

BEFORE THE AFRICAN COMMISSION ON HUMAN & PEOPLES' RIGHTS

**Bernard NOURRICE
Solomon Pierre PROSPER**

Complainants in their Individual Capacities & as Representatives of the Chagossian People

v.

Republic of Mauritius

Re: The Chagos Archipelago Military Occupying Authority

Communication to the African Commission on Human and Peoples' Rights under Article 55 of The African Charter on Human and Peoples' Rights alleging that the Military Occupying Authority (“Occupying Authority”) in the Chagos Archipelago, a territory of the Republic of Mauritius, a state party to the African Charter on Human and Peoples' Rights, has violated one or more of the rights contained therein including the right of a people to their property (Article 14), the right of equality under the law (Article 19), the right of self-determination (Article 20), the right to their property and in particular the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation (Article 21), and the right to economic development (Article 22).

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A Communication Pursuant to Article 55 of The African Charter on Human and Peoples' Rights,

Complainants hereinafter referred to as “Chagossians” state that the Military Occupying Authority in the Chagos Archipelago (a territory of the Republic of Mauritius¹) is the United Kingdom. The United Kingdom created the military colony known as British Indian Ocean Territory through the use of military force and crimes against humanity targeting the Chagossian people. The Military Occupier has violated multiple articles of The African Charter on Human and Peoples' Rights and continues to occupy territory of the Republic of Mauritius in open defiance of international law and international governmental organizations. In so doing the United Kingdom has flaunted the findings and resolutions of the African Union, the United Nations General Assembly, and the International Court of Justice

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 by military force thus applicable law of the legitimate power Mauritius will apply, specifically The African Charter on Human and Peoples' Rights.

This complaint is based on the personal knowledge of the Complainants of the events described herein, the findings of superior tribunals, international organizations and the pleadings of their legal representatives. The Complainants have exhausted domestic remedies or nonesuch exist or are futile and this communication is timely.

Background

1. The United Nations requested an advisory opinion for the International Court of Justice which was rendered in February 2019 on the matter of the Chagos Archipelago and is incorporated herein by reference.
2. 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 stated²:

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

¹ Republic of Mauritius: <http://www.govmu.org/English/ExploreMauritius/Geography-People/Pages/GeographyPeople/Location.aspx>

² <https://www.icj-cij.org/en/case/169>

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)

On 30 January 2017, the Assembly of the African Union adopted resolution AU/Res.1 (XXVIII) on the Chagos Archipelago which resolved, among other things, to support Mauritius with a view to ensuring “the completion of the decolonization of the Republic of Mauritius.” (¶52)

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)

On 23 June 2017, the General Assembly adopted resolution 71/292 requesting an advisory opinion from the International Court of Justice.

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)

3. The ICJ found:

The process of decolonization of Mauritius was not lawfully completed when that country acceded to independence in 1968, following the separation of the Chagos Archipelago;

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

All UN Member States are under an obligation to cooperate with the United Nations in order to complete the decolonization of Mauritius.

The United Kingdom has been advised by the Mauritius, the United Nations, the African Union and the International Court of justice that its occupation of the Chagos Islands is unlawful and must be ended immediately.

The Complainants

4. The Complainants are the Chagossians: Bernard NOURRICE and Solomon Pierre PROSPER. They appear here in their personal capacities and as representatives of the Chagossian people. Nourrice and Prosper were born on Diego Garcia Island and were victims of the forcible ethnic cleansing by the Military Occupying Authority. They are both active in various roles as advocates on behalf of the Chagossian people and their cause.

5. The Complainants are Chagossians, an African people, also known known as Ilois. The Ilois or Chagossians have a distinct language, Chagossian Creole and culture exclusive to the Chagos Archipelago. The Chagossians are of primarily African descent.

6. All the Complainants have personally suffered economic and social deprivation due to their status as a people exiled from their homeland by the Military Occupation Authority.

The Legal Status of the Chagos Archipelago.

7. This Commission is bound by the position of the African Union and United Nations General Assembly that the Chagos Archipelago is a territory of the Republic of Mauritius, a signatory of The African Charter on Human and Peoples' Rights. While the legal consensus is that the United Kingdom is an unlawful occupier of the Chagos Archipelago; the question of colonial restitution of property and particularly the valuable digital property “ccTLD .IO” have not been decided by any tribunal or agency.

The Occupying Authority

8. The United Kingdom is the Military Occupying Authority which has been unlawfully occupying the Chagos Archipelago in defiance of international law. While there is a Commissioner of the BIOT Administration who sits primarily in London, the actual military occupation is carried out by a Royal Navy Commander, who is appointed as the Commissioner’s Representative (known locally as “BritRep”). As well as being the highest civilian authority in the Territory, this person is also the Officer commanding the British Forces in Diego Garcia. The post is currently held by Commander Kay Burbidge.³

9. The United Kingdom has committed Crimes Against Humanity by forcibly deporting the Chagossian people including two of the Complainants in an intentional campaign of ethnic and racial cleansing 1967-1973 and denying their return as plead in detail *infra*.

Crimes Against Humanity by the Occupying Authority

10. Crimes Against Humanity are defined by Article 7 the Rome Statute of the International Criminal Court to include as follows⁴:

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:

³ BIOT Government: <https://www.biot.gov.io/governance/>

⁴ United Nations: https://legal.un.org/icc/statute/99_corr/cstatute.htm

(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 International Court of Justice has found the Chagossians were forcibly removed from the Chagos Archipelago and prevented from returning by the Military Occupying Authority:

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. (ICJ ¶43)

11. This ethnic cleansing and persecution was conducted by the United Kingdom military. There was no health or safety reason or any other justification. The United Kingdom sought to clear the Chagos Archipelago in order to repurpose it as a military base primarily for the use of its lease the United States. As only friendly and non-aligned powers were in that sector of the globe, there could be no immediate military necessity for defense of the United Kingdom or Mauritius.

12. There is no question the removal of the Chagossians, including two of the Complainants, was forcible and without any justification and was based solely on their ethnicity. The Military Occupying Authority has admitted this fact.

In the 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)

13. Nonetheless, the BIOT Administration justifies its military occupation by claiming their crimes were somehow economically justified and benevolent and that compensation was paid.⁵ These statements conflict with representations made by the United Kingdom to the UN and ICJ when in fact the BIOT Administration is unrepentant for its crimes and seeks to justify its actions even now.

14. The crime of Apartheid is a serious allegation, yet one amply demonstrated herein. Numerous individuals have been permitted to reside in the Chagos Archipelago since the removal of the Chagossians: members of the UK and US armed forces, contract workers and marine biologists.

⁵ BIOT government website: <https://www.biot.gov.io/about/history/> [Retrieved June 18, 2020]

Yet, the Chagossians, the original inhabitants who have the legal right of abode are currently denied access by law to the Chagos Islands except for what are brief “Heritage Visits” at the whim of the BIOT Administration.⁶

15. The Military Occupation Authority’s officials thought very little of the Chagossians. Their contemporary racist and apartheid views are well documented in various pleadings and publications.

Sir Paul Gore-Booth, senior official at the UK Foreign Office, wrote to a diplomat in 1966: "We must surely be very tough about this. The object of the exercise is to get some rocks which will remain ours... There will be no indigenous population except seagulls..."

The UK diplomat, Dennis Greenhill, replied: "Unfortunately along with the birds go some few Tarzans or Man Fridays whose origins are obscure and who are hopefully being wished on to Mauritius." In 1965, UK Colonial Secretary Anthony Greenwood had warned that it was: "[I]mportant to present the United Nations with a fait accompli".

16. 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.

17. The British Indian Ocean Territory Constitution Order 2004 states⁷:

No right of abode in the Territory

9. — (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

⁶ BIOT government website: <https://www.biot.gov.io/news/planned-heritage-visits-for-chagossians-2020-21/>

⁷ https://en.wikisource.org/wiki/British_Indian_Ocean_Territory_Constitution_Order_2004

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 permanently confiscated their property for its own use and use by its leasee and contractors.

The Occupier has Expropriated the Economic Property and livelihood of the Chagossian People

18. The Chagossians are also known as *Ilois* and as islanders are culturally attached and strongly connected to their environment.

19. Colonial exploitation takes at least 5 known aspects in the Chagos Islands:

1. The United Kingdom Issues Fishing Permits from which it derives some income.

2. The United Kingdom derives income from yachting permits.⁸

3. The United Kingdom receives tangible and in kind benefits from the United States in exchange for a lease of the military base on Diego Garcia Island.⁹

4. The United Kingdom derives income from the sale of postage stamps and coins to collectors which often utilize images of the unique flora and fauna of the Chagos Archipelago.¹⁰

5. In 1997 an agreement was signed by the United Kingdom with Internet Computer Bureau Limited or “ICB” granting ICB the administrative rights to the ccTLD (Country Code Top Level Domain) .IO. The ccTLD .IO rights are a valuable property and generate millions of dollars in fees for ICB annually. The 1997 contract or agreement grants ICB exclusive rights to exploit this asset in the same way colonial powers have delegated exclusive rights in Africa to private companies to act on behalf of the colonizer e.g. The Tati Concessions Land (Botswana), The Nyassa Chartered Company, and The Mozambique Company. ICB therefore is the Occupying Power’s agent and acts in its stead in the matter of ccTLD .IO.

20. The value of ccTLD is thought to be in the neighborhood of \$50 million. ccTLD .IO generates direct fees of \$10 million year to ICB. The domain end users of ccTLD .IO include thousands of crypto asset platforms (crypto asset exchanges, investment schemes, Initial Coin Offerings, Crypto Miners and Bitmixers) who take advantage of the nonexistent commercial regulation in BIOT to generate vast sums of unregulated and untaxed revenue and trade with volume of billions of dollars per day. The BIOT Courts and Administration have been aware since 2017 that cc TLD .IO has become the world’s largest crypto asset offshore centre.

⁸ <https://www.biot.gov.io/visiting/mooring-permits/>

⁹ <https://installations.militaryonesource.mil/in-depth-overview/navy-support-facility-diego-garcia>

¹⁰ <https://www.biot.gov.io/stamps-and-coins/>

21. The Chagossians receive no income from any of these colonial activities nor have any meaningful input in their management. The Occupying Power and its BIOT Administration has not only stolen the entire Chagos Archipelago and everything on, under and above it but also engages in virtual and digital exploitation and even tolerates massive criminality in order to generate revenue.

Jurisdiction

22. 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 applicable law of the legitimate power Mauritius will apply, specifically The African Charter on Human and Peoples' Rights.

23. 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.

24. Article 64 of the Fourth Geneva Convention states: “The penal laws of the occupied territory shall remain in force...¹¹” 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.¹²

The Republic of Mauritius

25. The African Charter party is the Republic of Mauritius which claims the territory of the Chagos Archipelago. The Republic of Mauritius ratified the African Charter in 1992.

26. Complainants have reason to believe that the Republic of Mauritius if not entirely favorable to their position, will have no objection to this Commission exercising jurisdiction and fashioning a remedy. The Republic of Mauritius has been particularly diligent in pursuing its territorial rights to the Chagos Archipelago at the UN, AU and elsewhere but has not sought restitution of property for the Chagossians

27. The Occupying Power, the BIOT Administration however takes a somewhat supercilious position:

¹¹<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=6DB876FD94A28530C12563CD0051BEF8>

¹²<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=9DA4ED335D627BBFC12563CD0042CB83>

Mauritius has never held sovereignty over the Archipelago, and we do not recognise its claim. However, we have a long-standing commitment, first made in 1965, to cede sovereignty of the territory to Mauritius when it is no longer required for defence purposes. We stand by that commitment. The United Kingdom is also committed to doing more (on a voluntary basis) to address the aspirations of Chagossians including the desire for better lives and to maintain a connection to the British Indian Ocean Territory (BIOT). Despite our disagreement over the British Indian Ocean Territory, the United Kingdom and Mauritius remain close friends and Commonwealth partners. We remain open to dialogue on all shared issues of mutual interest, as highlighted by the friendly and constructive discussion that took place between the UK's Foreign Secretary and the Prime Minister of Mauritius on 27 April.¹³

28. Thus, the Occupying Power remains contumacious in regard to the position of the UN and AU. The Occupying Power also makes promises to Mauritius and the Chagossians which are completely at odds with the current position. The Occupying Power recognizes that the Chagos Islands are to be ceded at some future time to Mauritius and that the Occupying Power is responsible to the Chagossians. This we believe indicates the Occupying Power while maintaining its military occupation, acknowledges the superior claims of Mauritius to the territory and its obligations to the Chagossian people and their rights under the African Charter.

ccTLD .IO

29. A country code top-level domain (ccTLD) is an Internet top-level domain generally used or reserved for a country, sovereign state, or dependent territory identified with a country code. Some of the world's smallest countries and non-sovereign or colonial entities with their own country codes have opened their TLDs for worldwide commercial use in order to generate significant revenues.

30. IANA (Internet Assigned Numbers Authority) is responsible for determining or approving an appropriate trustee for each ccTLD. IANA is a California nonprofit corporation. Administration and control are then delegated to that trustee, which is responsible for the policies and operation of the domain. IANA has delegated the rights to administer ccTLD .IO to ICB. ICB maintains an address on Diego Garcia Island, in order to satisfy IANA ccTLD delegation requirements. IANA's policy however is not to redelegate ccTLDs until the conflicting rights of the parties have been adjudicated. Therefore, an appeal to IANA to redelegate ccTLD .IO would be futile and premature. Additionally, both IANA and its sister organization ICANN are closely connected to the US government which is the leasee of Diego Garcia Island and would be bound by US recognition that BIOT not Mauritius is the government of the Chagos Archipelago.¹⁴

31. The ccTLD .IO is assigned to British Indian Ocean Territory (BIOT), the name used by the Military Occupation Authority for the Chagos Archipelago. The .IO domain was created in 1997

¹³ <https://www.biot.gov.io/news/uk-government-statement-on-the-united-nations-secretary-generals-report-on-the-implementation-of-resolution-73-295/>

¹⁴ <http://www.iana.org/domains/root/db/io.html>

when BIOT signed an agreement with Internet Computer Bureau Limited or “ICB” to administer ccTLD .IO. ICB was headed by an ICANN (The Internet Corporation for Assigned Names and Numbers) official, Paul Kane. Kane was also chosen to look after one of seven keys to the Internet, which will 'restart the world wide web' in the event of a catastrophic event. Counsel for Complainants has attempted to recover a copy of the 1997 ccTLD .IO agreement from the BIOT Administration under the UK Freedom of Information law, however the 1997 Agreement was withheld from counsel as a “trade secret.” In 2014, Kane made a public statement that indicated a portion of the revenue from ccTLD was returned to the BIOT Administration while the remainder was the property of ICB. The Chagossians received no portion of this revenue stream. Since 2014 the Chagossians and/or legal representatives acting on their behalf attempted to learn from the BIOT Administration about that status of the ccTLD .IO revenue but received no answer. [See Exhibits at pg. 9 et seq. attached hereto.]

32. Afilias Ltd., an Irish company which is a wholly owned subsidiary of the American company, Afilias Inc., hereafter “Afilias,” acquired Internet Computer Bureau Ltd. (ICB) and its main asset ccTLD .IO in 2017 for a cash payment of \$70 million to ICB’s shareholders, Paul Kane and his wife. The Chagossians received nothing from this sale even though Kane had made public statements on previous occasions to the press, that the Chagossians would share in his largesse from ccTLD .IO. Kane in fact had no intention of compensating the Chagossians and apparently made such statements to avoid the scrutiny of the press.

33. Afilias had actual notice of long standing claims and litigation by the Chagossians and their descendants regarding the unlawful deportation of the Chagossian people from their homes, confiscation and destruction of their property and the illegal occupation of the Chagos Archipelago by the United Kingdom and its leasee, the United States military. Afilias had actual notice of the shameful legacy of colonialism and criminal apartheid in the Chagos Archipelago yet still chose to acquire ccTLD .IO and enrich the owners of ICB by \$70 million while making no provision for the Chagossians.

34. Afilias provided misleading information to the Internet Assigned Numbers Authority (IANA) Delegation Record so that it appeared a Bermuda company, Sure (Diego Garcia) Limited, was the ccTLD Manager and Administrative Contact for ccTLD .IO instead of ICB in the IANA delegation record. This was corrected only after Complainants’ counsel complained to IANA and Sure (Diego Garcia) Limited.

35. ICB received control of the ccTLD .IO in a 1997 agreement which the BIOT Administration which has refused to release the Agreement despite Freedom of Information requests. All that is known about the Agreement is that a copy resides with “SURE” on Diego Garcia Island based on an email released by the FCO pursuant to the UK Freedom of Information Act:

From: Sure Sent: 15 May 2017 14:17

To: FCO Subject: ICB Agreement

[Redacted],

Just to confirm, I have checked and the only agreement as I advised at the meeting is the 1997 agreement.

Best Regards,

[Redacted]
Chief Executive Diego Garcia and CTO S&D

36. In February 2020, the Complainants made the following demands on Afilias/ICB¹⁵:

1. An accounting of the funds held in constructive trust by ICB for the benefit of the Chagossian people as promised by Paul Martyn Kane, the former CEO of ICB;
2. An accounting of payments, in kind or otherwise, made to the BIOT Colonial Administration by ICB;
3. Payment of past due royalties;
4. A fair percentage of the acquisition price paid to Paul Martyn Kane for property belonging to the Chagossian people;
5. An interim Agreement between ICB and the Chagossian people which sets an annual payment schedule of royalties, a disbursement schedule of funds owed, and provides for a Chagossian director's seat on board of ICB.
6. And that Afilias and ICB cease and desist from enabling criminal activities that damage the reputation and value of ccTLD .IO by immediately adopting the suggestions of the Cryptocurrency Crime Victims and working with their counsel to eradicate open and notorious cryptocurrency based crime in ccTLD .IO.

37. The Complainants cited as the legal basis for their claims: The African Charter on Human and Peoples' Rights (African Charter). The Charter guarantees a "people" the right to their property (Article 14), the right of equality under the law (Article 19), the right of self-determination (Article 20), the right to their property and in particular the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation (Article 21), and the right to economic development (Article 22).

38. Afilias/ICB replied on March 20,2020 to the Complainants:

The concerns that you raise on behalf of your clients relate to geopolitical matters which fall outside of our client's control or involvement. As you will appreciate, our client had no involvement in the establishment of the British Indian Ocean Territory or the treatment of its then residents in the 1960s. Nor is our client a party to any dispute regarding ownership of the territory.

In that context, it is not appropriate for our client to comment on the advisory opinion of the International Court of Justice, the UK Government's response to such opinion or any subsequent action being undertaken by the United Nations General Assembly.

¹⁵ See Exhibits beginning pg. 22.

The claims Your letter includes the bald assertion that “the ccTLD .io is valuable property that belongs to the Chagossian people”. No legal argument is advanced to support this assertion.¹⁶

39. The response by Afilius/ICB was disingenuous in that:

1. ICB’s presence in BIOT is based on a secret agreement with the BIOT Administration.
2. ICB has acknowledged Chagossian claims and claimed they would be compensated to the press.
3. ICB’s presence in BIOT on Diego Garcia Island is with the explicit approval of the BIOT Administration.
4. ICB is aware of the of the unlawful occupation of the Chagos Archipelago.
5. ICB is an agent of the Occupying Power.

Criminality

40. The Complainants are mindful that someday the digital patrimony and property of the Chagos Islands will be restored to them by the Occupying Power. As ccTLD.IO is perhaps the most valuable asset and going business in the BIOT, the Complaints are concerned with the despoilment and criminal use of ccTLD which is tacitly condoned by Afilius/ICB and the BIOT Administration and which will diminish its future value and a producer of revenue.

41. The Occupying Power has been made aware by Complainants’ counsel that ccTLD .IO is rife with lawlessness and criminality. Complainants’ counsel has communicated this to the BIOT Legal Advisor and has filed cases in the BIOT Magistrates and Supreme Courts on behalf of victims of crypto asset crime. Counsel on behalf of other clients has notified ICB/Afilius and BIOT Administration of just some of the many criminal organizations utilizing ccTLD to commit crime involving crypto assets.

42. Bitblender.IO, Doubly.IO, Profitcoins.IO, and AXECC.IO like thousands of other virtual crypto criminal entities operating in ccTLD .IO have registered their domains with false identities and third party privacy providers or proxies. Only Afilius’ wholly owned subsidiary ICB as the ccTLD .IO Administrator and Manager would have the ability to know or discover from its resellers the true identities and locations of the defendants. It has chosen not to do and continues to permit criminal entities to register domains in ccTLD .IO.

43. Complainants’ counsel had a September 2019 teleconference with Mr. Taylor, former legal counsel for Afilius Inc. and Afilius Ltd. (“Afilius”), at which time Complainants’ counsel requested Afilius’ cooperation in remediating the disgraceful combination of cryptocurrency fraud and organized crime that have congregated in the ccTLD .IO. This dangerous situation is wholly due to ICB and its resellers marketing and promoting ccTLD .IO specifically to cryptocurrency operators without heed to even basic KYC (Know Your Client) and CTF/AML (Counter Terrorism

¹⁶ Ibid.

Funding and Anti Money Laundering) regimes. As a result, numerous criminal virtual entities, dealing solely in cryptocurrency with no tangible existence other than a ccTLD .IO website and domain, have commenced criminal activities in the ccTLD .IO sphere causing immense financial and emotional damage to individuals and international commerce.

44. The Bitcoin Blender Organisation (“Bitblender.io”) litigation involving the criminal organization Bitblender.io has led to discovery of similar .IO cryptocurrency laundering sites: smartmix.io, smartmixer.io, cryptomixer.io, anonymix.io, blender.io, mixtum.io, privcoin.io, mixm.io. Bitblending or bitmixing is considered to be money laundering as it has no legitimate purpose except to obscure the origins of cryptocurrency. Despite our repeated warnings to BIOT Administration, Afilias and ICB most of these bitmixing .IO sites are still active and open for business, something that we cannot reconcile with basic anti money laundering and counter terrorism funding (AML/CTF) protocols supposedly in effect in the British Indian Ocean Territory. Our conservative estimate is that cryptocurrency worth hundreds of millions of dollars have been laundered through these sites and represents the fruits of extortion, hacking, tax evasion, fraud, Ponzi schemes, child pornography, terrorism financing, arms and drug dealing and other criminal activity.

45. In September 2019, Mr. Taylor of Afilias/ICB was provided with information on the desperate plight of the cryptocurrency crime victims we represent. We provided Mr. Taylor copies of some of our communications to the European Union, previous communications with the British Indian Ocean Territory, and alarming statistics on criminal activity in ccTLD .IO originating with the City of London Police. [See Exhibits at pg. 8]

46. Complainants’ counsel represent victims in ccTLD .IO matters pending before several European Union agencies and bodies and the BIOT Supreme Court:

CCRT (Crypto Currency Resolution Trust) v. THE BITCOIN BLENDER ORGANISATION (Bitblender.io) , BIOT 2018/001 SC

JOHHANES HEYNS V. AXECC.IO, BIOT 2019/001 SC

SENERGICA srl, ROBERTO ALIMONTI, PATRIZIA FACHERIS, ALVARO TAGLIABUE v. AXECC.IO (AXE Crypto Currency or AXECC), BIOT 2019/002 SC

ANTONIA FRANCESCO TEDESCO V. DOUBLY.IO, BIOT 2019/003 SC

PEEM LORVIDHAYA v. PROFITCOINS.IO (PROFITCOINS), BIOT 2019/004 SC

CCRT (Crypto Currency Resolution Trust) v. Bitcasino.io, Sportsbet.io, duckdice.io, luckyfish.io, edgeless.io, truflip.io, Betking.io, duckdice.io, bitcoinrush.io, betmatch.io, betroar.io, and coingaming.io.

Drew Jensen v. Cointeck.io

Guillermo de la Hera Casado v. Bitshell.io

CCRT (Crypto Currency Resolution Trust), Estère Crisona, Steve Scriha v. One Coin including onecoin.io
Steve Scriha, Jacqueline Scriha, Estère Crisona, Martin Braddy, Shakib Kayode Laguda v. usitech-intl.io, tech-coin.io ,usitech.io and successor in interest wealthboss.io (USITech)

Steve Scriha, Jacqueline Scriha, Errol Turner v. procurrency.io, procommerce.io (ProCurrency ICO & IPro Network)

Steve Scriha v. coinmdblockchain.io, coinmdsupport.io, coinmdchoice.io, coinmdlogin.io, coinrewards.io, coinmdwallet.io, cryptoonpoint.coinmd.io, coinmd.io (CoinMD)

Alexandre K. v. Lifelabs.io

47. The USITech, IPro Network and Online gambling matters are of particular note because of the amounts involved:

48. IPro Network is typical of the thousands of similar operations utilizing ccTLD.IO. According to the US Securities Exchange Commission (US District Court for the Central District California Case No.5:19-cv-958), this typical ICO Crypto scheme defrauded investors of at least \$26 million.

49. USI Tech Limited (also known as United Software Intelligence or stylized as USI-TECH) is perhaps the second most “successful” crypto currency Ponzi scheme, second only to the infamous \$4 billion One World One Coin Ponzi scheme. USI-TECH moved its operations to ccTLD .IO because of the ICB marketing campaigns seeking cryptocurrency related operations and used various ccTLD.IO online platforms to defraud investors of hundreds of millions of dollars.

50. The largest cryptocurrency Ponzi Scheme, the infamous OneCoin pyramid also utilized ccTLD .IO using the domain onecoin.io.

51. With regard to the online casino claims of no less than €3,000,000, we advised Afiliis we have obtained reliable information that at least 1,000,000 Bitcoins were unlawfully laundered from the ccTLD .IO crypto casinos to the crypto exchange HitBTC.

52. These claims are representative of thousands of other claims involving criminal activity in ccTLD .IO which are known to us including numerous fraudulent crypto trading platforms, crypto money laundering, ICOs, Ponzi, pyramid and HYIP (High Yield Investment Programs) and unlicensed gambling operations.

Exhaustion of Local Remedies

53. The Complainants are required to exhaust their remedies as to the digital property known as ccTLD .IO. ccTLD .IO is a product of BIOT and created by BIOT in 1997. The Occupying Power remains defiant in the face international condemnation of its military occupation of the Chagos Archipelago and does not recognize the jurisdiction of Mauritius over BIOT. The Complainants have attempted to resolve their differences over ccTLD .IO directly with Afilias/ICB, the agent of the BIOT Administration to no avail. As noted *supra* ICB maintains its official presence as the Administrator of ccTLD .IO at its office on Diego Garcia island, BIOT and is indicated as such in the IANA Delegation Record¹⁷:

Delegation Record for .IO

(Country-code top-level domain)
ccTLD Manager
Internet Computer Bureau Limited
c/o Sure (Diego Garcia) Limited
Diego Garcia
British Indian Ocean Territories, PSC 466 Box 59
FPO-AP 96595-0059
British Indian Ocean Territory

Administrative Contact
Internet Administrator
Internet Computer Bureau Limited
c/o Sure (Diego Garcia) Limited
Diego Garcia
British Indian Ocean Territories, PSC 466 Box 59
FPO-AP 96595-0059
British Indian Ocean Territory
Email: administrator@nic.io
Voice: +246 9398
Fax: +246 9398

54. The Occupying Authority has established a court system in the British Indian Ocean Territory which includes two Magistrates Court, a Supreme Court, a Court of Appeals, with further appeals to the UK Privy Council. Complainants' attorney, Dr. Jonathan Levy, has rights of audience to the BIOT Supreme Court and has engaged in related litigation involving the ccTLD .IO as noted *supra*. Further Dr. Levy has sought unsuccessfully from BIOT Administration the 1997 Agreement between ICB and BIOT Administration under the UK freedom of Information Act and on appeal has been refused by the United Kingdom Information Commissioner access to the document on grounds of "trade secret."¹⁸

¹⁷ <https://www.iana.org/domains/root/db/io.html>

¹⁸ See Exhibits at page 9 et seq.

55. The BIOT Constitution of 1984 denies any civil and property rights to the Chagossians. [See Exhibits pg. 1 et seq, Articles 9 & 14].

56. The Complainants contend that bringing this matter before Occupying Authority's court would be unavailable, ineffective and futile as the BIOT courts would be bound by its apartheid laws and constitution which deny all property and civil rights to the Chagossians.

The African Charter of Human & Peoples' Right

57. Complainants' bring this matter forward under the following Articles of the Charter:

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.

ccTLD .IO is perhaps the most valuable property right at present in the Chagos Archipelago. ccTLD .IO is delegated by IANA to the Chagos Archipelago and resides according to IANA on Diego Garcia. It is therefore inseparable from the geographic entity.

The Chagossians through their many legal struggles, too numerous to list here, have demonstrated an ongoing attachment to their land from which they were forcibly removed by the Occupying Power. The Occupying Power admits it was wrong yet demonstrates hubris and not contrition for its crimes against the Chagossian people. ICB, despite alleged promises to share revenue with the Chagossians has refused to do so. ICB's former stakeholder, the Kanes, have profited enormously upon sale of property not belonging to them to Afiliias. Afiliias when given a chance to make restitution has refused outright. As an African people, the Chagossians have a right to rely on the Charter to seek restitution of ccTLD .IO.

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.

The Crimes against Humanity perpetrated on the Chagossian people, the facts of which are not in dispute, amply demonstrates their status as victims of the unlawful occupation of the Chagos Archipelago by non-African occupiers, mainly American and British military and their contractors. As victims of domination, the Chagossians have the right to secure the return of their property in a forum that views them as equal to their oppressors.

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.*

There is no question the Chagossians are a colonized people exiled from their homeland by overwhelming military force. Article 20(1) grants them the right to economic and social development. They have been stripped of all property rights and it is only logical they would seek recovery of one of their most valuable assets, a digital asset ccTLD .IO, that does not even require their presence on the territory from which they are exiled but which nonetheless is part and parcel of their land.

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 21 broadly supports the right of the Chagossians to ccTLD .IO and the restitution of the revenues therefrom. Article 21(5) is particularly apropos as ICB/Afilias has been granted a right by Military Occupier and colonizer to exploit ccTLD .IO even to the point of tolerating criminality. ICB is an English company and Afilias an Irish and American one. All revenues from ccTLD .IO have enriched non Chagossians, the shareholders of ICB and the BIOT Administration.

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 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. They have been denied the right to participate in ccTLD .IO.

CONCLUSION

58. The matter of ccTLD .IO is a matter of first impression and has not been decided by any other tribunal. The Commission is particularly well suited for this purpose because the African Charter first and foremost was designed to address the ills and crimes of colonialism. It is therefore natural that the Chagossians as an African people would seek to deploy the African Charter against their oppressors.

59. The Commission has jurisdiction in this matter as the Chagos Archipelago is a territory of the Republic of Mauritius, a signatory to the African Charter and under the laws of military occupation, the Occupying Authority must follow the laws of the occupied territory. While the Occupying Authority may or may not directly participate herein, a finding by the Commission in favor of the Chagossians will have wide ranging ramifications.

1. It will place the Occupying Authority and its agent, Afilias/ICB, on notice that their actions violate the Charter;
2. It will place users of ccTLD .IO on notice that their use of ccTLD .IO is illegitimate and in particular any criminal activity is not sanctioned by the Chagossians.
3. It may induce Afilias/ICB to reevaluate their position as to the reasonable demands of the Chagossians.
4. It will provide a legal basis for the Chagossians, as an African people, to pursue their rights to ccTLD .IO in other forums and obtain eventual restitution of their property.

The Chagossians therefore pray of the Commission the following:

1. That the Commission find this matter admissible;

2. A declaratory finding that the Chagossians have a property right to ccTLD .IO under the African Charter and the right to restitution against the Occupying Power and its agent Afilias/ICB;
3. A finding that the Occupying Power and its agent Afilias/ICB have violated the applicable articles of the Charter;
4. The legal costs of the Complainants be taxable to the Occupying Power and/or its agents.
5. That the Republic of Mauritius has been noticed and afforded the opportunity to respond to and support the superseding economic claims of the Chagossians to digital property in BIOT, namely ccTLD .IO.
6. Such other relief this Commission deems necessary to achieve the relief requested in order to effect restitution of the property ccTLD .IO and disgorgement of the unjust enrichment obtained therefrom by the Occupying Authority and its colonial agents.

Respectfully submitted this 6yth day of July, 2020,

A handwritten signature in blue ink, appearing to read 'Jonathan Levy', is written over a blue circular notary seal. The seal features a central image of a scale of justice and contains the text 'JONATHAN LEVY' at the top and 'CALIFORNIA BAR #158032' at the bottom.

Dr. Jonathan Levy
Attorney for Complainants