NOURRICE & SOLOMON PROSPER

In their Individual Capacities and as Class Representatives of the Chagossian and Ilois People

Claimants

-and-

HER MAJESTY THE QUEEN

Defendant

PARTICULARS OF CLAIM

Parties

1. Claimant, **BERNARD NOURRICE**, is a resident of the Republic of the Seychelles and was born on Diego Garcia Atoll, British Indian Ocean Territory (BIOT)
2. Claimant **SOLOMON PROSPER**, is a resident of the Republic of the Seychelles and was born on Diego Garcia Atoll, British Indian Ocean Territory (BIOT).
3. Both Claimants are *Ilois* as defined under Section 6 of the British Overseas Territories Act 2002:

The Ilois: citizenship

(1) A person shall become a British citizen on the commencement of this section if—

(a) he was born on or after 26 April 1969 and before 1 January 1983,

(b) he was born to a woman who at the time was a citizen of the United Kingdom and Colonies by virtue of her birth in the British Indian Ocean Territory, and

(c) immediately before the commencement of this section he was neither a British citizen nor a British overseas territories citizen.

4. Both the Claimants are also **Chagossians** who are indigenous to the Chagos Archipelago and some of whose ancestors inhabited the islands prior to British occupation, which for the purpose of this pleading includes:

a. People formerly resident in the Chagos Archipelago prior to 1974.

b. Descendants of people formerly resident in Chagos Archipelago prior to 1974 who identify as Chagossians.

And who may be descended from formerly enslaved, indentured, contracted laborers or apprenticed peoples who made their homes in the Chagos Archipelago.

5. For the purpose of this claim, Claimants ask to be recognized as class representatives of the Chagossians and Ilois for collective claims.

6. **HER MAJESTY THE QUEEN**, the Defendant, is the head of state of the British Indian Ocean Territory (BIOT) and governs through a Commissioner for the Territory who is appointed by Her Majesty by instructions given through the Secretary of State and who shall hold office during Her Majesty's pleasure; the Commissioner has been provided substantial notice of these claims herein on December 17, 2020 and February 4, 2021 and has not acted upon them or otherwise reacted.

Indigenous Fishing Rights (Piscary)

7. This is a collective and individual claim for damages as a result of the intentional denial and confiscation of indigenous fishing rights or piscary resulting from the forcible exclusion of the Chagossians from the Chagos Archipelago by Her Majesty's Armed Forces after 1973 and their exclusion thereafter.

8. The current operative statute is British Indian Ocean Territory Constitution Order 2004 Section 9(b) which while not addressing Indigenous Fishing Rights vests Her Majesty's Commissioner with sole discretion to decide who may enter the territory and fish; for

example the Commissioner permits noncommercial recreational fishing for personal consumption by visiting yachts while excluding the economically disadvantaged Chagossians who do not own yachts:

There is no fishing in the entire BIOT Marine Protected Area. The only exception to this is to allow visiting yachts to fish for their own consumption (no more than three days' worth, without freezing) and only with a hand line. [<https://biot.gov.io/visiting/mooring-permits/>]

9. A piscary is defined as is the legal name of a right to catch and take away fish which was exercised regularly by the Chagossians from the 18th Century until 1973 and was an integral part of their Ilois and Chagossian cultural heritage which was integrally connected to the Indian Ocean.

10. Indigenous Fishing Rights refers of the noncommercial, nonexclusive right to fish and collect shellfish in British Indian Ocean Territory territorial waters, the right to transit territorial waters, the right to collect shell fish, bêche-de-mer and seaweed to the high tide line, and the right to temporarily access beaches to fish, minimally process and secure catches.

11. British Indian Ocean Territory Constitution Order 2004 Section 9(b) and its predecessor statutes as well as the practices of the British Indian Ocean Territory Administration conflict with Indigenous Fishing Rights and the piscary rights of the Ilois and Chagossian people by excluding them from the Chagos Archipelago.

12. International Law as well as the laws of Canada, New Zealand, Australia, and the United States recognizes the customary fishing rights of indigenous peoples.

13. The common law also recognizes fishing rights: “[T]he common people of England have regularly a liberty of fishing in the sea or creeks or arms thereof, as a public common of piscary.” *De Jure Maris et brachiorum ejusdem* (1888 ed), p 11.

14. Article 27 of the International Covenant on Civil and Political Rights provides for the right of ethnic minorities to enjoy their own culture by precluding any action of others which interferes with this enjoyment. The Human Rights Committee, in General comment 23 (1994), stated that the right includes traditional activities of indigenous peoples such as hunting and fishing.

15. The United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295 7) states in Article 20.1 Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. And in Article 20. 2 Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

16. The International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) includes numerous provisions which

provide protections for indigenous rights to fishing. First, article 6 imposes a duty on governments to consult with its peoples to establish means by which they can freely participate in, and fully develop, their own institutions and initiatives. More specific to fishing rights is article 15, which supports the protection of material bases of indigenous peoples' culture by safeguarding their right to the natural resources of their lands. Article 13 provides that the term "lands" is to be given a wide meaning to include all "areas which the peoples concerned occupy or otherwise use".

17. The African Charter on Human and Peoples' Rights Article 21 at (1) states: "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." Section (2) states: "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." The Chagossians are an African people with direct ties to the African Charter state parties, Mauritius and the Seychelles.

18. The United Nations General Assembly, International Tribunal for the Law of the Sea, and International Court of Justice have all opined or ruled that British Indian Ocean Territory is the territory of Mauritius and must be decolonized.

19. The Claimants and those they represent have been denied their indigenous fishing rights since 1973 but have not been compensated specifically for the temporary loss of these rights.

20. Any alleged compensation paid by the Defendant did not include fishing rights.

21. The British Indian Ocean Territory was a member of the United Nations Indian Ocean Tuna Commission as "UKBIOT" until December 2020 at which time its membership was taken over by the United Kingdom, by maintaining membership in good standing in a United Nations organization; the UKBIOT constitutional entity generally acknowledged the existence of international law as to fishing rights.

Economic Value of Fishing Rights

22. As of 2008, scholarly research opined that Chagossian land based claims related to their expulsion from the Chagos Archipelago amounted to: "[U]ncompensated damages suffered by the Chagossians from 1970 through 2008 totaled between \$5.4 billion and \$13.2 billion (expressed in 2008 international dollars). See: Vine, D, Harvey, P. and Sokolowski W. (2012). Compensating a People for the Loss of Their Homeland: Diego Garcia, the Chagossians, and the Human Rights Standards Damages Mode. *Northwestern Journal of Human Rights*. Volume 11, Issue 1, Article 6.

23. The damages estimated by Vine et al. ¶22 *supra* did not include indigenous fishing rights but concentrated on land holdings while it did not account for the access to the lagoons and ocean waters around the islands to which Chagossians had previously enjoyed for generations rights to fishing, recreational, cultural and economic development purposes.

24. Therefore indigenous fishing rights, not commercial fishing, have both an intrinsic and extrinsic value, in this case a value of £1 billion BIOT that accounts for all losses from 1973 to the present.

Recognition of Indigenous Fishing Rights of Similar Overseas Territories

25. Her Majesty recognizes customary native fishing rights in Her similar overseas territory of the Pitcairn Islands which like the Chagos Archipelago contained a community of residents prior to British occupation; Pitcairn like BIOT also contains a Marine Protected Area.

26. In the Pitcairn Islands, the indigenous natives' right to subsistence fishing is recognized by law. See Pitcairn Islands Marine Protected Area Ordinance (2016) which at Part 3, Section 9 allows for fishing rights by natives even in the Marine Protected Area.

Indigenous Fishing Rights have not been Extinguished by Expulsion of Chagossians

27. The Defendant by its wrongful action has transformed Chagossian Indigenous Fishing Rights into an Incorporeal Hereditament which while not available to the Chagossians at present still has value, is inheritable and may contingently vest in the future when sovereignty is transferred to the Republic of Mauritius and/or the status of the Chagos Archipelago otherwise changes as has been promised by the United Kingdom.

28. The law of England defines property thusly: "property" includes money, goods, things in action, land and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent, arising out of, or incidental to, property. (1986 Bankruptcy Act, s 436).

29. An Incorporeal Hereditament is anything, the subject of property, which is inheritable and not tangible or visible. It may also be a right issuing out of a corporeal thing but not the substance of thing itself. (Black's Law Dictionary 5th Edition, p. 653).

The Relief Requested is within the Power of Defendant to Grant

30. Claimants are seeking damages in the amount £1 billion (BIOT).

31. The BIOT Commissioner pursuant to The British Indian Ocean Territory, Ordinance No. 2 of 2008 has the power to issue licenses for the production of BIOT legal tender banknotes, coins and tokens and has in the past issued such licenses including licenses for unlimited quantities of coinage to Pobjoy Mint. See Exhibits 1, 2.

32. The BIOT Commissioner at their discretion may specify the terms of license including design, quantities, term, composition, and denominations of the coinage, tokens, or banknotes. See Exhibit 2

33. The Claimants seek:

(i) Damages in the amount of £1 billion (BIOT) payable by currency or by license to issue banknotes, coins and tokens in that amount.

(ii) Legal fees and costs;

(iii) Such other relief as this Court finds appropriate including referral of Defendant for criminal prosecution.

JONATHAN LEVY
Legal Practitioner and
Solicitor for Claimant

Statement of Truth

The Claimant believes that the facts stated in these Particulars of Claim are true.

I am duly authorised by the Claimants to sign this statement.



Signed

Date April 7, 2021

Name: JONATHAN LEVY

SOLICITOR FOR CLAIMANTS





Claim No. *BIOT SC 2021-1*

IN THE SUPREME COURT OF THE BRITISH INDIAN OCEAN TERRITORY

B E T W E E N:

BERNARD NOURRICE & SOLOMON PROSPER

In their Individual Capacities and as Class Representatives of the Chagossian and Ilois People
Claimants

-and-

HER MAJESTY THE QUEEN

Defendant

PARTICULARS OF CLAIM

EXHIBIT ONE

THE BRITISH INDIAN OCEAN TERRITORY.

THE COMMEMORATIVE COINS ORDINANCE, 2008

Ordinance No. 2 of 2008

An Ordinance to make licensed commemorative coins lawful currency
in the British Indian Ocean Territory and to provide for matters
incidental thereto and connected therewith.

Arrangement of sections.		
Section		Page.
1.	Short title and commencement.	2
2.	Restrictions on issue or making of bank notes and coins	2
3.	Licensed bank notes and coins to be current and legal tender.	2

Enacted by the Commissioner for the British Indian Ocean Territory.

16 September 2008

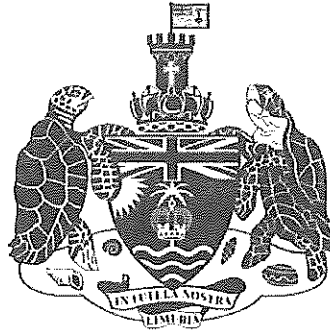
.....
C.Roberts
Commissioner.

THE BRITISH INDIAN OCEAN TERRITORY

Ordinance No. 2 of 2008

Short title and commencement.	1. This Ordinance may be cited as the Commemorative Coins Ordinance, 2008 and shall come into force forthwith.
Restrictions on issue or making of bank notes and coins.	<p>2. (1) Save under the authority of a licence granted by the Commissioner, no person may –</p> <ul style="list-style-type: none">(a) issue any bank notes; or(b) make or issue any piece of gold, silver, copper or bronze, or of any metal or mixed metal, of any value whatever, as a coin or token for money, or as purporting that the holder thereof is entitled to demand any value denoted thereon. <p>(2) Any person who contravenes subsection (1) shall be guilty of an offence under this Ordinance and shall, on conviction, be liable to a fine not exceeding £10,000.</p> <p>(3) Notwithstanding subsection (1) British sterling notes and coins of the denominations, designs and specifications in circulation from time to time as lawful currency in the United Kingdom shall continue to be lawful currency in the Territory pursuant to the provisions of the Currency Ordinance 1981.</p>
Licensed bank notes and coins to be current and legal tender.	3. (1) All bank notes coins or other pieces authorised to be made and issued by a licence granted under section 2(1) may circulate in the Territory and shall be legal tender in the Territory for payment of any amount.

EXHIBIT 2



BRITISH INDIAN OCEAN TERRITORY

THIS LICENCE is granted by the Commissioner pursuant to section 2(1) of the Commemorative Coins Ordinance 2008.

1. Pobjoy Mint of Millenia House, Kingswood Park, Bonsor Drive, Kingswood, Surrey is hereby authorised by this licence to –
 - a. make during a period of three years from the date of the grant of this licence, and
 - b. issue during a period of three years from the date of the grant of this licence

coins in the quantities and of the design and specification set out in the Schedule.

2. It is a condition of this licence that every such coin issued must fully comply with the design and specification set out in the Schedule.
3. Each such coin made in accordance with the conditions of this licence shall be legal tender in the Territory for its face value after 1 January 2019.

IN WITNESS whereof the Commissioner has hereto set his hand and the Seal of the Territory this 21 day of June 2018.

.....
Ben Merrick
Commissioner

SCHEDULE

(Design, specification, authorised quantity and authorised mint of coins)

A. Design:

As shown in the Annex to this Schedule:

1. The obverse of every coin shall consist of the Pobjoy Mint Effigy of H.M. Queen Elizabeth II, surrounded by the inscription “ELIZABETH II BRITISH INDIAN OCEAN TERRITORY” and “2019” the year of the minting of the coin.
2. The reverse of every coin shall depict an image of the Cutty Sark with an outline map of the route she took from Shanghai to England in the background. The wording “The Cutty Sark” and the dates “1869” and “2019”, together with a marking of one of the denominations set out in Part B of this Schedule shall appear in the surround.

B. Specification, authorised quantity and authorised mint of coins:

Type	Gold Proof	Gold Proof	Gold Proof	Titanium	Silver Proof	Silver Proof	Cupro Nickel
Denomination	£20	£4	£2	£2	£1	£2	£2
Weight (gms)	6.22	1.24	0.5	10.00	12.00	28.28	28.28
Diameter (mm)	22.00	13.92	11.00	36.10	38.60	38.60	38.60
Fineness	999.9	999.9	999.9	910.0	999.0	925.0	75%CU 25%Ni
Quality	Proof	Proof	Proof	Proof	Proof	Proof	Uncirculated
Shape	Round	Round	Round	Round	Round	Round	Round
Edge	Milled	Milled	Milled	Milled	Milled	Milled	Milled
Quantity	2,000	5,000	10,000	7,500	10,000	10,000	Unlimited

ANNEX

